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COMMERCE AND TRADE

Purchase of a Dwelling Place From Debtor: Require Compliance With Fair Business Practices Act

CODE SECTIONS: O.C.G.A. §§ 10-1-392 (amended), 10-1-393
(amended), 10-1-399 (amended)

BILL NUMBER: SB 278

ACT NUMBER: 636

SUMMARY: The Act regulates the purchase of property
being used as a dwelling place to ensure
that the homeowner fully understands that
his or her property is being sold, rather
than mistakenly believing that the buyer is
a lender loaning money to help the home-
owner keep the property when he or she is
in default on mortgage payments.

EFFECTIVE DATE: July 1, 1987

History

Prior to the Act, complaints were received from homeowners, particularly elderly people and individuals with reading and writing difficulties, concerning actions by buyers and others in the real estate business.¹ When the homeowner defaulted on his or her house note, the homeowner often would sign over the warranty deed to a third party mistakenly believing the third party was merely loaning money to the homeowner to help him or her out of a financial bind. Sometimes, however, the third party, under the guise of loaning the owner money to catch up on payments on his or her house notes, actually bought the house when the warranty deed was signed over by the homeowner.²

SB 278

The Act extends the Fair Business Practices Act of 1975 to include the purchase of property in the definition of consumer transactions in O.C.G.A. § 10-1-392(a)(3).³ The Act also adds a new subsection (20) to

1. Telephone interview with Senator Eugene Walker, Senate District No. 43 (May 22, 1987) [hereinafter Walker Interview].

2. *Id.*

3. Previously O.C.G.A. § 10-1-392 defined consumer transactions as "the sale, lease, or rental of goods, services, or property, real or personal, primarily for personal, family, or household purposes." The bill's sponsor wanted to ensure that purchase of property

O.C.G.A. § 10-1-393(b) relating to unfair or deceptive practices in consumer transactions. This new section makes it a violation to represent that money given to a debtor, in connection with property used by that debtor as a dwelling place, is a loan when the money is in fact being used to purchase that property.⁴

The intent of these provisions is to ensure that the homeowner realizes that his or her home is actually being sold.⁵ This purpose is accomplished by requiring the buyer to provide a written contract incorporating the entire agreement between parties, including clear and bold language that a sale of the property is being transacted.⁶ The Act also requires that a statement, signed by the debtor and the buyer, be included in the agreement stating that the provisions of the agreement have been fully explained to the seller.⁷ Additionally, the Act requires that, if a lease or rental agreement is executed in connection with the sale of the property, the rental terms be clearly explained to the debtor and language be included informing the debtor that failure to pay the agreed amount may result in his or her eviction.⁸

The Act grants courts discretionary power to relieve the debtor from the requirement of a "tender" when the debtor seeks equitable relief from a violation of O.C.G.A. § 10-1-393(b)(20) and is able to allege facts sufficient to show a likelihood of success on the merits.⁹ This remedy was added to ensure that a debtor would not be barred from seeking equitable relief for a violation of this provision if the debtor was delinquent in his or her payments to a creditor who had allegedly violated O.C.G.A. § 10-1-393(b)(20).¹⁰ The discretion to determine whether the debtor should be granted this relief was left with the court in order "to dispense a greater degree of justice" in providing relief for violations.¹¹

No opposition was expressed to the Act. The Georgia Real Estate Association and Legal Aid supported the legislation.¹²

J. Cronin

was explicitly included in the Fair Business Practices Act.

4. O.C.G.A. § 10-1-393(b)(20) (Supp. 1987).

5. Walker Interview, *supra* note 1.

6. O.C.G.A. § 10-1-393(b)(20)(B)(i) (Supp. 1987).

7. O.C.G.A. § 10-1-393(b)(20)(B)(ii) (Supp. 1987).

8. O.C.G.A. § 10-1-393(b)(20)(B)(iii) (Supp. 1987).

9. O.C.G.A. § 10-1-399(a) (Supp. 1987).

10. Walker Interview, *supra* note 1. The Act's sponsor felt that this provision was necessary to ensure that an alleged victim of a violation of his Act was not barred from seeking judicial relief, when the debtor was in default and unable to catch up on payments, in accord with the "clean hands doctrine" often imposed by courts of equity. *Id.*

11. *Id.*

12. *Id.*