5-1-2006

Representing Georgia Homeowners in Predatory Home Mortgage Lending Cases

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Guide Information

Last Updated:	Oct 29, 2010
Guide URL:	http://libguides.law.gsu.edu/PredatoryHomeMortgag
Description:	Frances Finegan - Spring 2006 - Consumer Law; Georgia Law; Property and Real Estate
Tags:	georgia_law, property, real_estate
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Overview

Predatory home mortgage lending is a pressing social problem that directly impacts consumers who purchase subprime mortgage loans. Subprime lending, in and of itself, is not predatory lending and many subprime lenders are legitimate businesses providing necessary services to individuals with credit histories who can not qualify for prime loans. The most common description of predatory home mortgage lending practices usually refers to a list of abusive contract terms and practices that include: packing of credit insurance, balloon payments, padded fees, rapid refinancing, high rates, high pressure marketing and solicitation, no regard for the consumer's ability to repay the loan and broker kickbacks disguised as yield spread premiums. These abusive terms and behaviors are also described as targeting vulnerable populations, i.e. the elderly, minorities and low-income individuals. In addition, groups that are traditionally underserved by the mainstream lenders, such as Native American living on reservations, are especially vulnerable to predatory lending. Unfortunately, some home owners eventually lose their homes because they are unable to keep up with the excessive payments. In response, advocates are using a variety of statutory and common law claims to achieve justice for homeowners harmed by abusive lending practices.

About the Author

Frances Finegan is a May 2006 J.D. candidate in the College of Law at Georgia State University in Atlanta, Georgia. Her interest in this topic was influenced by her internship experiences with public interest organizations committed to advocating and representing low-income individuals.

Scope

Home ownership is critical to building neighborhood and community stability. Unfortunately, however, foreclosure rates in the United States have almost quadrupled over the past twenty years such that the number of foreclosures has increased by more than 384%. In addition, unscrupulous lending practices are estimated to cost American home owners more than $9.1 billion each year. An analysis by the U.S. Department of Housing and Urban Development (HUD) demonstrated that in 1998 11% of refinance mortgages nationwide were subprime and in low income neighborhoods that percentage rose to 26%. In the very poorest communities where households make only 50% of the median income, subprime refinancing mortgage loans amounted to 44% of the total refinance loans. Additional research indicates that if consumers had had full and accurate information, they would not have signed the loan documents. When settlement is made on a predatory loan, the consumer is the least experienced and least informed but with the greatest amount of risk. Consumers have reported that they neither knew that their loans were secured by their homes nor that they could lose their homes if they were unable to make the loan payments.

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Primary Sources

FEDERAL STATUTES AND REGULATIONS

The first step in analyzing a credit transaction for mortgage lending is to determine which statute governs the transaction. Although the federal statutes listed below can be extremely important in predatory lending cases, state statutes (listed below) designed to regulate consumer credit may also offer a remedy.

Federal Statute and Regulatory Citations	Title of Statute or Regulation	Summary of Statute
15 U.S.C. Section 1601 et seq. (2002)	The Truth in Lending Act (TILA)	TILA was enacted in 1968 to "assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit . . ." The amount financed, the finance charge and the annual percentage rate must be disclosed to provide accurate information concerning the cost of credit. Thus, violations of TILA may be apparent on the face of the documents and warrant summary judgment for consumers. TILA provides for statutory damages of twice the finance charge, attorneys' fees, costs and actual damages for violations of the disclosure requirements. Additionally, in cases involving loans secured by the family home, TILA gives a right to rescind the transaction, in some cases, for up to three years and this may save the family home from foreclosure by predatory lenders. "The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The regulation also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes." The regulation also provides exceptions that allow creditors to exclude many settlement costs from the finance charge.
12 C.F.R. Section 226 et seq. (2006)	Regulation Z	
12 U.S.C. Section 2601 et seq. (2002)	The Real Estate Settlement Procedures Act (RESPA)	RESPA was enacted to provide homeowners with a uniform disclosure of their costs at all stages of the settlement process. It describes the specific disclosures required during each phase of obtaining a mortgage. This disclosure may facilitate the identification of predatory loans by showing where the money went or should have gone. RESPA requires a good faith estimate of settlement costs and an itemized report of actual closing costs. It prohibits the provision of a referral fee for settlement service business and a requirement to purchase title insurance from a specific company. RESPA only provides a private right of action for three specified violations but violations of any provision may fall within the scope of a state Unfair and Deceptive Acts and Practices (UDAP) statue. In addition to describing RESPA requirements, the regulation describes the loans that are exempt from the requirements of RESPA.
24 C.F.R. Section 3500 et seq. (2005)	Regulation X	
15 U.S.C. Sections 1602(aa)(1), 1610, 1639,	The Home Ownership and Equity Protection Act	HOEPA provides protection of additional disclosure if one of two high cost loan triggers is met for closed-end loans: the annual percentage rate at the time the loan is consummated exceeds by more than ten percentage points the yield on treasury securities having comparable maturities; or, if the total of the points and fees exceeds 8% of the total loan amount and exceeds $400. Careful analysis is critical because if lenders miscount or manipulate points and fees, the second trigger is not met. HOEPA also provides for certain restrictions on numerous

