Georgia 2013 Legislation as of May 14, 2013

The Regular 2013 Session for the Georgia General Assembly began in January 2013 and ended on March 28, 2013. Georgia Governor Nathan Deal signed bills into law last week on May 6 and May 7. Bills that did not pass in 2013 are still on the table for consideration during the 2014 session. Below are the final updates on the bills of importance to the default servicing community.

Bills that passed:

GA House Bill 83: Amends Georgia law relating to the licensing of mortgage lenders and brokers and specifically exempts from licensing a Georgia licensed real estate agent providing information to a lender on a short sale transaction where a separate fee is not received by the agent or broker. A real estate agent or broker, who directly negotiates, places or finds mortgages for others are not exempt from licensing. **This bill was signed by the Governor on May 6, 2013 and is now law.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/83

GA Senate Bill 139: Allows a lender or seller to collect a one-time closing fee for contracts for the advance of money or the extension of credit. **This bill was signed by the Governor and became effective on April 9, 2013.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/SB/139

GA House Bill 160: Adds a new code section which will prohibit transfer fee covenants to get rid of the fee that must be paid to the property developer each time a parcel of property is sold. This bill also amends 44-12-24 to make claims for legal practice un-assignable. Lastly, the bill amends the current vacant and foreclosed property registry by clarifying that if the deed under power (foreclosure deed) or deed in lieu of foreclosure is filed within 60 days of the foreclosure sale or transfer of the deed in lieu and other provisions are met then payment of fees for the vacant property registration is not required under subsection(h). **This bill was signed by the Governor on May 6, 2013.** The legal malpractice provision is effective immediately; however, the provisions amending the vacant property registry and providing for transfer fee covenants are effective July 1, 2013.

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http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/160

GA House Bill 175: Amends Georgia code by recognizing that covenants duly recorded in the chain of title between property owners and third parties run with the land for no more than 20 years. **This bill was signed by the Governor on May 6, 2013 and is effective July 1, 2013.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/175

GA House Bill 434: Amends GA law pertaining to material men's liens specifically requiring that the amount due and owed to the lien claimant under the terms of its express or implied contract, subcontract or purchaser order be listed in the lien. The bill also provides for interest on the principal amount due in accordance with applicable law. **This bill was signed by the Governor on May 7, 2013 and is now law.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/434

Georgia House Bill 458: Relates to the damage or destruction of condominium units, restoration, votes not to restore, and allocation of insurance deductible, and specifically changes the maximum allowable casualty insurance deductible from $2,500.00 to $5,000.00 per casualty imposed by condominium associations. **This bill was signed by the Governor on May 7, 2013 and is now law.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/458

Georgia Senate Bill 66: This bill increases the maximum penalty that can be imposed for contempt of superior and state courts from $500.00 to $1,000.00. **This bill was signed by the Governor on May 6, 2013 and is effective July 1, 2013.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/SB/66

Georgia Senate Bill 105: This bill amends the Uniform Fraudulent Transfers Act to provide that a charitable contribution made to a charitable organization shall not be deemed a fraudulent transfer when the charitable organization receives such contribution in good faith. GA HB 531 was tacked onto this bill which provides for an increase up to $5,000.00 for a borrower's motor vehicle exemption in bankruptcy. **This bill was signed by the Governor on May 7, 2013 and is effective July 1, 2013.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/SB/105

Georgia Senate Bill 185: This bill amends several areas of GA UCC law in order to enact the 2010 amendments to the UCC initiated by the American Law Institute. **This bill was signed by the Governor on May 6, 2013 and is effective July 1, 2013.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/SB/185

Bills that did not pass in 2013 but are still up for consideration in 2014:

GA House Bill 42: Clarifies the sales and use tax amounts that can be charged in conjunction with the construction of and sale of a single family manufactured home structure. State and local sales or use taxes will not apply to the retail sale of pre-owned manufactured single family homes. **This bill is dead for 2013 but can be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/42

GA House Bill 47: If the borrower pays in good funds to the lender or lender's attorney all sums that are due under the security instrument no later than five calendar days before the sale of the property and if any other default is also cured, then the foreclosure sale will be discontinued at any time up to five calendar days prior to the scheduled sale. Applies only to properties occupied as borrower's primary residence as well as properties occupied by the original borrower who entered into the security instrument. Becomes effective on July 1, 2013 and applies only to security instruments executed on or after July 1, 2013. **This bill is dead for 2013 but can be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/47

GA House Bill 49: Creates the Foreclosure Rescue Fraud Prevention Act that requires a person or business to obtain a license and a $500,000.00 bond before acting as a foreclosure rescue consultant. Failure to verify that the homeowner has a reasonable ability to make payments is a violation of the Act. A homeowner may bring an action for recovery of damages, including attorney's fees, or equitable relief. Attorneys, mortgage brokers and lenders are exempt from the Act. The Act becomes effective on July 1, 2013. **This bill is dead for 2013 but can be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/49

