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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

FORECLOSURE OF RESIDENTIAL RENTAL PROPERTY

On May 20, 2009, President Obama signed a federal law that provides residential tenants with certain rights if their rental property is foreclosed upon by the Landlord's lender. In the past, residential tenants did not have these rights. The law, which is entitled "Protecting Tenants at Foreclosure Act of 2009", provides that tenants may remain in the property for the term of the lease after a foreclosure, or, if the tenant does not have a written lease and is occupying the property on a month-to-month basis, the tenant is entitled to be given ninety (90) days notice to vacate. The tenant is still required to pay rental to the lender after foreclosure. There is one exception to these basic rules. If the purchaser at the foreclosure sale intends to occupy the premises as their primary residence, they can provide the written lease tenant with ninety (90) days notice to vacate and terminate that lease. This new law applies only to residential real estate, not commercial properties. The law currently provides for "sunset" or termination on December 31, 2012.

Therefore, a lender foreclosing on residential real estate should make certain that it determines whether the current tenant is a tenant under the terms of a written lease or whether the current tenant is on a month to month basis. If the tenant has a lease, determine the expiration of that lease and market the property accordingly. If the tenant is on a month-to-month basis, advise any potential purchaser that the tenant must be given ninety (90) days written notice prior to being required to vacate the property. Of course, these rules do not prevent beginning eviction proceedings for monetary default.

ESTOPPEL & INCREASED RISK DEFENSES DO NOT DEFEAT SUMMARY JUDGMENT FOR LENDER

In a recent case, Georgia Investments International, Inc. v. Branch Banking and Trust Company, 305 Ga. App. 673 (2010), that Court of Appeals considered a Borrower's defense of estoppel and Guarantor's allegation of increased risk. The underlying facts are as follows. As the maturity date of the Note approached, the Guarantor had numerous conversation with the lender regarding a loan renewal or a new line of credit. Relying on the banks promises, the Borrower did not apply for loans from other lenders. Then, the Lender informed the Borrower and Guarantor that the Borrower was in default under the Note and accelerated the note.

The lender then sued the Borrower and the Guarantor to recover the balance due on the promissory note. The Borrower and Guarantor asserted the defense of estoppel: they alleged that the lender represented that it would refinance the loan or provide a line of credit. The court found that the lender's representation was vague and indefinite as to material terms, particularly the interest rate of the future loan, and therefore insufficient to support an estoppel defense. The court explained that "a lender's refusal to make a second loan, or even misrepresentations that it would make a second loan, does not bar the lender from recovery of the amount owed under the first loan." Further "promissory estoppel does not apply to vague and indefinite promises, or promises of uncertain duration".

Additionally, the trial court determined that there was no issue of material fact as to the defense that the Lender's actions in promising to refinance the loan or to extend a line of credit increased the Guarantor's risk under the guaranty. The court reiterated that it has consistently held that "a lender's failure to lend additional sums to a principal does not discharge a guarantor from liability for the amount that was actually advanced by the lender." Accordingly, there was no issue of material fact as to the defense of increased risk. Therefore, summary judgment was proper.

Deena Plaire-Haas' 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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