1640, 1641 (2002)	of 1994 (HOEPA) (amendment to TILA)	terms such as prepayment penalties, negative amortization, higher default interest rates and certain balloon payments. HOEPA prohibits a lender from extending credit based on the value of the home collateral and not the borrower's ability to repay through monthly income. HOEPA provides a significant additional protection by i including a provision for limited assignee liability. Since HOEPA is an amendment to TILA, TILA monetary damages are available. In addition, enhanced damages of all consumer paid finance charges and fees are available if the violation is "material" under a common law standard. The regulation provides the requirements for certain closed-end home mortgages.
12 C.F.R. Section 226.31 et seq. (2006)	Regulation Z	
15 U.S.C. Section 1691 et seq. (2002)	The Equal Credit Opportunity Act (ECOA)	ECOA prohibits a creditor from discriminating in any aspect of a credit transaction on the basis of race, color, sex, religion, national origin, age, marital status, public assistance income and the exercise of rights under the Consumer Credit Protection Act. ECOA describes specific actions that creditors must or must not take and factors not to be considered in assessing credit worthiness. ECOA may apply to bait and switch tactics used by lenders. ECOA provides private remedies for actual and punitive damages, equitable relief and attorney fees. In addition to prohibiting creditor practices that discriminate on the basis of any of the protected factors, the regulation also "requires creditors to notify applicants of action taken on their applications; to report credit history in the names of both spouses on an account; to retain records of credit applications; to collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans; and to provide applicants with copies of appraisal reports used in connection with credit transactions."
12 C.F.R. Section 202 et seq. (2006)	Regulation B	
42 U.S.C. Section 3605 (2002)	The Fair Housing Act (FHA)	The FHA prohibits discrimination on the basis of race, color, religion, sex, handicap, familial status or national origin in *housing* related financing. To state a claim, consumers must show that the defendants intentionally targeted them and that they were a member of a protected class or that there was a disparate impact on the basis of their protected class. The FHA provides for actual and punitive damages, attorney's fees, costs and injunctive relief. The regulation addresses discrimination "related to the sale or rental of dwellings, the provision of services in connection therewith, and the availability of residential real estate-related transactions."
2 4 C.F.R. Section 100 et seq. (2005)	Discriminatory Conduct Under The Fair Housing Act	

