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FINANCIAL INSTITUTION UPDATE

Gardner, Willis, Sweat & Handelman, LLP hopes you find the information in this newsletter helpful. This information is intended to be general in nature and is not a substitute for competent legal advice. Because every issue is unique, we do not recommend that you apply the information in this newsletter without first seeking appropriate legal advice.

We publish various newsletters regarding other areas of law as well. Please call us for more information.

If you prefer to receive our newsletters electronically, please forward an email informing us to gwsh-law@gwshlaw.com.

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Free Seminars Available

If you and your employees are interested in learning more about a particular legal topic, we would be happy to provide a seminar on such topic at no charge. The seminar can be at your business location or at our firm's location in Albany.

Examples of seminars:

- General Banking Law
- Legal Issues in Agriculture
- Workers' Comp Overview
- Return to Work in Workers' Comp
- Sexual Harassment
- Americans with Disabilities Act
- Family and Medical Leave Act
- Negligent Hiring
- Estate Planning

Georgia Court of Appeals Rules in Favor of Bank on Conversion Claim

In Bank of Dawson v. Worth Gin Company, Inc., 295 Ga. App. 256 (2008), the Georgia Court of Appeals reversed a cotton gin's motion for summary judgment and remanded the case to the trial court for consideration of a bank's conversion claim.

The bank sued the cotton gin company for conversion, alleging it had failed to honor the bank's security interest in a cotton crop. A borrower, Jason Wiggins, had granted a security interest in his cotton crop to the Bank of Dawson. The Bank of Dawson filed a financing statement to perfect its interest. Later, when Wiggins sold his cotton crop to Worth Gin Company, the gin company deducted from the purchase price an amount for debts Wiggins owed in connection with his farming operation and gave Wiggins a check made jointly payable to Wiggins and the bank for the remaining balance.

The gin company attempted to argue that the bank had not properly perfected its security interest insofar as the financing statement failed to provide for the name of the record owner where the crops had been planted. However, the Court of Appeals found that said omission was not seriously misleading and that the filing did perfect the security interest.

The gin company acknowledged receipt of correspondence from the bank regarding the security interest, but argued that no documents had been enclosed with the letter substantiating the security interest. Further, the evidence before the Court indicated that a representative of the gin company asked the borrower if the Bank of Dawson had a lien on the crop and was told that it did. The Court held that, because the gin company had actual knowledge of the security interest and withheld proceeds of the cotton crop, it was liable to the bank on the conversion claim.

RESPA Reform to Good Faith Estimate (GFE) Form and HUD Closing Statements

On November 17, 2008, HUD published new rules under RESPA in an effort to make the mortgage and closing process more transparent and understandable for consumers, to enable customers to make informed decisions about the best loans, and to disclose the cost of those loans and related closing services. The new rule requires that, as of January 1, 2010, mortgage lenders and mortgage brokers use a new standard Good Faith Estimate form (GFE), which is three (3) pages long, and must be provided to the customer within three (3) days of application for the loan.

The first page of the new GFE is broken down into the following six parts: (1) Purpose, (2) Shopping for Your Loan, (3) Important Dates, (4) Summary of Your Loan, (5) Escrow Account Information, and (6) Summary of Your Settlement Charges.

The second page of the GFE sets out two additional sections: (1) Adjusted Origination Charges which explain the compensation of the lender and the mortgage broker; and (2) Charges for All Other Settlement Services.

The new rules provide varying tolerances with regard to certain fees. The lender or broker's origination charge is subject to a zero tolerance variation. The lender required settlement services where the lender selects the third party provider is subject to a 10% tolerance or variance. There is no restriction on fees for lender required services where the borrower shops and selects his or her own third party provider. If a mortgage lender will pay a broker fee, such as the yield spread premium on the loan, the mortgage broker is required to disclose the premium as a credit or charge for the specific interest rate chosen.

The third page of the GFE is somewhat of an instructions manual for the customers and is in fact labeled "Instructions". On this third page, there is actually a table which sets out charges

which can change at settlement and charges which cannot change. Also, there are two (2) other tables that allow the consumer to compare lenders.

There are also substantial changes to the HUD closing statement which become effective January 1, 2010. The new HUD will have to coordinate with the items set out on the GFE. Therefore, the closing attorney must have a copy of the GFE to fully prepare the HUD. The new HUD will require a disclosure of the split between the title insurance agent and the underwriter for any title insurance premium collected on the HUD (new Lines 1107 and 1108). Additionally, there is an introduction of a new third page to the HUD closing statement which compares the GFE and the actual HUD charges.

The new HUD regulation also repeals the prior HUD regulation which limited origination fees on FHA loans (1% of the mortgage amount or 2.5% of the construction loan amount).

Please let us know if you have any questions by calling Deena Plaire-Haas at 883-2441 or by emailing her at deena.plaire-haas@gwsh-law.com.

Deena's practice includes representation of financial institutions and businesses in bankruptcy court, drafting contracts and leases, formation of new businesses, general business litigation, and closing complex commercial transactions.



She understands the importance of responsiveness, efficiency, anticipation of clients' needs and creative solutions. Deena was recently named as one of Southwest Georgia's Top Forty Under Forty in recognition of her leadership and community involvement. She and her husband, Bob, have a daughter, Haley. DPH/32-090.901