

## **Declaratory Ruling**

The Department of Banking and Finance ("Department"), having received a petition for a declaratory ruling pursuant to Department Rule 80-8-1-.05 from affected parties, hereby responds as follows:

The question submitted to the Department by the Georgia Bankers Association, the Community Bankers Association of Georgia, and the Georgia Association of Realtors was "Can the Department refrain from making any determination or ruling that declares that real estate brokerage activity constitutes a financial activity or from authorizing any financial institution to engage in real estate brokerage activity until the United States Congress or federal regulators authorize federally chartered or federally authorized financial institutions to engage in real estate brokerage activities?" The full text of the petition is attached as Exhibit A to this ruling.

The Department answers that, in 1997, it approved one bank to perform real estate brokerage services as a power incidental to the purposes for which banks are organized. The Department is also aware that in the past two years the issue of whether, at the federal level, real estate brokerage is financial in nature or incidental to a financial activity, has become a complex and controversial question.

Although the federal law, enacted by the Gramm Leach Bliley Act (Pub. L. No. 102-106, 113 Stat. 1338 (1999)) (GLB Act'), is not identical to the Georgia law (O.C.G.A. §7-1-261), they are similar in their wording. Both laws generally require a determination of whether an activity is financial in nature or incidental or complementary to a financial activity, in order to decide whether such activity is permissible.

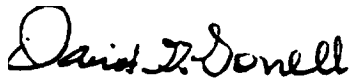
The Department recognizes that there has been much discussion and debate about the question of whether real estate brokerage is financial in nature or incidental to a financial activity, both at the federal and Georgia level. It also recognizes that 26 states have permitted this activity for state banks. The Board of Governors of the Federal Reserve System and the Secretary of Treasury have not acted on their proposed rule which would have made, in part, real estate brokerage such an activity. The Department is aware of at least two (2) bills currently introduced at the federal level on this same issue.

After careful review of all this information, the Department responds that until more information is available to it, including the information outlined below, it will not approve real estate brokerage as an incidental power of banks.

**Information needed includes:**

- 1. Action by the Board of Governors of the Federal Reserve System, the Secretary of the Treasury, or the Office of the Comptroller of the Currency, which would allow a national bank, a financial holding company or a financial subsidiary to perform real estate brokerage services; or**
- 2. Federal legislation that would permit real estate brokerage services by banks, their subsidiaries or affiliates, financial subsidiaries, or financial holding companies; or**
- 3. Other action at the federal level that would permit real estate brokerage to be performed by banks, their subsidiaries or affiliates, financial subsidiaries or financial holding companies.**

Hereby declared this 13 day of February, 2002,



David G. Sorrell  
Acting Commissioner  
Department of Banking and Finance