LEGISLATIVE HISTORY OF FEDERAL STATUTES

Federal Statute and Title	Legislative History Annotation
15 U.S.C. § 1601 The Truth in Lending Act (TILA)	TITLE: Fair and Accurate Credit Transactions Act of 2003 TILA Legislative History Public Law 108-159 was enacted on December 4, 2003 "To amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer records, make improvements in the use of, and consumer access to, credit information, and for other purposes." The amendments include: 1. establishing procedures to prevent fraud involving the theft and illegal use of personal identification information and documents, and to facilitate the ability of consumers who are victims of identity fraud to repair their credit; 2. requiring credit bureaus to include a "fraud alert" in consumer files at a consumer's request; 3. requiring individuals and businesses that accept credit or debit cards to truncate the card account numbers by including no more than the last five numbers on an electronically printed cardholder receipt; 4. requiring federal banking agencies to issue guidelines and regulations concerning identity theft and credit reporting by financial institutions; 5. requiring national credit reporting agencies to annually provide a credit report without charge upon the consumer's request; and 6. prohibiting consumer reporting agencies from providing credit reports that contain medical information without the consumer's affirmative consent.
12 U.S.C. § 2601 The Real Estate Settlement Procedures Act (RESPA)	TITLE: Real Estate Settlement Procedures Act of 1974 RESPA Legislative History Public Law 93-533 was enacted on 12/22/1974 “To further the national housing goal or encouraging home ownership by regulating certain lending practices and closing and settlement procedures in federally related mortgage transactions to the end that unnecessary costs and difficulties of purchasing housing are minimized, and for other purposes." The law eliminates the payment of kickbacks and unearned fees in connection with settlement services provided in federally related mortgage transactions. The law requires the cooperation of HUD, VA, FDIC and the Federal Home Loan Bank Board to develop standard forms, special information booklets and advance disclosure regulations.
15 U.S.C. § 1691 The Equal Credit Opportunity Act (ECOA)	TITLE: Equal Credit Opportunity Act Amendments of 1976 ECOA Legislative History Public Law 94-239 was enacted March 23, 1976 "To amend title VII of the Consumer Credit Protection Act to include discrimination on the basis of race, color, religion, national origin, and age, and for other purposes." The law also prohibits discrimination on the basis of sex or marital status or because all or part of the applicant's income comes from a public assistance program.
42 U.S.C. § 3605 The Fair Housing Act (FHA)	TITLE: Fair Housing Amendments Act of 1988 FHA Legislative History Public Law 100-430 was enacted September 13, 1988 "To amend title VIII of the Act commonly called the Civil Rights Act of 1968, to revise the procedures for the enforcement of fair housing, and for other purposes." The amendment: 1. authorizes administrative law judges to hear and resolve housing discrimination complaints as an alternative to civil actions in Federal court; 2. revises provisions governing HUD investigation of housing discrimination complaints; 3. extends title VIII fair housing protections to disabled persons and families with children; and 4. establishes civil and criminal penalties for act violations.

STATE STATUTES

The first step in analyzing a credit transaction related to mortgage lending is to determine which statute governs the transaction because the statutes listed below may be viable avenues for relief. In addition, common law theories based on the notions of fairness and unconscionability play powerfully to juries and may provide relief to vulnerable homeowners.

State Statute Citation	Title of Statute	Summary of Statute
O.C.G.A. Section 7-1-1000 et seq.	Georgia Residential Mortgage Act (GRMA)	Mortgage brokers and lenders are required to be licensed by the Georgia Department of Banking and Finance. Section 7-1-1013 lists prohibited acts under the licensing law: misrepresentation and concealment of material facts; failure to disburse funds according to a written agreement; failure to act in good faith and fair dealing; and lending directly or indirectly with the intent to foreclose. Although GRMA does not provide for a private right of action, a consumer may seek enforcement under O.C.G.A §§ 51-1-6 and -8 for breach of a duty imposed by statute.
O.C.G.A. Section 7-6A-1 et seq.	Georgia Fair Lending Act (GFLA)	The initial GFLA enacted in 2002 prohibited high cost loans and imposed liability on lenders who made the loans and on those who purchased them. GFLA was amended in March 2003 to render most of its critical protections useless such that assignee liability for high cost loans is extremely limited. Remedies include actual, statutory and punitive damages; attorney fees and costs, rescission and injunctive relief
O.C.G.A. Section 8-3-200 et seq.	Georgia Fair Housing Act (FHA)	The Georgia FHA was enacted to “safeguard all individuals from discrimination in any aspect relating to the sale, rental, or financing of dwellings or in the provision of brokerage services or facilities in connection with the sale or rental of a dwelling because of that individual's race, color, religion, sex, disability or handicap, familial status, or national origin…” Unlike the federal FHA, the Georgia FHA does not include age as a protected class. The statute does provide for equitable relief, attorney fees, court costs, actual and punitive damages.
O.C.G.A. Section 10-1-1 et seq.	Retail Installment and Home Sales Solicitation Act	This statute may apply to door-to-door solicitations for home improvement contracts that often morph into predatory home mortgage loans. The statute provides the homeowner with a right to cancel a home solicitation sales agreement within three days of having signed the agreement.
O.C.G.A. Section 10-1-390 et seq.	Georgia Fair Business Practices Act (FBPA)	The Act prohibits unfair and deceptive acts or practices in the marketplace and applies to consumer transactions involving the sale, lease or rental of goods, services or property mainly for personal, family or household purposes. The FBPA does not apply to private transactions; therefore, the activity must have occurred within the consumer marketplace and have a potential harmful on the consuming public. The Act does not apply in extensively regulated areas of the marketplace such as finance charges and required disclosures by lenders. Nonetheless, home improvement contracts that often morph into predatory home mortgage loans may be challenged under this statute. Remedies include general damages, exemplary damages if intentional violation, treble damages if intentional violation, equitable injunctive relief, and attorney fees and expenses.
O.C.G.A. Section 13-3-24	Lack of Party’s Mental Capacity to Contract	“The contract of an insane, a mentally ill, a mentally retarded, or a mentally incompetent person who has never been adjudicated to be insane, mentally ill, mentally retarded, or mentally incompetent to the extent that he is incapable of managing his estate as prescribed by this Code is not absolutely void but only voidable, except that a contract made by such person during a lucid interval is valid without ratification.”
O.C.G.A. Section 23-2-2	Inadequacy of Consideration	A contract may be set aside where there is “great inadequacy of consideration, joined with great disparity of mental ability in contracting a bargain…” Home improvement contracts that often morph into predatory home mortgage loans may be challenged under this statute.

