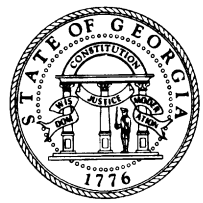
OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

Prepared by

The Code Revision Commission
The Office of Legislative Counsel
and
The Editorial Staff of LexisNexis®



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Title 8. Buildings and Housing

Including Acts of the 2024 Session of the General Assembly of Georgia
and Annotations taken from the Georgia Reports
and the Georgia Appeals Reports

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THE STATE OF GEORGIA

OFFICE OF SECRETARY OF STATE

I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that

the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as the same appear on file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 3rd day of June, in the year of our Lord Two Thousand and Twenty-Four and of the Independence of the United States of America the Two Hundred and Forty-Eighth.

Brad Raffensperger

Brad Raffensperger, Secretary of State

(Pub. 41805)

Preface

This volume cumulates and replaces the 2020 edition of Volume 5 of the Official Code of Georgia Annotated, as supplemented by the 2023 Cumulative Supplement. The 2020 Volume 5 and its 2023 Supplement may be recycled or, if so desired, retained for historical purposes.

This volume contains all laws specifically codified in Titles 7 and 8 by the General Assembly through the 2024 Regular and Extraordinary Sessions. This volume also contains case annotations reflecting decisions posted to LexisNexis® through May 19, 2024. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; John Marshall Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice; American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated and the Official Compilation of the Rules and Regulations of the State of Georgia.

This volume retains amendment notes and effective date notes for Acts passed during the 2022, 2023, and 2024 Regular and Extraordinary Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2022 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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Law reviews.

For article, "Complex Financial Institutions and Systemic Risk," see 45 Ga. L. Rev. 779 (2011).

For article, "How the Poor Got Cut Out of Banking," see 62 Emory L.J. 483 (2013).

For article, "Financial Reform's Internationalism," see 65 Emory L.J. 1255 (2016).

For article, "Overlapping Legal Rules in Financial Regulation and the Administrative State," see 54 Ga. L. Rev. 791 (2020).

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Am. Jur. Trials.

Alternative Dispute Resolution for Banks and Other Financial Institutions, 46 Am. Jur. Trials 231.

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7-1-1136. Cessation of activities.
7-1-1137. Reporting to department; impact of filings.
7-1-1138. Continuing registration.

Cross references.

Negotiable instruments, § 11-3-101 et seq.

Bank deposits and collections, § 11-4-101 et seq.

Making of loans for educational purposes, § 20-3-230 et seq.

Taxation of financial institutions, § 48-6-90 et seq.

State depositories, § 50-17-50 et seq.

Law reviews.

For note discussing and comparing the prudent man rule and the legal list rule in trustee investment, see 15 Mercer L. Rev. 530 (1964).

For note discussing transfer fees in home loan assumptions in reference to the Georgia usury laws, see 9 Ga. L. Rev. 454 (1975).

For article discussing the consolidation of laws dealing with various types of financial organizations into the Financial Institutions Code of Georgia, see 11 Ga. St. B.J. 225 (1975).

For survey article on business associations, see 42 Mercer L. Rev. 71 (1990).

For annual survey article on business associations, see 45 Mercer L. Rev. 53 (1993).

For note on 1995 amendments and enactments of sections in this chapter, see 12 Ga. St. U.L. Rev. 1 (1995).

For annual survey article discussing commercial and banking law, see 49 Mercer L. Rev. 95 (1997).

For survey article discussing developments in law of business associations for the period from June 1, 1998 through May 31, 1999, see 51 Mercer L. Rev. 127 (1999).

For survey article discussing developments in law of business associations for the period from June 1,

1999 through May 31, 2000, see 52 Mercer L. Rev. 95 (2000).

For annual survey article discussing developments in commercial law, see 52 Mercer L. Rev. 143 (2000).

For survey article on cases in the areas of corporate, securities, partnership, and banking law for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 55 (2003).

JUDICIAL DECISIONS

Bank's exercise of power of sale not state action. — Statutory authorization of right of creditor bank to contract with debtors for power of sale under deed to secure debt does not, when combined with state's general regulation of banking industry's loan making procedures, convert exercise of such power of sale into state action; therefore, any contention that the creditor's exercise of the creditor's power of sale under a deed to secure debt violated the debtors' rights to procedural due process under U.S. Const., amend. 14 is without merit. Ray v. Bank of Covington, 247 Ga. 758, 279 S.E.2d 425, 1981 Ga. LEXIS 847 (1981).

OPINIONS OF THE ATTORNEY GENERAL

Multiple office facilities. — Bank may establish multiple bank office facilities using single mobile bank unit on regular part-time basis. 1976 Op. Att'y Gen. No. 76-106.

National bank's cancellation of debt in event of borrower's death. — National bank operating in Georgia may not enter into a debt cancellation contract providing that debt will be automatically cancelled in the event of borrower's death without complying with Georgia's insurance laws. 1963-65 Ga. Op. Att'y Gen. 457.

