The Lender's Source

MOORE CLARKE DUVALL & RODGERS
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Save the Date: Moore Clarke Banking Law Seminar in Albany, Valdosta and Savannah

The firm of Moore, Clarke, DuVall & Rodgers will offer its 2019 banking law seminar on July 25 at the Hilton Garden Inn in downtown Albany; on August 15 at the James H. Rainwater Conference Center in Valdosta; and on September 12 at the DeSoto in Savannah.

Each seminar is free of charge to banking and lending professionals. Lunch will be provided, as well as written materials addressing the topics discussed by the firm's attorneys during the seminar. Each event will begin at 12:30 p.m. and continue until 3:30 p.m. Invitations featuring further details on the topics of discussion at the seminar will soon be distributed by the firm.

If you wish to confirm your attendance, or if you have any questions regarding the seminars, please contact Kim Shirley via telephone at 229-888-3338 or via email at kshirley@mcdr-law.com. We hope you will make plans to attend your choice of one of these informative events.

Georgia Deceased Depositors Law Amendments Effective July 1

Legislation amending Georgia's banking code provisions for payment of deposits of deceased depositors and payment of checks payable to deceased persons took effect on July 1, 2019. It is important for banks operating within Georgia to take notice of these amendments.

The amendment to the provision for payment of checks payable to deceased intestate persons (found in the banking code at section 7-1-239.1) is simple: it merely increases the maximum monetary limit of a payable check from $10,000 to $15,000. This will bring a larger scope of checks within the coverage of the provision. No other changes are made to this particular provision.

More numerous changes are made to the code section governing payment of deposits of deceased depositors (found at section 7-1-239). Readers may recall that under the prior version of the law, where a depositor died intestate (without a will) and had no more than $10,000 on deposit, the bank was authorized to pay the deposit balance to the spouse or certain other relatives on receipt of an affidavit. The amendment makes two changes to this concept: first, the deposit limit is increased from $10,000 to $15,000. Second, the affidavit required by the bank for payment must state that the claimant qualifies as the proper relation to the deceased, that there are no other known claimants of corresponding relation, *and* that there is no known will of the deceased. The prior version of the law did not require the claimant to swear that there was no known will. For this reason, banks may need to update their forms and guidance on payment of deposits of intestate deceased customers.

Under the prior law, if the deceased's deposits exceeded the $10,000 threshold, the bank was nonetheless authorized to pay up to (but not more than) the $10,000 threshold amount to claimants as discussed in the prior paragraph. The amendment deletes this authorization. Now, if the amount on deposit exceeds the $15,000 threshold, the bank is not authorized to pay any amount to a spouse or relative based solely on that person's relationship to the deceased.

The amendments also delete the provision under which any persons holding money of the deceased were authorized to deposit the money into a savings account in the decedent's name, for ultimate distribution as under an account that was opened by the deceased. There is no replacement for this deleted provision. Thus, this procedure for dealing with money of the deceased is no longer authorized.

The amendments also make changes to the provisions for payment of funeral and last illness expenses, though most of the provisions remain intact. The maximum amount of funeral and last illness expenses payable is now $15,000, increased from $10,000 under prior law. These expenses can be paid (upon proper documentation) when no spouse or other qualifying relative has submitted an

application for payment within 45 days after death of the deceased depositor. Under the prior law, the expenses could not be paid until 90 days after death had lapsed without receiving a spouse or relative's application for payment. So, the minimum waiting period for spouse and relative claims prior to expense payment is substantially decreased.

Finally, the amendment provides a statutory form affidavit for use by those seeking payment of funeral and last illness expenses. Use of the statutory affidavit form, or one with substantially the same content, is mandatory. Thus, it will be important for financial institutions to incorporate the new form into their operations, either by revising prior formats or replacing them altogether with the new statutory form. The affidavit is not a substitute for underlying documentation of the expenses to be paid. It remains necessary for the claimant to submit itemized receipts or statements for the expenses to be paid, along with the affidavit.

Appeals Court: Security Deeds Enforceable Despite Signature and Title Defects

In its May 23, 2019 opinion in *Abedi v. U.S. Bank, N.A.*, the U.S. Court of Appeals held that a lender's security deeds covering a Cobb County home were enforceable despite signature and title issues that existed at the time of loan closing.

The underlying facts involved two borrowers, a husband and wife, who obtained credit from U.S. Bank totaling approximately $900,000 to be secured by a home in Cobb County. At the loan closing—which occurred in the parking lot of a post office—the borrowers signed two security deeds covering the home. Per the borrowers, the only persons who attended this peculiar closing were the borrowers and one closing attorney: the notary public and the unofficial witness who attested the security deeds were not present to see the borrowers sign.

As a further problem, which presumably was unknown to the bank, the borrowers did not hold title to the collateral property at the time of the closing. Instead, the home was owned by a corporation of which the husband was a shareholder. The borrowers did not obtain title to the property until several months after the closing, when the corporation deeded the property to the borrowers jointly.

The borrowers eventually defaulted on their obligations and the bank commenced proceedings to foreclose. The borrowers sued the bank in an attempt to stop the foreclosure. The borrowers alleged that the security deeds covering their home were invalid for two separate reasons: first, because the deeds were not validly attested by a notary and unofficial witness, they were ineffective to convey title to the property. Second, because the borrowers did not actually own the property when they signed the security deeds, the deeds could not be effective to convey the property. After the federal district court for the Northern District of Georgia found in favor of the bank, the borrowers appealed.

