

## **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.

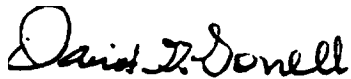
The Department recognizes that there has been much discussion and debate about the question of whether real estate brokerage is financial in nature or incidental to a financial activity, both at the federal and Georgia level. It also recognizes that 26 states have permitted this activity for state banks. 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

**Notice: Real Estate Brokerage and Incidental Powers/Petition from the Georgia Bankers Association (GBA), Community Bankers Association (CBA), and Georgia Association of Realtors (GAR)**

The following petition was received on Friday, February 8, 2002, by the Department of Banking and Finance (Department). It requests that the Department defer any further approvals for banks to perform real estate brokerage activities as incidental powers, until the federal authorities act on this subject.

**Background: The 1997 Approval and Events Surrounding It**

In November of 1997, the Department approved an application of a community bank to acquire an existing real estate brokerage agency in northeast Georgia. The approval was granted under the provisions of Code Section 7-1-261, which is the incidental powers section of the banking code. The bank was required to meet all licensing standards and obtain all licenses normally required to conduct business as a real estate brokerage agency. At the time of this approval federal thrifts, federal credit unions (through a credit union service organization) and banks in twenty-five other states were authorized to engage in real estate brokerage as an activity. In addition, in 1997 Congress was debating the Financial Modernization Bill. Discussions regarding that legislation included the possibility of real estate brokerage being an activity that the Federal Reserve and the Treasury Department could approve as an additional activity under the provision in that bill which allowed approvals for activities that were determined to be "financial in nature". During the 1990's, the OCC approved through letter opinions a wide variety of activities for national banks, who are direct competitors of state banks.

The Financial Modernization Bill ultimately passed in the form of the Gramm Leach Bliley Act (GLBA) in 1999 and contained the "financial in nature" provision. This standard was much broader than the earlier "closely related to banking" standard. Thus it was likely many more activities would be approved for banks and financial entities than before GLBA. In fact, insurance and securities activities had already been added.

**Action at Federal Level**

Pursuant to the provisions of GLBA, the Federal Reserve and the Treasury Department issued a proposal with comments due by March 2, 2001 to allow financial subsidiaries of banks and financial holding companies to engage in real estate brokerage and real estate management services. This proposal has drawn heavy criticism from the National Association of Realtors and may have resulted in the Georgia Association of Realtors becoming concerned about the 1997 approval of a bank in Georgia to conduct real estate brokerage activities. The Federal Reserve and the Treasury Department have not yet acted on the proposal, and at least one bill has been introduced in the current session of Congress to prohibit banks from engaging in this activity. Opposition to that bill has been registered by the American Bankers Association (ABA).

This petition was expected, and will be reviewed by the Department in light of the current national situation. A ruling is anticipated very soon.

Received 8-1-07  
JB

**PETITION TO  
DEPARTMENT  
OF  
BANKING AND FINANCE**

**GEORGIA ASSOCIATION OF REALTORS,  
GEORGIA BANKERS ASSOCIATION, AND  
COMMUNITY BANKERS ASSOCIATION OF GEORGIA**

**PETITIONERS**

**PETITION FOR DECLARATORY RULING**

**COME NOW Georgia Association of Realtors, Georgia Bankers Association, and Community Bankers Association of Georgia, as affected parties, and pursuant to Rule 80-8-1-.05, Petition for Declaratory Ruling, petition the Department of Banking and Finance.**

**Under Code Section 7-1-261 of the O.C.G.A., financial institutions are authorized to engage in certain specified activities.**

**2.**

**This Code section also authorizes financial institutions to engage in other activities determined by the Commissioner to be financial in nature and consistent with the objectives of applicable laws and regulations.**

**3.**

**In 1997, the Department of Banking and Finance authorized the Community Bank and Trust of Cornelia, Georgia, to acquire a real estate brokerage company.**

**4.**

**Federally chartered financial institutions are not permitted to engage in real estate brokerage activities, and the United States Congress and federal regulators are studying the issue of whether to authorize federally chartered financial institutions to engage in real estate brokerage activities.**

5.

Under the doctrine of parity and fair competition, state chartered financial institutions should not be authorized to engage in real estate brokerage activities if federally chartered financial institutions are not authorized to engage in real estate brokerage activities.

6.

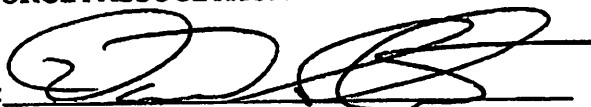
NOW THEREFORE come the Petitioners and respectfully request the Department of Banking and Finance to declare how it would evaluate an application from a financial institution to engage in real estate brokerage activities.

Further, Petitions specifically request the Department to declare that :

- (1) The Department shall 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.

Respectfully submitted this 8<sup>th</sup> day of February, 2002.

GEORGIA ASSOCIATION OF REALTORS

By: 

Title: President

Date: 2-8-02

GEORGIA BANKERS ASSOCIATION

By: Elizabeth L. Way

Title: Director

Date: 2-8-02

COMMUNITY BANKERS ASSOCIATION  
OF GEORGIA

By: Charlie Watt

Title: agent for CBA

Date: 2-8-02