RESEARCH REFERENCES

Am. Jur. Proof of Facts.

Gift of Fund on Deposit in Bank Account, 7 POF2d 375.

Bank's Failure to Use Ordinary Care in Detecting Forged or Altered Checks, 13 POF2d 347.

Commercial Paper — Negligence Contributing to Alteration or Unauthorized Signature Under UCC § 3-406, 14 POF2d 693.

Circumstances Rebutting Presumption of Payment of Savings Account, 18 POF2d 187.

Bank's Liability for Payment of Check or Withdrawal on Less than Required Number of Signatures, 25 POF2d 165.

Liability of Bank for Criminal Attack at ATM or Night Depository, 4 POF3d 497.

Banking Negligence — Improper Dishonor of Letter of Credit, 17 POF3d 541.

Am. Jur. Trials.

Bank Liability for Negligence in Lending and Breach of Loan Agreement, 69 Am. Jur. Trials 119.

ALR.

Finance company's liability in connection with consumer fraud practices of party selling goods or services, 18 A.L.R.4th 824.

Exclusion from debtor status of banks and the like by § 109(b)(2) of Bankruptcy Code (11 USCS § 109(b)(2)), 87 A.L.R. Fed. 282.

Construction and application of preemption exemption, under Employee Retirement Income Security Act (29 USCS § 1001 et seq.), for state laws regulating insurance, banking, or securities (29 USCS § 1144(b)(2)), 87 A.L.R. Fed. 797.

ARTICLE 1

DEPARTMENT OF BANKING AND FINANCE AND FINANCIAL INSTITUTIONS GENERALLY

Law reviews.
For survey article on commercial law, see 34 Mercer L. Rev. 31 (1982).

RESEARCH REFERENCES

ALR.
Failure of moneylender or creditor engaged in business of making loans to procure license or permit as affecting validity or enforceability of contract, 29 A.L.R.4th 884.

Part 1

Purposes and Preliminary Matters

Law reviews.
For note discussing the interrelationship between the International Banking Act, the provisions of the Financial Institutions Code relating to domestic banking, and the Foreign Corporations Chapter of the Corporation Code in the regulation of international banking in Georgia and comparing Georgia provisions with those of New York and California, see 27 Mercer L. Rev. 827 (1976).

7-1-1. Short title.

This chapter shall be known and may be cited as the "Financial Institutions Code of Georgia."

History.
Code 1933, § 41A-101, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2024, p. 1052, § 1(a)(1)/SB 448, effective July 1, 2024.
Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, replaced "Georgia' (hereinafter called 'this chapter')." with "Georgia."" at the end of this Code section.

7-1-2. Legislative findings.

The General Assembly finds and declares that the sound, efficient, and responsive operation of financial institutions is essential to the livelihood of the people of this state and to the stability and growth of the economy of this state and region and vitally affects the public interest.

History.
Code 1933, § 41A-103, enacted by Ga. L. 1974, p. 705, § 1.

7-1-3. Objectives of chapter; standards for construction and regulation.

(a) The underlying objectives of this chapter are to provide for:

(1) Safe and sound operation of financial institutions;

(2) Proper conservation of the assets of financial institutions;

(3) Public confidence in financial institutions;

(4) Protection for the interests of the depositors, creditors, and shareholders of financial institutions;

(5) Service by financial institutions responsive to the needs and convenience of depositors, borrowers, and other customers and conducive to economic progress and, to these ends, opportunities to expand services and facilities;

(6) Appropriate competition among financial institutions and between them and other financial organizations including those organized under the laws of the United States, other states, and foreign countries;

(7) Delegation to the department of rule-making power and administrative discretion in order that supervision of financial institutions may be flexible and responsive to changes in economic conditions and banking, fiduciary, and other commercial practices;

(8) Opportunity for management of financial institutions to exercise their business judgment;

(9) Simplification and modernization of the law governing banking, trust, and other financial institutions; and

(10) As to other entities under the supervision of the department that are not financial institutions, including check cashers and mortgage lenders and brokers, to provide for:

(A) Supervision and examination of their business affairs to ensure that they operate in a manner consistent with state law;

(B) Protection of the interests of consumers and service by these entities which is responsive to their consumers; and

(C) Simplification and modernization of the law that governs these entities, together with the delegation of rule-making power and administrative discretion to the department to carry out its responsibilities, keeping in mind the need for economic and technological progress in the industry.

(b) This chapter shall be construed and applied to promote the foregoing objectives and they shall constitute standards to be observed

by the department in promulgating rules and regulations, issuing cease and desist orders, conducting examinations, and exercising discretionary powers and in connection with all other matters embraced by this chapter.

History.
Code 1933, § 41A-104, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1997, p. 485, § 1; Ga. L. 2002, p. 1220, § 1; Ga. L. 2024, p. 1052, § 1(a)(2)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "rule-making" for "rulemaking" in subparagraph (a)(10)(C).

7-1-4. Definitions.