CASE LAW

1. Federal Cases

The cases below, although not exhaustive, illustrate legal claims based on federal statues that are designed to protect consumers from overreaching lenders.

Citation	Summary
Hirsch v. BankAmerica Corp. , 328 F.3d 1306, 1308 (11th Cir. 2003).	The court applied the two part test of the U.S. Department of Housing and Urban Development to determine whether a payment from a mortgage lender to a mortgage broker is illegal under the Real Estate Settlement Procedures Act. The court affirmed summary judgment for the defendant.
Ellis v. General Motors Acceptance Corp., 160 F.3d 703, 708 (11th Cir. 1998).	The court addressed the scope of assignee liability under TILA and found the defendant was not liable for the alleged violations.
Jackson v. Okaloosa County, 21 F.3d 1531, 1543 (11th Cir. 1994).	The court emphasized that a violation of the Fair Housing Act can be demonstrated by either direct discrimination or significant discriminatory effects.
Robertson v. Strickland (*In re* Robertson), 333 B.R. 894 (Bankr. M.D.Fla. 2005).	The bankruptcy court held that the lender violated TILA and HOEPA by failing to disclosure credit terms or rescission terms as required. The court awarded damages and attorneys fees to the debtor.
Senterfitt v. Sun Trust Mortgage, Inc. , 385 F. Supp. 2d 1377 (S.D.Ga. 2005).	This is the only reported decision that references the Georgia Fair Lending Act. The mortgagor's putative class action alleged the mortgagee charged a fee to receive, by fax, a loan payoff statement which violated the Act. The defendant removed to federal court and the plaintiff's motion for remand per the Class Action Fairness Act of 2005 was denied.

2. State Cases

The cases below, although not exhaustive, illustrate legal claims based on state statues that are designed to protect consumers from overreaching lenders.