GA Senate Bill 56: Seeks to amend Georgia law on the priority of condo and HOA liens. Specifically, the purchaser at the foreclosure sale or transferee in a deed-in-lieu shall take title subject to a lien in favor of and personal obligation to condominium owners' association and property owners' associations in an amount equal to a portion of the association's unpaid lien

existing prior to the foreclosure but not more than the equivalent of one-half of the unpaid common expense assessments charged to the lot or unit during and 12 months prior to foreclosure sale for HOA dues and not more than 6 months of unpaid assessments for Condo dues. **This bill is dead for 2013 but can be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/SB/56

GA House Bill 69: Amends Georgia law on the amount that must be paid to redeem a property that has been sold at a tax sale. The main change is to include sums owed to property owners' associations in the redemption amount. **This bill was withdrawn from the Rules Calendar and recommitted to the Rules Committee on March 28, 2013. The bill may be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/69

GA House Resolution 75: Creates a House Study Committee on the Foreclosure Crisis in Georgia to study the effect of the high number of foreclosures in Georgia. The committee will be composed of seven members and will report its findings before January 13, 2014. **This resolution is dead for 2013 but can be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HR/75

GA House Bill 82: Creates the Small Business Borrower Protection Act. Requires successor creditors to give written notice to all guarantors within 30 days setting forth the terms and conditions under which the debt obligation or judgment was obtained. Upon receipt of the notice, any guarantor has 90 days to purchase the debt obligation or judgment from the successor creditor subject to the same terms and conditions plus a 10 percent premium if purchased within 30 days and a 20 percent premium if purchased within 90 days. Applies to debt obligations or judgments acquired from an original depository or affiliate which is federally insured by a person other than institutions with federally insured deposits. **This bill is dead for 2013 but can be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/82

GA Senate Bill 106: Amends Georgia law relating to deficiency judgments and confirmations. Requires an appraisal by licensed appraiser be done 30 days prior to foreclosure to confirm the sale and obtain a deficiency judgment. The court will require evidence of the appraised value, as opposed to the true market value as required before. The deficiency judgment shall be the lesser of the debt amount minus the appraisal amount or the debt amount minus the highest

accepted bid at the foreclosure sale. **This bill is dead for 2013 but can be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/SB/106

GA Senate Bill 108: Changes several existing provisions relating to foreclosure in Georgia. Most importantly, this bill would require the lender to give the borrower 60 days notice of the foreclosure sale as opposed to the current 30 day notice required. The following additional information must also be included in the notice of sale: an explanation of the GA foreclosure process, the date and nature of default, an amount to cure the default, the name and contact information of the secured party and any agent that can be contacted regarding the notice and alternatives to foreclosure as well as the recording information for the chain of assignments. Failure to comply with these notice provisions is grounds to set aside the foreclosure. In addition, no later than 30 days after the transfer of a deed to secure debt, the transferee would be required to provide the borrower with the name, address, and phone number of the new creditor, date of transfer and the name and agent authorized to act on behalf of the new creditor. Before proceeding to foreclosure sale, the lender must ensure that there is a recordation of any assignments necessary to trace the interest of the hold of the security deed. If an intervening assignment cannot be recorded because the assignee no longer exists, an affidavit can be filed. Failing to comply with these new provisions subjects the lender to actual damages and exemplary damages in the amount of $1,000.00 plus attorney's fees. Lastly, this bill adds a fraudulent foreclosure component to the Georgia Residential Mortgage Fraud Act. Any person who knowingly makes a misstatement, misrepresentation or omission during the foreclosure process or files or causes to be filed a foreclosure document containing a deliberate misstatement, misrepresentation or omission shall be subject to civil cause of action that can be filed by the owner of the real property. All provisions of the current Georgia Residential Mortgage Fraud Act now apply to fraudulent foreclosures. **This bill is dead for 2013 but can be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/SB/108

GA Senate Bill 123: Any security deed executed after January 1, 2014 that convey or sell owner occupied residential real property with the intention of securing the payment of money shall be deemed a mortgage instead of a deed to secure debt/security deed. Foreclosure would be governed by the rules pertaining to foreclosure of mortgages. **This bill is dead for 2013 but can be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/SB/123

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GA Senate Bill 125: Adds § 51-3-3 which would codify the duty of a possessor of land to a trespasser against harm. **This bill passed the Senate; however, it was decided to hold SB 125 until next session so that additional research could be done on this topic.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/SB/125

GA House Bill 270: Similar to SB 125, it would codify the law related to landowner liability for trespassers. **This bill is dead for 2013 but can be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/270

GA Senate Bill 126: When the holder of a deed to secure debt, mortgage or other lien obtains a judgment prior to foreclosure, any person or entity obligated on the debt may file within 30 days of the sale, a complaint against the holder to establish fair market value of the property. The court will make a finding of fair market value and if it determines that the property was sold for less than fair market value, the holder can elect to either set aside the foreclosure or perform a resale or the remaining balance on the judgment can be reduced by the fair market value. **This bill is dead for 2013 but can be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/SB/126

