**South Carolina General Assembly**

118th Session, 2009-2010

**H. 3986**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. E.H. Pitts

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Introduced in the House on April 29, 2009

Currently residing in the House Committee on **Judiciary**

Summary: Mortgages

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/29/2009 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2009\04-29-09.docx)‑9

4/29/2009 House Referred to Committee on **Judiciary** [HJ](file:///h:\HJ%20Archive\2009\04-29-09.docx)‑9

**VERSIONS OF THIS BILL**

[4/29/2009](file:///p:\pprever\2009-10\3986_20090429.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40‑5‑395 SO AS TO PROVIDE, NOTWITHSTANDING ANOTHER PROVISION OF LAW, A LICENSED ATTORNEY IS NOT NECESSARY TO SUPERVISE OR CONDUCT ANY ASPECT OF THE REFINANCING OF AN EXISTING REAL ESTATE MORTGAGE INCLUDING TITLE EXAMINATION, LOAN DOCUMENT PREPARATION, CLOSING, OR PERFECTING SETTLEMENT OF THE OLD MORTGAGE AND RECORDATION OF THE NEW MORTGAGE; AND TO AMEND SECTION 37‑10‑102, RELATING TO ATTORNEYS’ FEES FOR MORTGAGES, SO AS TO MAKE CONFORMING CHANGES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 5, Chapter 5, Title 40 of the 1976 Code is amended by adding:

“Section 40‑5‑395. Notwithstanding another provision of law, a licensed attorney is not necessary to supervise or conduct any aspect of the refinancing of an existing real estate mortgage, including:

(1) conducting a title examination to determine the current status of the title and new encumbrances;

(2) preparing new loan documents and instruments needed to ensure the buyer obtains funds to pay off the existing mortgage and the lender receives a mortgage to protect its interest;

(3) conducting a closing of the loan for the buyer and lender; and

(4) perfecting settlement of the old mortgage and recordation of the new mortgage.”

SECTION 2. Section 37‑10‑102(a) of the 1976 Code is amended to read:

“(a) ~~The~~ Where a licensed attorney is required to conduct a real estate closing, the creditor must ascertain ~~prior to~~ before closing the preference of the borrower as to the legal counsel that is employed to represent the debtor in all matters of the transaction relating to the closing of the transaction and except in the case of a loan on property that is subject to the South Carolina Horizontal Property Act, ~~(~~Section 27‑31‑10 et seq.,~~)~~ the insurance agent to furnish required hazard and flood property insurance in connection with the mortgage and comply with such preference.

The creditor may comply with this section by:

(1) including the preference information on or with the credit application so that this information ~~shall be~~ is provided on a form substantially similar to a form distributed by the administrator; or

(2) providing written notice to the borrower of the preference information with the notice being delivered or mailed no later than three business days after the application is received or prepared. If a creditor uses a preference notice form substantially similar to a form distributed by the administrator, the form is in compliance with this section.

The creditor may require the attorney or agent to provide reasonable security to the creditor by way of mortgage title insurance in a company acceptable to the creditor and to comply with reasonable closing procedures. If title insurance is made a condition of the loan at any point during the negotiations, it must remain a condition all the time thereafter regardless of which attorney ultimately closes the transaction. Any legal fees other than for examination and certification of the title, the preparation of all required documents, and the closing of the transaction required or incurred by the creditor in connection with the transaction is the responsibility of the creditor regardless of which party pays for the title work, document preparation, and closing.”

SECTION 3. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor.

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