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HB-1109 – What Does it Mean to Me?

House Bill 1109 (HB-1109) recently was enacted to expand the protection given home owners under the Foreclosure Protection Act. The ONLY action taken in the bill is to revise the definition of a “Residence in foreclosure” to include a residence that is ***“occupied as the home owner’s principal place of residence and is encumbered by a residential mortgage that is at least thirty days delinquent or in default.”***

The Foreclosure Protection Act was not amended in any other way and the requirements and restrictions of the Act still apply. This amendment to the Act is effective July 1, 2009. The amendment will allow a homeowner who is in default the same protection afforded to a homeowner who is in foreclosure. A Notice of Election and Demand (NED) must still be filed for an owner to be “in foreclosure”. Nothing in HB-1109 or the current Foreclosure Protection Act imposes an obligation on the seller to disclose that they are delinquent or in default in their mortgage. This amendment does not change the requirements or process under which REALTORS® operate. If the Act applies, then an attorney should prepare the contract.

One item causing some confusion among brokers is the Commission’s decision to repeal the Contract to Buy and Sell Real Estate Foreclosure Form and the Foreclosure Property Addendum. Although the Commission repealed these forms, the Act still applies and the contract will need to comply with its provisions. Only now, attorneys will be required to complete the contracts because no form promulgated by the commission will exist.

If an “Equity Purchaser” (as defined in the Act) is purchasing a “Residence in Foreclosure,” the Equity Purchaser will need to proactively inquire whether a homeowner/seller is in default. If the seller is in default and is deemed to be a “Residence in Foreclosure” and the Equity Purchaser does not inquire, the seller would be afforded the protection of the Act and the contract will be void. Keep in mind that the Act does not apply to buyers purchasing a principal residence to live in. It was designed to protect homeowner/sellers from Equity Purchasers and foreclosure consultants.