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PROPERTY Mortgages, Conveyances to Secure Debt, and Liens: Amend Article 7 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, Relating to Foreclosures on Mortgages, Conveyances to Secure Debt, and Liens, so as to Require a Foreclosure to be Conducted by the Current Owner or Holder of the Mortgage, as Reflected by Public Records; Provide for the Identity of the Secured Creditor to be Included in the Advertisement and in Court Records; Change the Requirement for Mailing or Delivery of Notice to Debtor for Sales Made Under Power of Sales in a Mortgage Security Deed, or Other Lien Contract,

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PROPERTY

Mortgages, Conveyances to Secure Debt, and Liens: Amend Article 7 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated, Relating to Foreclosures on Mortgages, Conveyances to Secure Debt, and Liens, so as to Require a Foreclosure to be Conducted by the Current Owner or Holder of the Mortgage, as Reflected by Public Records; Provide for the Identity of the Secured Creditor to be Included in the Advertisement and in Court Records; Change the Requirement for Mailing or Delivery of Notice to Debtor for Sales Made Under Power of Sale in a Mortgage, Security Deed, or Other Lien Contract, to Provide for the Content of Such Notice; Provide for Related Matters; Provide an Effective Date; to Repeal Conflicting Laws; and for Other Purposes¹

CODE SECTIONS: O.C.G.A §§ 44-14-162 (amended),
-162.2 (amended)

BILL NUMBER: SB 531

ACT NUMBER: 576

GEORGIA LAWS: 2008 Ga. Laws 624

SUMMARY: The Act amends the procedure for foreclosures in Georgia. The Act provides that a secured creditor provide the borrower with the identity of an individual or entity with full legal authority to modify the terms of the loan. The Act requires the identity of the secured creditor be recorded prior to foreclosure. Notice of the initiation of proceedings to exercise power of sale must be given to the borrower 30 days before the date of the proposed foreclosure.

EFFECTIVE DATE: May 13, 2008

1. This is the caption for SB 531 (HCS), 2008 Ga. Gen. Assem. The Act, however, operates in a substantially different fashion. *See discussion infra.*

History

The national housing market experienced dramatic turmoil in 2007 after a period of rapidly rising housing prices.² As 2007 came to a close, the number of foreclosures and home loan delinquency rates across the country reached record levels.³ At the center of the foreclosure storm were “subprime” mortgages.⁴ Subprime broadly refers to loans with higher interest rates made to borrowers with poor or no credit history who would not be able to qualify for a mortgage under traditional lending standards.⁵ Georgia, like the rest of the country, saw an explosion in the number of subprime loans from 1998 to 2007.⁶ In the third quarter of 2007, nineteen percent of Georgia borrowers with subprime loans were at least thirty days behind on their payments and approximately 3.3 percent of sub prime loans in Georgia fell into foreclosure.⁷ The foreclosure crisis only deepened at the beginning of 2008.⁸ In January and February of 2008, the number of foreclosure notices in metro Atlanta increased by forty-five percent when compared to the same time period the previous year.⁹

The growth in subprime lending was fueled partly by a Wall Street innovation referred to as securitization.¹⁰ Securitization is a process which involves pooling income streams or receivables, such as

2. Nelson D. Schwartz & Vikas Bajaj, *Credit Time Bomb Ticked, but Few Heard*, N.Y. TIMES, Aug. 19, 2007, at A1; Jo Carrillo, *Dangerous Loans: Consumer Challenges to Adjustable Rate Mortgages*, 5 BERKELEY BUS L.J. 1 (2008).

3. Joe G. Collier, *More Bad News for Housing: Figures Bleak for Foreclosures, Delinquent Loans*, ATLANTA J. -CONST., Mar. 7, 2008, at 1G (“U.S. foreclosure rates hit a record high in the last three months of 2007 and home delinquency rates reached their highest levels in 22 years, according to a survey released Thursday by a real estate organization.”).

4. See Edmund L. Andrews, *Fed and Regulators Shrugged as the Subprime Crisis Spread*, N.Y. TIMES, Dec. 18, 2007, at A1.

5. Kathleen C. Engel & Patricia A. McCoy, *A Tale of Three Markets: The Law and Economics of Predatory Lending*, 80 TEX. L. REV. 1255, 1261 (2002).