GA House Bill 159: Relates to ad valorem taxation of property and specifically excludes non-tax related fees or assessments including but not limited to storm water service fees or solid waste fees from the calculation of ad valorem taxes. **This bill was withdrawn from the Rules Calendar and recommitted to the Rules Committee on March 28, 2013. This bill is up for reconsideration in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/159

GA House Bill 239: Changes then notice provisions related to hospital liens. **This bill is dead but can be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/239

GA House Bill 222: Amends current Georgia law to provide for the transfer of property to a trust if the name of the trust is ascertainable. **This bill is dead for 2013 but can be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/222

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GA House Bill 300: Changes the definition of fair market value of property with regards to ad valorem taxation of the property. **This bill is dead for 2013 but can be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/300

GA House Bill 344: In situations where the lender obtains a judgment on the debt prior to foreclosure, this bill adds a new code section allowing a borrower to file a complaint with the court within 30 days of the foreclosure to establish true market value of the property. If the court determines that the property sold for less than true market value, the holder of the security deed may elect that either (1) the court set aside the foreclosure sale or (2) the court enter an order crediting the amount of the true market value against the remaining balance of the judgment. If the court's finding of true market value exceeds the remaining balance of the judgment, the credit will be limited to the remaining balance in full satisfaction of the judgment. **This bill is dead for 2013 but can be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/344

GA House Bill 379: Amends Georgia law related to dispossessory proceedings between landlords and tenants so as to require that after a writ of possession is issued, the person removing the personal property shall provide for storage of such items. Upon removal of the property, a receipt shall be issued which describes the property removed and the location and contact information where the property is being stored. Copies of the receipt will be filed with the court that issued the judgment and mailed to both parties at their last known address. The property should be stored for no more than two weeks and the landlord shall pay the costs. The landlord is entitled to reimbursement from the tenant. Landlord shall have a lien on the personal property during the time of storage and will be entitled to satisfy such lien through the sale or disposition of the personal property. **This bill is dead for 2013 but can be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/379

GA House Bill 455: Sets the maximum allowable casualty insurance deductible imposed by condo associations. **This bill is dead for 2013 but can be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/455

GA House Bill 464: Amends Georgia law to make Security Deeds conveying one or more lots in a residential development that is subject to covenants and a property owner's association subject to and subordinate to such covenants. In the event of foreclosure, the entity foreclosing

would take the property subject to such covenants. **This bill is dead for 2013 but can be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/464

GA House Bill 465: Provides requirements for debt management service providers such as registration, record maintenance, maintain minimum insurance, make certain required disclosures to debtors, and establishment of trust accounts. The bill allows debt management service providers to collect fees but also establishes prohibited acts and creates a cause of action for violations. The bill will not apply to title insurance or abstract companies, attorneys, judicial officers, CPAs or financial institutions. **This bill was withdrawn from the Rules Calendar and recommitted to the Rules Committee on February 26, 2013. The bill can be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/465

GA House Bill 502: An additional bill that creates a super-lien for property owner's associations as to mortgage holders. **This bill is dead for 2013.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/502

Georgia House Bill 530 – increases the penalties that can be imposed for contempt in superior and state court. HB 530 has been added as an amendment to SB 66 by the House Judiciary Committee. **HB 530 is dead for 2013 but its provisions were added to SB 66 which is now law.**
http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/530

Georgia House Bill 531 - increases a debtor's exemption in a bankruptcy filing for motor vehicles from $3,500 to $5,000. It has been added as an amendment to SB 105. **This bill is dead for 2013 but its provisions were tacked onto SB 105.**
http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/531

Georgia House Bill 607: Requires water authorities to seek reimbursement for unpaid bills only from the person who incurred such charges. **This bill was under a 2nd review in the House and is up for reconsideration in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HB/607

Georgia House Resolution 757 and Senate Resolution 595: A resolution based on the residential foreclosure crisis which pushes the Department of Community Affairs to amend the

federally funded HomeSafe program to reduce foreclosure for Georgians facing unemployment, etc. **This resolution is under review and may be reconsidered in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/HR/757
http://www.legis.ga.gov/legislation/en-US/Display/20132014/SR/595

Georgia Senate Bill 269: This bill provides priority for mechanic and material men's liens over other liens until the lien for the labor, materials, etc. has been satisfied. A lien recorded prior to any labor or services being commenced or material furnished shall have priority in the distribution of proceeds of foreclosure sale, but only to the extent of the value of the land, exclusive of subsequently erected buildings or improvements. The rest of the proceeds would be applied to the satisfaction of the special lien. **This bill remained in the senate and is up for consideration again in 2014.**

http://www.legis.ga.gov/legislation/en-US/Display/20132014/SB/269

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