

2011 HOUSEKEEPING BILL

TALKING POINTS – Bill Becomes Effective July 1, 2011

DEPOSITORY FINANCIAL INSTITUTIONS

- **“Statutory Capital Base”** (O.C.G.A. §7-1-4(35))

The definition of “statutory capital base” was changed to simplify the calculation and create a more stable result by eliminating reliance on net assets, which fluctuate with unrealized gains and losses on available-for-sale investment securities. This change should result in a more stable number that will not be subject to large daily fluctuations unless there is a change in a bank’s capital structure.

- **Voluntary dissolution prior to commencement of business.** (O.C.G.A. §7-1-113)

Language has been added to allow the Department to file for dissolution of a corporate bank charter if an organizing group fails to do so after demand.

The Department has had a couple of occasions where banks in organization, long past their authorization window, have failed to file voluntary dissolution with the Georgia Secretary of State’s office. The language change will allow for the Department to file dissolution directly if a bank in organization fails to do so after demand from the Department. We anticipate that this will be a little used provision; however, it will be appropriate in certain limited circumstances.

- **Number, term, and compensation of directors.** (O.C.G.A. §7-1-482)

Language change to clarify that the failure of a financial institution to maintain at least five (5) directors at any time, does not release the remaining directors from their obligations and liabilities associated with their decisions as directors of the financial institution.

No additional or new liabilities for directors are established by this language change. The language simply clarifies that even though the law requires 5 directors, if an institution has less than 5 directors for whatever reason, the remaining directors are still responsible for the decisions they make for the institution. This change is the result of the FDIC’s concern when entering into a Consent Order with an institution that had less than 5 directors at the time of the signing of the order.

- **Board of directors; credit and supervisory committees; officers; oaths of officials; removal from office.** (O.C.G.A. §7-1-655)

Language change to reconcile any conflict between O.C.G.A. §§ 7-1-655(c) and 7-1-658(3) regarding who can serve on the credit committee of a credit union.

To clarify we simply added to 7-1-655(c) “. . . No member of the supervisory committee may serve as a member of the credit committee or as an officer, unless the Board of Directors functions as the credit committee . . . “

- **“P.O.D. Account”** (O.C.G.A. §7-1-810(10))

A 2009 Georgia Supreme Court decision ruled that a corporation is not an eligible “payable on death” (**P.O.D.** payee) beneficiary. That Court determined that the statute provided that a **P.O.D.** payee must be a “person” as it is defined at 7-1-4(26) which does not include incorporated entities. [The case is TUVIM et al v. UNITED JEWISH COMMUNITIES, INC. et al, 285 Ga. 632 (2009).]

The language change allows POD payees to be incorporated entities, such as charities or funeral homes.

MORTGAGE

- **Definitions.** (O.C.G.A. §7-1-1000)

The definition of “mortgage lender” is clarified to include any person that *holds* mortgage loans. The definition of “Nationwide Mortgage Licensing System or Registry” is amended to include any successor to the mortgage system currently in place.

- **Exemption for certain persons and entities; registration requirements.** (O.C.G.A. §7-1-1001)

Language was added to clarify that attorneys exempt from mortgage loan originator, mortgage broker, or mortgage lender licensing requirements must be licensed to practice law in the state of Georgia.

- **Requirement for mortgage loan originator license; application to sellers of mobile homes.** (O.C.G.A. §7-1-1001.1)

Superfluous language has been removed from this code section to acknowledge that mortgage loan originator licensing is required. The date on which the licensing of mortgage loan originators was officially required – August 1, 2010, has been added to the law, and a clarification has been made to reference the federal Safe and Fair Enforcement for Mortgage Licensing Act of 2008.

The August 1, 2010, date may at first appear to be in error since that date has already passed, however, the current language at O.C.G.A. § 7-1-1001.1(a) provides a licensing date of “January 1, 2010, or such later date approved by the Secretary of the United States Department of Housing and Urban Development . . .” The Department in conjunction with discussions with HUD extended the licensing deadline to August 1, 2010. The correct change to the statute is the August 1, 2010 date.

- **Transaction of business without a license, registration, or exemption prohibited; knowing purchase of mortgage loan from unlicensed or nonexempt broker or lender prohibited; liability of persons controlling violators.** (O.C.G.A. §7-1-1002)

A citation correction is the only change to this code section.

- **Financial requirements for licensing and registration; bond requirements.** (O.C.G.A. §7-1-1003.2)

The change to this code section requires that each mortgage loan originator be covered by the surety bond of his or her sponsoring licensed or registered mortgage broker or lender.

- **Uniform multistate administration of automated licensing system for mortgage loan originators, mortgage brokers, and mortgage lenders.** (O.C.G.A. §7-1-1003.5)

Changes are intended to update the existing language to recognize that mortgage loan originator licensing is now an existing process as opposed to one that is prospective in nature.

- **Privileged or confidential nature of information; exception.** (O.C.G.A. §7-1-1003.6)

A clarification has been made to a reference to the federal Safe and Fair Enforcement for Mortgage Licensing Act of 2008. Language has been added to allow the Department to share information with other agencies and law enforcement authorities.

- **Approval of mortgage industry related courses; application; renewal applications; audits.** O.C.G.A. §7-1-1003.7)

A citation correction is the only change to this code section.

- **Investigation of applicant and its officers; audit; education, experience, and other requirements relative to licensees and registrants.** (O.C.G.A. §7-1-1004)

The language deletion in this section is necessary based upon the proposed change at O.C.G.A. §7-1-1003.2(c) that will require that each mortgage loan originator be covered by the surety bond of his or her sponsoring licensed or registered mortgage broker or lender.

The proposed language change at paragraph O.C.G.A. §7-1-1004(h) is intended to make state law mirror the federal Safe and Fair Enforcement for Mortgage Licensing Act of 2008 as it relates to mortgage loan originators who have felony convictions. O.C.G.A. §7-1-1004(o) has been rewritten to enhance the readability of this code section and move to §7-1-1004(p) a requirement that licensees check the public records of the Department before hiring an employee.

- **Renewal of licenses and registrations; Expiration.** (O.C.G.A. §7-1-1005)

Language has been added to this code section to define “proper application” and to provide that no refunds are permissible once a renewal fee has been paid. Language has been added requiring that an applicant for renewal must be in compliance with all orders of the Department.

- **Acquisition of 10 percent or more of the voting shares or of the ownership of any other entity licensed to conduct business under this article.** (O.C.G.A. §7-1-1008)

Language has been added to clarify that this code section applies to *registrants* as well as licensees.

- **Suspension or revocation of licenses, registrations, or mortgage broker education approval; notice; judicial review; effect on preexisting contract.** (O.C.G.A. §7-1-1017)

A change was made to clarify that when an administrative action is initiated against an applicant for a license, the Department may pursue that action to its conclusion even if the applicant withdraws his or her request for a license.

- **Cease and desist orders; enforcement procedure; civil penalty; fines.** (O.C.G.A. §7-1-1018)

A change is included in this code section to provide that any person who violates the terms of an order issued by the Department may be subject to a penalty that shall be calculated per violation per day unless otherwise agreed to by the Department.