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## FINANCIAL INSTITUTION UPDATE

**October 6, 2008**

### **Hope for Homeowners Act of 2008**

On October 1, 2008, the Hope for Homeowners Act of 2008 became effective and runs through September, 2011. The Act is an attempt by Congress to steer struggling homeowners away from foreclosure. The legislation allows those who qualify to refinance their current mortgage loans and replace them with 30 year fixed rate loans for up to 90% of the home's current value. FHA will insure a total of \$300 billion of the loans over a 3-year period. However, individual financial institutions have the authority to determine whether or not to allow the borrower's loan to be refinanced under this program.

To be eligible, borrowers must have spent more than 31% of their monthly income on their mortgages as of March 1, 2008. The troubled loan must have originated no later than January 1, 2008, and be the borrower's primary residence. It is important that borrowers understand the importance of attempting to make payments and keep the payments current on the mortgage until such time as their current lender determines whether or not to consent to participation under this new program.

If a homeowner/borrower sells the home during the next five (5) years after refinancing under the program, the homeowner/borrower must agree to share 50% of any profit from the resale with the government. Additionally, homeowners can only retain equity gains based on a sliding scale. The homeowner would have zero equity from a sale in the first year, with the amount rising 10% in each succeeding year and capping at 50% from a sale in year 5 and thereafter. The equity must be repaid because the maximum amount of a new loan will be capped at 90% of the current market value, which automatically gives the previously troubled homeowner 10% equity in his home.

**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.**

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## Reimbursement of Costs in Responding to Discovery

A couple of years ago, the Georgia statutes were changed to enable parties in litigation to send third party Requests for Production of Documents to financial institutions. Financial institutions can incur significant costs in searching for and reproducing such records.

The question is often asked as to the amount that a financial institution can charge with regard to said activities. A Georgia statute, O.C.G.A. §7-1-237, provides that the financial institution shall be reimbursed by the requesting party for costs which are “reasonably necessary” and which have been “directly incurred” in searching for, reproducing, or transporting books, papers, records, or other data of a customer, required or requested to be produced pursuant to a lawful subpoena, summons, or garnishment, attachment, request for production of documents, or court order where the financial institution is not a party to the action. The Department of Banking and Finance has the authority to prescribe regulations regarding the rates and conditions under which reimbursement may be made.

The Georgia Department of Banking and Finance Regulation 80-10-1-.04 provides for reimbursement for costs of production of records. Said Regulation, subsection (1), provides that such costs shall be reasonably determined according

to time spent, materials provided, personnel level required, and any pertinent state law. However, the Regulation further provides that if such a request is incurred on the request of a state government or a state law enforcement agency, the following limitations apply: (a) \$15.00 per hour per person for research and processing costs; (b) 25¢ per page for reproduction costs incurred in making copies; and (c) actual costs of any necessary transportation. Whether a governmental agency, law enforcement, or a private party requests such documents, the financial institution should provide an itemized invoice indicating in specific detail the searching and processing, reproduction, and transportation costs.

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.



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