6. Carrie Teegardin, *Economic Slide Touches Many Lives: Pain of Mortgage Crisis Expected to Spread Far*, ATLANTA J. -CONST., Feb. 4, 2008, at 1A (“In Georgia alone, the number of subprime mortgages increased from just 11,000 in 1998 to more than 200,000 by the middle of last year, according to the Mortgage Bankers Association.”).

7. *Id.*

8. Collier, *supra* note 3.

9. *Id.*

10. Gretchen Morgenson, *More Home Foreclosures Loom as Owners Face Mortgage Maze*, N.Y. TIMES, Aug. 6, 2007, at A1.

payments on a mortgage, and selling securities backed by those payments.¹¹ In a typical transaction, the lender, commonly referred to as an originator in securitization parlance, assigns a loan to a subsidiary of an investment bank.¹² In exchange for the receivable, the originator receives a lump sum payment.¹³ The subsidiary, in turn, combines that loan with hundreds of other loans in a special purpose vehicle (SPV).¹⁴ The SPV can take a variety of forms; however, it is commonly organized as a trust.¹⁵ The SPV then sells securities backed by payments on the underlying mortgages.¹⁶ These securities resemble other debt instruments and are typically traded among large, institutional investors.¹⁷ The securities sold by the SPV are commonly referred to as asset-backed securities (ABS).¹⁸ While almost any type of receivable can be securitized,¹⁹ asset backed securities secured by real estate make up a significant portion of the overall ABS market.²⁰ As the process of securitization evolved, bankers created increasingly sophisticated and innovative structures to provide investors and other participants in the marketplace more yield, predictability, and flexibility with regard to the tradable securities.²¹

The investment bank which organizes the SPV also sells the right to service the loan pool to a separate company.²² This right to service the loans can change hands frequently.²³ The servicer will interact with actual borrowers, accept monthly payments, monitor collateral, and in some instances, bring foreclosure actions.²⁴ The trustee may

11. See Lois R. Lupica, *Asset Securitization: The Unsecured Creditor's Perspective*, 76 TEX. L. REV. 595, 599–600 (1998); Christopher L. Peterson, *Predatory Structured Finance*, 28 CARDOZO L. REV. 2185, 2186–87 (2007).

12. Lupica, *supra* note 11 at 600; Peterson, *supra* note 11 at 2209.

13. Lupica, *supra* note 11, at 600.

14. Peterson, *supra* note 11, at 2209.

15. *Id.*

16. *Id.*

17. Aaron Unterman, *Exporting Risk: Global Implications of the Securitization of U.S. Housing Debt*, 4 HASTINGS BUS. L.J. 77, 80 (2008).

18. Lupica, *supra* note 11, at 600–01.

19. Peterson, *supra* note 11, at 2206.

20. See Lupica, *supra* note 11, at 601–02.

21. See Peterson, *supra* note 11 at 2200–06.

22. Peterson, *supra* note 11, at 2210.

23. *Id.* at 2211 (“Servicing rights also change hands often, ‘in some cases several times a year for the same loan.’”) (citing R.K. Arnold, *Is There Life on MERS?*, 11 PROP. & PROB. 32, 35 (1997)).

24. *Id.* at 2210.

change servicers depending on the company's performance and the costs.²⁵ The SPV, however, actually owns the loans.²⁶ The ownership of the underlying loans will change if the entire SPV is acquired.²⁷ After the securities are issued, a trustee bank monitors the trust on behalf of the investors who purchased securities from the trust.²⁸

In addition to originators, servicers, sponsors, and trustees, another corporation, Mortgage Electronic Registration System, Inc. (MERS), has added an additional layer of complexity to the securitization landscape.²⁹ MERS is a unique firm that was formed by participants in the secondary mortgage market to track ownership and servicing rights of mortgages.³⁰ To this end, MERS maintains a database used by originators and other market participants.³¹ In addition to this role as a record keeper for mortgage ownership, the signed mortgage documents frequently name MERS as the "mortgagee of record."³² MERS, however, does not actually own or service the underlying loan.³³ MERS's role does not end at this stage of the process. MERS "purports to remain the mortgagee of record for the duration of the loan even after the originator or a subsequent assignee transfers the loan into an SPV for securitization."³⁴ In this role, MERS asserts that it is "acting as a 'nominee' for the parties."³⁵ In some cases, MERS will bring a foreclosure in its own name.³⁶

25. *Id.* at 2211.

26. Peterson, *supra* note 11, at 2209.

27. See Telephone Interview with Frank Alexander, Prof. of Law, Emory University (Apr. 5, 2008) [hereinafter Alexander Interview].