Citation	Summary
Marrale v. Gwinnett Place Ford , 271 Ga. App. 303, 308 (2005) For a free copy of this case, Register on LexisOne	This case was brought alleging violation of the Georgia Fair Business Practices Act. The defendant sold new and used cars to the public and had a tent sale to sell cars to the general public. The court found that the plaintiff's transaction was not private as the defendant argued but that the sale was a transaction within the consumer marketplace. “Clearly, offering a product for sale by opening one's doors to the general public triggers the prohibitions of the FBPA if a deceptive act or practice is involved.”
Coldwell Banker Real Estate Corp. v. DeGraft-Hanson , 266 Ga. App. 23 (2004). For a free copy of this case, Register on LexisOne	This is the only reported decision that references the Georgia Fair Housing Act as it relates to buying a home. However, the alleged discriminatory behavior was caused by the home seller while the consumers were looking at homes to purchase and not while they were attempting to finance a mortgage. The court held the realty company and real estate broker did not violate the Fair Housing Act.
Mullis v. Mullis , 245 Ga. App. 845 (2000). http://www.lawskills.com/case/ga/id/21665/	To grant equitable relief under O.C.G.A. § 23-2-2, this court found evidence of inadequacy of consideration and disparity of mental ability. The 83 year old plaintiff signed a deed transferring 46 acres to her brother-in-law ten days after her husband of 65 years died. The court affirmed the setting aside of the deeds.
Moore v. Dixon , 264 Ga. 797, 799 (1994). http://www.lawskills.com/case/ga/id/2820/	With regard to the Georgia Residential Mortgage Act which requires licensing of mortgage brokers and lenders, this court noted that, generally, when individuals are required by statute to obtain a license before conducting certain business transactions and that this requirement is made to protect the public, contracts made without the required license are void and unenforceable.

Miness v. Miness , 254 Ga. 658 (1985). http://www.lawskills.com/case/ga/id/6000/	Unable to prove a lack of mental capacity, the court affirmed the granting of summary judgment for the defendant. The evidence was insufficient to show that the grantor, who suffered from dementia and Alzheimer's Disease, was incompetent on the day she transferred to her husband a quitclaim deed to property.
Zeeman v. Black, 156 Ga. App. 82 (1980). http://www.lawskills.com/case/ga/id/50356/	In this case, the consumer purchased land and then sued the seller and real estate agent, under the Fair Business Practices Act, because the acreage was less than promised. The court held that in determining whether a defendant's allegedly wrongful behavior is an isolated incident not covered by the statute, the court must consider: "the medium through which the act or practice is introduced into the stream of commerce; and the market on which the act or practice is reasonably intended to impact. It is only when the application of both those factors indicates that the act or practice occurred within the context of the consumer marketplace that the fairness or deceptiveness of the act or practice need be examined." The court affirmed summary judgment for the defendants.
Cook-Davis Furniture Co., Inc. v. Duskin, 134 Ga. App. 264 (1975). http://www.lawskills.com/case/ga/id/58386/	This is the only reported decision that references the Retail Installment and Home Sales Solicitation Act. In this case, the seller signed a contract that he would provide insurance for furniture purchased by the consumer. The court held that because there was a retail installment contract requiring the seller to procure insurance, an oral agreement by the consumer that the insurance would not be procured by the seller as provided in the written contract, would be void and unenforceable under the Act.

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Administrative Agencies

GOVERNMENT AGENCY

The two agencies listed below may be helpful in ending abusive mortgage loans in entire communities as opposed to abusive mortgage loans that impact individual households.

Government Agency	Mission
Georgia Office of Consumer Affairs 404-651-8600	The mission of the Governor's Office of Consumer Affairs (OCA) is to "protect Georgia consumers from unfair, deceptive and unlawful practices in the marketplace." If a significant number of complaints about a business are filed with the OCA, the Administrator may pursue legal action to enforce state law but OCA does not represent the interests of any one individual.
Federal Trade Commission Bureau of Consumer Protection http://www.ftc.gov/ftc/consumer/home.html	"The Bureau of Consumer Protection's mandate is to protect consumers against unfair, deceptive, or fraudulent practices. The Bureau enforces a variety of consumer protection laws enacted by Congress, as well as trade regulation rules issued by the Commission. Its actions include individual company and industry-wide investigations, administrative and federal court litigation, rulemaking proceedings, and consumer and business education." A consumer may file a complaint with the FTC which may assist in the investigation of fraud and enforcement of consumer protection laws.

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Secondary Sources

AMERICAN LAW REPORTS

a. American Law Reports (ALR) Federal and Legal Encyclopedias

As described above, there are numerous statutory and regulatory mandates that attempt to prevent abusive mortgage loans. The annotations below may be helpful in discerning whether a lendor violated any of the statutes and/or regulations.