On appeal, the Court ruled that the signature and title problems asserted by the borrowers did not render the security deeds ineffective as to the bank. While a security deed must be properly attested—meaning signed by a notary and another individual who actually saw the borrower sign the deed—in order to be effective against third parties such as a competing lender or bankruptcy trustee, attestation is not required for effectiveness between the two parties to the deed (the borrower and lender). To be valid as between the borrower and lender, the security deed need only describe the property, describe the debt secured, and show an intent for the property to secure the debt. As these basic requirements were met, the deed was enforceable between the borrowers and the lender even though the deed may be subject to attack by others if, for example, the borrowers file for bankruptcy protection (meaning the situation could have turned out very differently for the bank).

The status of title at the time of closing likewise was not fatal to the deeds. Georgia follows the "after-acquired title doctrine," which holds that where a person signs a deed purporting to convey property he does not own, and the signor thereafter obtains title to that property, title is considered to immediately transfer to the recipient named in the deed given by the signor. This implied "transfer" occurs by operation of law, and it is not necessary that the parties agree that the doctrine will apply. Thus, when the borrowers eventually did obtain title to the home, the bank received title to the home without further action by the borrowers.

Understanding the UCC-1: Effects of Post-Filing Changes to the Debtor's Name

Preparation of an effective UCC-1 financing statement requires a careful focus on the name of each debtor. The UCC creates a system where financing statements are indexed and searched according to debtor names; and so as to encourage consistent and predictable results, the UCC is fairly intolerant of name errors. But even the most careful drafting at the outset cannot assure that subsequent events altering the name of the debtor will not arise over the life of a loan. Name changes and mergers are common.

The general rule is that a change in the debtor's name after filing will not impair the effectiveness of the filed financing statement. Perfection continues without necessity of filing an amendment or a new financing statement to show the correct name. However, where the security interest reaches after-acquired property (a "blanket lien"), the general rule is subject to two substantial limitations.

The UCC addresses post-filing name alteration in two separate contexts: one, a "pure name change" where the debtor simply changes its legal name without further altering its legal structure; and two, a change in name resulting from a merger or other similar change in business structure that causes a "new debtor" (e.g., the survivor of a corporate merger) with a different name from the original debtor to become bound by the security agreement.

With respect to the "pure name change" scenario, the rule is that the originally-filed financing statement will remain effective to perfect as to collateral acquired by the debtor before, and within four months after, the name change. However, in order to be perfected as to property acquired by the debtor more than four months after the name change, the secured party must file an amendment showing the correct name of the debtor. So long as the amendment is filed within four months after the name change, perfection will continue seamlessly until the financing statement otherwise lapses due to passage of time. If the secured party waits more than four months after the name change to file an amendment, perfection as to property acquired more than four months after the name change will only occur when the amendment is properly filed; in other words, the secured party will be unperfected as to such property until the secured party files the amendment.

As a basic example, assume debtor Sara Ann Brown gives Bank a security interest in all equipment then owned or thereafter acquired by the debtor. Bank properly files using the name Sara Ann Brown. Two years later, Sara marries and legally changes her name (including that shown on the driver's license) to Sara Ann Williams. Bank takes no further action. Six months after the name change, Sara acquires a new tractor. Bank will be unperfected as to the tractor, but will remain perfected as to equipment owned by Sara before the marriage or acquired by her within four months thereafter. Bank could perfect as to the tractor by filing an amendment showing Sara's new name.

The rule applicable to name alterations resulting from a change in business structure is similar, but not exactly the same. Where a merger or similar change in business structure causes the debtor name shown in the original financing statement to be incorrect, that financing statement will nonetheless remain effective to perfect as to property acquired by the debtor (or its successor entity) before, or within four months after, the change. In order to perfect as to property acquired more than four months after the change, the secured party must file a new initial financing statement—not an amendment—showing the correct name of the post-change debtor. Much like the example above, there is no perfection as to property acquired more than four months after the change until the new initial financing statement is filed. The secured party must take action by filing under the "new" debtor's correct name to assure perfection as to this later-acquired property.

Have questions? Need help?

Moore, Clarke, DuVall & Rodgers, P.C. has attorneys available to provide representation in a broad range of concerns an institution may face. Our practice includes document preparation for complex loans and workout arrangements, bankruptcy and collection litigation, foreclosures, real estate transactions, taxation, estate planning, and employer representation in wage, hour, and discrimination disputes.

MOORE CLARKE DUVALL & RODGERS
ATTORNEYS AT LAW

Have Questions? Contact Us.

Albany
2829 Old Dawson Road
Albany, Georgia 31707
Tel. 229-888-3338

Valdosta
2611 N. Patterson Street
Valdosta, Georgia 31604
Tel. 229-245-7823

Atlanta
900 Circle 75 Parkway
Suite 1175
Atlanta, Georgia 30339
Tel. 770-563-9339

Savannah
33 Bull Street
Suite 203
Savannah, Georgia 31401
Tel. 912-234-0995

E-mail
businesslaw@mcdr-law.com

Visit us on the internet at:
www.mcdr-law.com

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