28. Morgenson, *supra* note 10.

29. See Peterson, *supra* note 11, at 2211–12.

30. *Id.* at 2211.

31. *Id.* ("Currently more than half of all home mortgage loans originated in the United State are registered on the MERS system.")

32. *Id.* (citing Phyllis K. Slesinger & Daniel McLaughlin, *Mortgage Electronic Registration System*, 31 Idaho. L. Rev. 805, 806–07 (1995)); MERS, About MERS, <http://www.mersinc.org/about/index.aspx> (last visited May 9, 2008) ("MERS acts as nominee in the county land records for the lender and servicer.").

33. Peterson, *supra* note 11, at 2212; Alexander Interview, *supra* note 27.

34. Peterson, *supra* note 11, at 2212; MERS, *supra* note 32 ("Any loan registered on the MERS® System is inoculated against future assignments because MERS remains the nominal mortgagee no matter how many times the servicing is traded.").

35. Peterson, *supra* note 11, at 2212.

36. *Id.*

Securitization provides advantages for each party involved in the process.³⁷ Through securitization, many borrowers have been able to obtain loans on terms that would be unavailable to them under the traditional mortgage model.³⁸ Borrowers have obtained these favorable terms because securitization brings significant capital to the mortgage market.³⁹ Lenders and investors also benefit: “[c]ollectively, investors have large amounts of capital, but a limited ability to originate and monitor individual loans. Conversely, mortgage lenders are well situated to make loans but are typically constrained in the number of loans they can make by their limited access to capital.”⁴⁰ Investors who purchase the securities issued by the SPV gain the benefits of diversification because the securities are backed by numerous loans.⁴¹ As a result of these advantages, the size of the market for mortgage-backed securities has grown enormously:

At the end of [2006], \$6.5 trillion of securitized mortgage debt was outstanding. More than 60 percent of home mortgages made in the United States in 2006 went into securitization trusts. Some \$450 billion worth of subprime mortgages, those made to borrowers with weak credit, went into securitizations [in 2006].⁴²

Although securitization provides a variety of benefits to borrowers, lenders, and investors, the process presents unique problems for borrowers who are having difficulty making their monthly mortgage payments and may be facing foreclosure.⁴³ The conventional wisdom of residential real estate is that no one wins if a lender is forced to foreclose on a home.⁴⁴ The borrower loses his home and the lender may take a loss on the loan in addition to foregoing a profitable

37. See Lupica *supra* note 11, 605–17.

38. Peterson, *supra* note 11, at 2188 (“All this is well and good, in that homeowners receive new access to cheap capital, making (other things being equal) home ownership more affordable at the margins.”)

39. *Id.*

40. *Id.*

41. Kathleen C. Engel & Patricia A. McCoy, *Turning a Blind Eye: Wall Street Finance of Predatory Lending*, 75 FORDHAM L. REV. 2039, 2056–57 (2007).

42. Morgenson, *supra* note 10.

43. See Gretchen Morgenson & Jonathan D. Glater, *The Foreclosure Machine*, N.Y. TIMES, Mar. 30, 2008, at BU1; *see also* Morgenson, *supra* note 10.

44. See Morgenson, *supra* note 10.

stream of future interest payments.⁴⁵ As a result, lenders have traditionally worked with distressed borrowers to modify the terms of a loan.⁴⁶ The complicated process of securitization, however, has resulted in substantial confusion as to who can actually modify the terms of a loan for a distressed borrower or what entity actually owns the loan.⁴⁷ In a recent case involving an elderly Atlanta woman, the trustee claimed its role was only administrative and “that it is not responsible for foreclosures.”⁴⁸ Even more troubling, foreclosure proceedings have been initiated when it is unclear who owns the loan.⁴⁹

SB 531 was introduced as a bi-partisan effort to help borrowers “identify who has the right to foreclose before they actually do, instead of after they do the foreclosure.”⁵⁰

Bill Tracking of SB 531

Consideration and Passage by the Senate

SB 531 was sponsored by Senator William Hamrick (R-30), Senator Nan Orrock (D-36), Senator Robert Brown (D-26), Senator Ronnie Chance (R-16), Senator Curt Thompson (D-5), and others.⁵¹ The bill was first read on February 28, 2008 and was assigned to the Banking and Finance Committee.⁵² The Senate Banking and Finance Committee favorably reported the bill on March 5, 2008.⁵³ The bill was read for the second time on the Senate floor on March 6, 2008.⁵⁴ The bill was read for the third time and the Senate unanimously approved the measure without alteration on March 11, 2008.⁵⁵ No

45. See generally *id.*; Morgenson & Glater, *supra* note 43.

46. Morgenson *supra* note 10; Morgenson & Glater, *supra* note 43.

47. Morgenson *supra* note 10.

48. *Id.*

49. *Id.*

50. Video Recording of House Proceedings, Apr. 1, 2008 at 1 hour, 42 min., (remarks by Rep. Edward Lindsey (R-54th)) [hereinafter House Video].