Citation	Summary of Report
Richard J. Link, Annotation, *What constitutes violation of requirements of Truth In Lending Act (15 U.S.C.A. §§ 1601 et seq.) concerning disclosure of information in credit transactions-- civil cases*, 113 A.L.R. FED. 197 (2006).	This annotation analyzes cases brought under TILA for numerous types of credit transactions. There are eight analyses that are specific to home mortgages and TILA requirements: clear and conspicuous disclosure of certain key terms and costs; the grouping together of disclosures required in a closed-end credit transaction; timely disclosures; clear notice of rescission rights; disclosure of the effects of rescinding a credit transaction; specifying the date on which the right to rescind expires; disclosure of the amount of a late payment charge; and disclosure of circumstances under which a variable interest rate may increase.
James Lockhart, Annotation, *What constitutes "finance charge" under § 106(a) of the Truth in Lending Act (15 U.S.C.A. § 1605(a)) or applicable regulations*, 154 A.L.R. FED. 431 (2006).	Although TILA requires disclosure of the finance charge, it can be confusing as to what constitutes a finance charge. Even though a cost may meet the statutory definition of a finance charge, the statute, regulation or commentary may say the costs are not considered to be finance charges. Thus, this annotation provides specific examples of costs that have or have not triggered the TILA damages or rescission remedies.
James L. Rigelhaupt, Jr., Annotation, *Good faith defense to Truth in Lending Act liability, under § 130(f) of act (15 U.S.C.A. § 1640(f)),* 50 A.L.R. FED. 201 (2006).	This annotation analyzes federal and state cases where courts have decided whether there is a good faith defense to TILA civil liability. Although the annotation addresses all types of credit transactions, two cases from the 11th Circuit regarding mortgages address variable rate loans and accrual of late charges.
Barbara J. Van Arsdale, Annotation, *Validity, Construction, and Application of Home Ownership and Equity Protection Act of 1994 (HOEPA), 15 U.S.C.A. §§ 1602(aa), 1610, 1639, and 1640.* 198 A.L.R. FED. 631 (2006).	This annotation analyzes cases where courts have applied HOEPA to specified home mortgage loans. A case from the 11 th Circuit addresses the timeliness of the required disclosures.
Michael G. Walsh, Annotation, *Construction and Application of Real Estate Settlement Procedures Act of 1974 (12 U.S.C.A. §§ 2601 et seq.),* 142 A.L.R. FED. 511 (2006).	This annotation analyzes state and federal cases where courts have applied RESPA to home mortgage loans. The most hotly litigated provision of RESPA prohibits improper kickbacks and unearned fees in connection with loans and settlement services. Thus, the cases analyzed turn on the facts in determining whether a financial arrangement is improper or not improper.
Joan Kirshberg, Annotation, *Discrimination against credit applicant on basis of marital status under Equal Credit Opportunity Act (15 U.S.C.A. § 1691 et seq.),* 55 A.L.R. FED. 458 (2006).	This annotation analyzes federal cases where courts have considered whether an applicant for credit has been the victim of discrimination under the Equal Credit Opportunity Act based on marital status. The cases presented illustrate what does not constitute discrimination, rather than what does, based on marital status.
David J. Oliveiri, Annotation, *Notification of adverse action on credit application under Equal Credit Opportunity Act (15 U.S.C.A. § 1691 et seq.) and regulations promulgated thereunder (12 C.F.R. part 202),* 65 A.L.R. FED. 906 (2006).	This annotation analyzes the federal cases where courts have considered the effect of the statutory notification requirement that creditors provide to credit applicants the reasons why adverse action is taken by a creditor. Of particular interest may be an 11 th Circuit case that provides guidance on the definition of an "adverse action" which triggers the notification provision of the Equal Credit Opportunity Act.
John E. Theuman, Annotation, *Evidence of discriminatory effect alone as sufficient to prove, or to establish prima facie case of, violation of Fair Housing Act (42 U.S.C.A. §§ 3601 et seq.)*, 100 A.L.R. FED. 97 (2006).	This annotation analyzes the federal cases where courts have considered whether evidence that an action concerning the sale, rental, financing, or brokerage of housing has had a disproportionate impact on certain racial, ethnic, religious, or other groups, is sufficient to at least establish a prima facie case of a violation of the FHA. Although the 11 th Circuit cases do not specifically address home mortgage lending, the cases do discuss the elements needed to substantiate the alleged discriminatory actions.
Sam A. Mackie, *Mortgage Broker Liability*, 18 Am. Jur. Proof of Facts 3d 559 (2005).	This article discusses the liability of mortgage brokers to borrowers and lenders when transacting mortgage loans. Causes of action against a mortgage broker include: breach of contractual obligations, engaging in fraud or misrepresentation and negligence. The article also reviews the statutory and common law regulation of mortgage loan brokers.

LAW REVIEW ARTICLES

The law review articles listed below represent a very small percentage of published materials on this topic. Unlike the annotations from The American Law Reports series, these articles address specific policy and procedural issues related to the broad subject of predatory mortgage lending practices.

Citation	Summary of Article
Christopher R. Childs, *So You've Been Preempted – What are you Going To Do Now?: Solutions for States Following Federal* Preemption of State Predatory Lending Statutes, 2004 BYU L. Rev. 701 (2004).	The author notes that although the Office of the Comptroller of the Currency concluded that Georgia's Fair Lending Act interfered with national bank real estate lending powers, and, thus, does not apply to nationally chartered banks and their subsidiaries, individual states may still reduce abusive sub-prime lending. The author discusses the rationale of improving regulation of non-bank loan sellers and increasing enforcement of state deceptive and unfair trade practices acts, without being preempted by federal regulatory agencies, to curb predatory lending.
Lawrence Hansen, *In Brokers We Trust – Mortgage Licensing Statutes Address Predatory Lending,* 14 J. Affordable Housing & Community Dev. L. 332 (2005).	The author compares and contrasts the mortgage licensing statutes of Georgia, New York and North Carolina. He concludes by recommending that because Georgia and North Carolina place affirmative duties on the brokerage industry, all states should combine the approaches of Georgia and North Carolina and impose fiduciary duties within mortgage licensing statutes to prevent predatory lending.
Jessica Fogel, *State Consumer Protection Statutes: An Alternative Approach to Solving the Problem of Predatory Mortgage Lending*, 28 Seattle U.L. Rev. 435 (2005).	The author provides a brief summary of TILA and RESPA to include the weaknesses of the federal statutes. She then describes the benefits of UDAP statues which may provide an important alternative to federal anti-predatory lending legislation because UDAP statutes usually provide consumers with a private right of action and attorney's fees.
Ronald H. Silverman, *Toward Curing Predatory Lending,* 122 Banking L.J. 483 (2005).	The author provides a brief historical perspective of the problem of predatory home mortgage loans, causes of predatory home mortgage lending and traditional local, state and federal efforts to correct predatory lending problems. The author concludes by describing the "creative use of credit union lending" as a way to provide home mortgage loans to consumers with limited borrowing or financing options.
Christopher L. Peterson, *Federalism and Predatory Lending: Unmasking the Deregulatory Agenda*, 78 Temp. L. Rev. 1 (2005).	The author addresses the tension of overlapping federal and state responsibilities presented by predatory lending regulations. The author's premise is that "today's advocates of exclusive federal power over predatory lending policy care less for the niceties of balance of power, nor even for the benefits of uniform regulation, than they do for the covert protection of a powerful industry that profits, either directly or indirectly, from predatory lending."

BOOKS

The two books listed below provide the reader with comprehensive background information on the problem of predatory lending and with a roadmap to litigating predatory lending cases against predatory lenders. In addition, the books provide recommendations for legislative changes and community responses designed to end predatory financial practices.

Citation	Summary of Book
NAT'L CONSUMER LAW CTR., STOP PREDATORY LENDING: A GUIDE FOR LEGAL ADVOCATES (2002). This book can be purchased online from the National Consumer Law Center at http://www.consumerlaw.org	This is an excellent, "must have" handbook. It is a practical guide to learning the law that regulates lending, becoming skilled at using a step by step analysis for spotting the predatory lending issues and to litigating cases. A CD-ROM is included in the handbook and it contains worksheets, sample pleadings, a model state home protection statute, math programs to calculate the annual percentage rate and consumer education brochures.
WHY THE POOR PAY MORE – HOW TO STOP PREDATORY LENDING (Gregory D. Squires ed., 2004). Georgia State University Library General Collection HG2040.2 .W49	The book is comprised of nine chapters within which different authoritative experts identify the systemic flaws in our lending system and offer their respective recommendations to end predatory practices. Unlike other books on predatory mortgage lending, there are no human interest stories; however, the book is interesting, informative and very well documented.