51. SB 531, as introduced, 2008 Ga. Gen. Assem.

52. State of Georgia Final Composite Status Sheet, SB 531, Feb. 28, 2008 (Apr. 4, 2008).

53. *Id.* at Mar. 5, 2008.

54. *Id.* at Mar. 6, 2008.

55. *Id.* at Mar. 11, 2008; Georgia Senate Voting Record, SB 531 (Mar. 11, 2008).

amendments to the bill were proposed and discussion of the bill on the floor of the Senate was brief.⁵⁶

As introduced in the Senate, the bill would have amended Code section 44-14-162 to add procedural requirements to foreclosure sales.⁵⁷ The bill required that the advertisement required for a valid sale, which must be provided to the debtor under 44-14-162.2, contain the identity of the secured creditor and contact information for the party having the authority to “service” the underlying debt.⁵⁸ The bill added a provision that invalidated sales not conducted in the name of the individual or entity that held the rights of the secured creditor at the time of the sale.⁵⁹ The bill required that the identity of the secured creditor appear in the records of the clerk of the superior court of the county in which the real property is located.⁶⁰ Finally, the bill required that all assignments of a mortgage, deed, or lien contract be recorded with the office of the clerk of the superior court in which the real property is located.⁶¹

Consideration and Passage by the House

SB 531 was first read in the House on March 12, 2008.⁶² The bill was read a second time on March 18, 2008.⁶³ The House Judiciary Committee favorably reported a substitute bill on March 28, 2008.⁶⁴ The substitute bill was read for a third time and adopted by the House on April 1, 2008.⁶⁵ Representative Edward Lindsey (R-54) presented the substitute bill to the House.⁶⁶ As in the Senate, there was limited discussion of the substitute bill on the floor of the House.⁶⁷

56. Video Recording of Senate Proceedings, Mar. 11, 2008 at 2 hours, 46 min., (remarks by Sen. William Hamrick (R-30th)) [hereinafter Senate Video].

57. SB 531, as introduced, 2008 Ga. Gen. Assem.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. State of Georgia Final Composite Status Sheet, SB 531, Mar. 12, 2008 (Apr. 4, 2008).

63. *Id.* at Mar. 18, 2008.

64. *Id.* at Mar. 28, 2008.

65. *Id.* at Apr. 1, 2008.

66. House Video, *supra* note 50.

67. *Id.*

The House substitute bill made some significant modifications. The House substitute bill kept the recording requirements contained in the Senate version; however, the House substitute bill clarified that the security instrument should be filed “prior to the time of sale.”⁶⁸ The House substitute bill did not include the provision passed in the Senate that would invalidate a foreclosure sale not conducted in the name of the individual or entity holding the legal rights of the secured creditor.⁶⁹ Like the Senate version, the House substitute bill modified the notice requirements contained in Code section 44-14-162.2.⁷⁰ While the Senate version required that the notice contain information about the secured creditor, and contact information for a party *with authority to service the underlying debt*, the House version required that the notice contain contact information for an individual or entity *with full authority to modify the terms of the loan*.⁷¹ The House substitute added language to Code section 44-14-162.2 clarifying that notice requirements should not “be construed to require a secured creditor to negotiate, amend, or modify the terms of a mortgage instrument.”⁷² The House substitute bill also increased the length of notice of foreclosure proceedings from 15 days to 30 days.⁷³ The House Committee on the Judiciary removed the language in the Senate version of the bill that invalidated foreclosure sales not conducted in the name of the secured based on concern about the possible effects of the Senate provision on the secondary mortgage market.⁷⁴ There are unanswered legal questions about who can bring a foreclosure proceeding in Georgia.⁷⁵ Specifically, there is uncertainty over the ability of MERS to initiate a foreclosure

68. SB 531 (HCS), 2008 Ga. Assem.

69. Compare SB 531, as introduced, 2008 Ga. Gen. Assem., with SB 531 (HCS), 2008 Ga. Gen. Assem.

70. Compare SB 531, as introduced 2008 Ga. Gen. Assem., with SB 531 (HCS), 2008 Ga. Gen. Assem. Although the Senate version would have modified the notice requirement by adding provision (b) to Code section 44-14-162, the House substitute modified the notice requirements by directly amending Code section 44-14-162.2.