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Interest Groups and Associations

ADVOCACY GROUPS

The advocacy groups listed below represent the spectrum of advocacy efforts. The groups represent individual consumers, advocate for governmental policy changes to prevent abusive financial practices and/or educate consumers and communities about abusive financial practices. Most of the information is provided free-of-charge to the public although some organizations sell publications related to their respective advocacy missions.

Websites of the Advocacy Groups	Stated Purpose of the Advocacy Groups
Atlanta Legal Aid Society (ALAS) http://www.atlantalegalaid.org	The main purpose of ALAS is to "provide referrals and legal representation to people who otherwise cannot obtain access to the court system - the poor, minorities, the elderly, those disabled by mental illness or long term diseases, and recent immigrants. …in meeting their basic needs, protecting their homes and safeguarding their families." The website describes numerous ways that mortgage lenders are able to trick homeowners into giving up their homes.
Center for Community Change http://www.communitychange.org	"The Center's purpose has been to help establish and develop community organizations across the country, bring attention to major national issues related to poverty, and help insure that government programs are responsive to community needs." The Center has provided support to groups that address predatory lending practices which force low-income and minority home owners to leave their homes.
Center for Responsible Lending (CRL) http://www.responsiblelending.org	"The CRL is a nonprofit, nonpartisan research and policy organization dedicated to protecting home ownership and family wealth by working to eliminate abusive financial practices. CRL is affiliated with Self-Help, one of the nation's largest community development institutions."
National Association of Consumer Advocates (NACA) http://www.naca.net	NACA is a "nationwide organization of more than 1000 attorneys who represent and have represented hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices. As an organization fully committed to promoting justice for consumers, NACA's members and their clients are actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means."
National Consumer Law Center (NCLC) http://www.consumerlaw.org	The NCLC is " America's consumer law expert, helping consumers, their advocates, and public policy makers to use powerful consumer laws to build financial security and assure marketplace justice for vulnerable individuals and families." The NCLC writes to elected officials and government entities regarding policies that address predatory mortgage lending and has published an excellent reference book on this topic.
Trial Lawyers for Public Justice (TLPJ) http://www.tlpj.org	"TLPJ is a national public interest law firm dedicated to using trial lawyers' skills and resources to create a more just society." In addition to TLPJ's litigation docket, the organization files amicus curiae briefs in support of its objectives to advance "consumers' and victims' rights, environmental protection and safety, civil rights and civil liberties, occupational health and employees' rights, the preservation and improvement of the civil justice system, and the protection of the poor and the powerless."
U.S. Department of Housing and Urban Development (HUD) http://www.hud.gov/offices/hsg/sfh/pred/predlend.cfm	The U.S. government's website provides access to HUD's research and reports on predatory lending practices in numerous cities for which the focus is "Income and Racial Disparities in Subprime Lending." The site also provides links to federal agencies whose mission is to assist individuals who believe they have been victims of predatory lending practices.

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Possible Search Terms for Computerized Research on Predatory Mortgage Lending

LexisNexis, Westlaw, & LoisLaw

LexisNexis, Westlaw and LoisLaw are fee based systems providing access to primary and secondary sources of legal information. Casemaker is a legal research system that is available to members of the Georgia Bar Association. LexisOne provides free access to case opinions published within the previous five years. Lastly, Findlaw offers legal professionals and the general public information on topics ranging from the legal headlines to state and federal statutes, regulations and case laws.

A basic search of “predatory mortgage lending” will provide a researcher with a dearth of information whether using an Internet search engine or a legal system mentioned above. The terms below may be useful in narrowing the search:

Mortgage Lending	Anti-Predatory Lending Legislation	Targeted Minorities
Subprime Lending	High Cost Loans	Vulnerable Populations
Credit Discrimination	Low-Income Individuals	Mortgage Flipping
Home Mortgage	Residential Mortgage Lending	Housing Discrimination

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