71. Compare SB 531, as introduced 2008 Ga. Gen. Assem. (emphasis added), with SB 531 (HCS), 2008 Ga. Gen. Assem. (emphasis added).

72. SB 531 (HCS), 2008 Ga. Gen. Assem.

73. *Id.*

74. See Telephone Interview with Rep. Edward Lindsey (R-54th) (Apr. 21, 2008) [hereinafter Lindsey Interview].

75. See *id.*

proceeding in its position as a nominee.⁷⁶ The Senate version would have had an impact on this issue by invalidating foreclosure sales not conducted in the name of the secured creditor.⁷⁷ The House Judiciary committee removed this provision because it did not intend for the Act to resolve this fundamental question.⁷⁸ Instead, the changes contained in the House substitute were intended to focus on the specific problem of distressed borrowers who have difficulty identifying an individual or entity with full authority to modify the terms of the mortgage.⁷⁹ There was also concern that dramatic change could cause turmoil in the secondary mortgage market, which in the long run would be detrimental to borrowers.⁸⁰ Representative Lindsey maintains this issue should be studied and could be addressed in future sessions.⁸¹

The Senate agreed to the House substitute bill on the final day of the session, April 4, 2008.⁸²

The Act

The purpose of the Act is to address some of the problems that have arisen out of the recent foreclosure crisis and are associated with the securitization of mortgages.⁸³ The Act aids distressed borrowers who want to work with their lender by requiring that a notice of foreclosure contain specific information about the entity that has the power to modify the terms of their loan.⁸⁴ The General Assembly intended for this requirement to simplify matters for borrowers facing a variety of parties associated with their loans—originators, servicers, law firms, and trustees.⁸⁵ Additionally, the recording requirement attempts to end confusion over who actually owns the loan by requiring that the security instrument be recorded with the county

76. *See id.*

77. SB 531, as introduced, 2008 Ga. Gen. Assem.

78. *See Lindsey Interview, supra note 74; Telephone Interview with Sen. Nan Orrock (D-36th) (Apr. 3, 2008) [hereinafter Orrock Interview].*

79. *See Lindsey Interview, supra note 74.*

80. *See id.*

81. *See id.*

82. State of Georgia Final Composite Status Sheet, SB 531, Apr. 4, 2008 (Apr. 4, 2008).

83. Senate Video, *supra* note 56.

84. O.C.G.A. § 44-14-162.2 (Supp. 2008); *see Orrock Interview, supra note 78.*

85. *See Orrock Interview, supra note 78.*

clerk's office prior to foreclosure.⁸⁶ The Act resulted from careful negotiation between Atlanta Legal Aid, which frequently represents borrowers facing foreclosure, and the Mortgage Bankers Association of Georgia.⁸⁷ Senator Nan Orrock (D-36), one of bill's original sponsors, voiced concern that the mortgage crisis was particularly pronounced in Georgia and that the lending industry in Georgia is as "unregulated as anywhere in the country."⁸⁸

Analysis

Identifying the entity that has the power to modify the terms of a loan is essential for borrowers facing foreclosure,⁸⁹ and requiring disclosure of that information is perhaps the most significant aspect of the Act.⁹⁰ In the past, the original lender would hold the loan, rather than sell it to a separate company to be bundled with other loans.⁹¹ An unintended consequence of securitization is that it can be very difficult for borrowers to identify the party who can modify the terms of their loan.⁹² Although the Act requires this information be included in the notice provided to a distressed borrower, the Act does not establish a specific remedy when the notice does not contain this information.⁹³ The Act, however, speaks of this notice requirement in mandatory terms: "No sale of real estate . . . shall be valid . . . unless notice of the sale *shall* have been given as required by Code section 44-14-162.2."⁹⁴ Moreover, "[s]uch notice *shall include* the name, address, and telephone number of the individual or entity who shall have full authority to negotiate, amend, and modify all terms of the mortgage with the debtor."⁹⁵ Almost certainly, borrowers will seek relief from the courts to have foreclosure proceedings enjoined or set aside because the notice was inadequate. Indeed, the Vice Chair of

86. Senate Video, *supra* note 56.

87. House Video, *supra* note 50.

88. See Orrock Interview, *supra* note 78.

89. See *supra* notes 43–49 and accompanying text.

90. See Orrock Interview, *supra* note 78; Lindsey Interview, *supra* note 74.

91. Lupica, *supra* note 11, at 611–12.

92. Senate Video, *supra* note 56.

93. O.C.G.A. §§ 44-14-162(a), -162.2(a) (Supp. 2008).

94. O.C.G.A. § 44-14-162(a) (Supp. 2008) (emphasis added).

95. O.C.G.A. § 44-14-162.2(a) (Supp. 2008) (emphasis added).

the House Judiciary committee, Representative Edward Lindsey (R-54), intended the mandatory nature of the notice requirement to give a court equitable power to set aside or enjoin a foreclosure if the notice were deficient.⁹⁶

Prior to the Act, a party giving notice to a debtor of proceedings to exercise power of sale already had to fulfill certain statutory requirements: the notice had to be a copy of the published legal advertisement, given to the debtor no less than 15 days prior to the published date of the foreclosure sale, and sent by registered or certified mail, return receipt requested.⁹⁷ Georgia law does not require actual notice of the foreclosure by the borrower provided that these statutory requirements are met.⁹⁸ But, if the existing statutory notice requirements of Code section 44-14-162.2 are not met, the debtor “may seek either to have the sale set aside or to recover damages for the value of the property under the tort of wrongful foreclosure, but not both.”⁹⁹ The Act merely adds to the existing notice requirements of Code section 44-14-162.2.¹⁰⁰ Thus, if treated in the same manner as the other notice requirements, the failure to provide contact information for the party who has full authority to modify the terms of the loan would provide grounds to set aside a foreclosure.¹⁰¹

Under the Act, the notice must contain information for a party with full legal authority to modify the terms of the loan.¹⁰² Professor Frank Alexander, author of *Georgia Real Estate Finance and Foreclosure Law*,¹⁰³ asserts three distinct methods for the secondary mortgage market to comply with the Act.¹⁰⁴ First, the Pooling and Servicing agreement between the trustee of the SPV and the servicer could be modified so that the mortgage is referred to a servicer for foreclosure

96. See Lindsey Interview, *supra* note 74.

97. O.C.G.A. § 44-14-162.2 (Supp. 2008) (these requirements were only modified by the Act with respect to the length of time for notice—thirty days rather than fifteen).

98. FRANK S. ALEXANDER, GA. REAL ESTATE FINANCE AND FORECLOSURE LAW § 8-3 (4th ed. 2004) (citing *McCollum v. Pope*, 261 Ga. 835 (1992)).

99. *Id.* (citing *Calhoun First National Bank v. Dickens*, 264 Ga. 285 (1994)).

100. O.C.G.A. § 44-14-162.2(a) (Supp. 2008).

101. See *supra* note 99 and accompanying text.

102. O.C.G.A. § 44-14-162.2(a) (Supp. 2008).

103. Ga. Real Estate Finance and Foreclosure Law (4th ed. 2004).

104. See Alexander Interview, *supra* note 27.

and the servicer has full authority to modify the terms of the loan.¹⁰⁵ Second, the trustee of the SPV could provide that once a mortgage enters default it is pulled out from the larger pool and placed in a separate SPV. The notice to the borrower in that case should contain contact information for the trustee of this separate SPV.¹⁰⁶ Third, the notice could simply identify the trustee of the SPV that currently holds the mortgage, a procedure which is already the practice of many trustees.¹⁰⁷ However, Professor Alexander maintains that if the notice provided to a borrower contained information for MERS, that notice would be inadequate because MERS does not have any authority to modify the terms of a loan.¹⁰⁸ Given MERS' current role, Representative Lindsey agrees with this assertion.¹⁰⁹

The Act is a significant first step in bringing Georgia law up to date with the realities of modern finance. Given the enormous potential for profit associated with securitization, Wall Street will continue to manufacture exotic securities out of ordinary home loans. The challenge for the General Assembly is to keep up with the rapid pace of financial innovation.

Austin Hall

105. *See id.*

106. *See id.*

107. *See id.*

108. *See id.*

109. *See Lindsey Interview, supra note 74.*