Subject to additional definitions contained in the subsequent provisions of this chapter, as used in this chapter, the term:

(1) "Affiliate" means any corporation, business trust, association, or other similar organization:

(A) Of which a financial institution, directly or indirectly, owns or controls either a majority of the voting shares or more than 50 percent of the number of shares voted for the election of its directors, trustees, or other persons exercising similar functions at the preceding election or controls in any manner the election of a majority of its directors, trustees, or other persons exercising similar functions;

(B) Of which control is held, directly or indirectly, through stock ownership or in any other manner by the shareholders of a financial institution who own or control either a majority of the shares of such financial institution or more than 50 percent of the number of shares voted for the election of directors of such financial institution at the preceding election or by trustees for the benefit of the shareholders of any such financial institutions;

(C) Of which a majority of its directors, trustees, or other persons exercising similar functions are directors of any one financial institution; or

(D) Which owns or controls, directly or indirectly, either a majority of the shares of a financial institution or more than 50 percent of the number of shares of a financial institution voted for the election of directors of a financial institution at the preceding election or controls in any manner the election of a majority of the directors of a financial institution or for the benefit of whose shareholders or members all or substantially all the capital stock of a financial institution is held by trustees.

(1.5) "Agency relationship" means a relationship created by a contractual agreement whereby a financial institution agrees with a

third party, including another financial institution, to act in a principal or agent capacity to facilitate the conduct of activities related to the business of banking, which activities are currently authorized under this chapter or under other applicable law.

(2) "Agreement for the payment of money" means a consensual monetary obligation not in the form of an evidence of indebtedness or an investment security and includes an account or general intangible as defined in Code Section 11-9-102.

(3) Reserved.

(4) "Articles" means original or restated articles of incorporation or articles of consolidation and all the amendments thereto, including articles of merger or conversion, and also includes what heretofore have been designated by law as certificates of incorporation or charters and, in case of foreign corporations, whatever documents are equivalent to "articles" in their jurisdiction of incorporation. After an amendment restating articles in their entirety, the "articles" shall not include any prior documents, and the certificate of amendment issued by the Secretary of State shall so state.

(5) "Assets" means all the property and rights of every kind of a financial institution.

(6) "Attorney" means an attorney at law who is regularly retained as counsel for a financial institution or who is a partner or associate of a firm which is regularly retained as counsel for a financial institution.

(7) "Bank" means a corporation existing under the laws of this state on April 1, 1975, or organized under this chapter and authorized to engage in the business of receiving deposits withdrawable on demand or deposits withdrawable after stated notice or lapse of time; "bank" shall also include national banks located in this state for the purposes of Part 6 of Article 2 of this chapter, relating to deposits, safe-deposit agreements, and money received for transmission, and Article 8 of this chapter, relating to multiple-party accounts; provided, however, that the term "bank" shall not include a credit union, a savings and loan association, or a licensee under Article 4 of this chapter, but shall include a federal or state credit union for the purposes of Part 6 of Article 2 of this chapter, provided that this inclusion is not intended to grant or expand any powers to credit unions not authorized in Part 6 of Article 2 of this chapter or by other law.

(8) Reserved.

(9) "Capital debt" means the sum of the face value of the subordinated securities of a financial institution issued pursuant to Code Section 7-1-419.

(10) "Capital stock" means the sum of the par value of the authorized shares which have been issued and remain outstanding of a bank or trust company.

(11) Reserved.

(12) "Commercial bank" means a bank authorized to hold deposits subject to check.

(13) "Commissioner" means the commissioner of banking and finance.

(14) "Corporation" means a corporation, whether profit or nonprofit, and includes a professional corporation or joint-stock association, organized under the laws of this state, the United States, or any other state, territory, or dependency of the United States or under the laws of a foreign country.

(15) "Credit union" means a cooperative society incorporated under the laws of this state on April 1, 1975, or organized under Article 3 of this chapter and existing for the twofold purpose of promoting thrift among its members and creating a source of credit for them at reasonable rates.

(16) "Department" means the Department of Banking and Finance.

(17) "Depositor" means any person or corporation who shall deposit money or items for the payment of money in any financial institution, which funds are subsequently (allowing time for collections) withdrawable either on demand or after a stated notice or lapse of time, whether interest is allowed thereon or not, and shall also include:

(A) Holders of demand and time certificates of deposit;

(B) Owners of certified or cashiers' checks and checks purchased from a licensee under Article 4 of this chapter; and

(C) Shareholders in credit unions, federal credit unions, and savings and loan associations to the extent that funds paid in by them are withdrawable within the terms of this definition.

(18) "Evidence of indebtedness" means a note, draft, or similar negotiable or nonnegotiable instrument.

(19) "Federal credit union" means an association organized pursuant to the Federal Credit Union Act, 12 U.S.C. Sections 1750-1795i.

(20) "Fiduciary" means an executor, administrator, guardian, receiver, trustee, assignee for benefit of creditors, or one acting in a similar capacity.

(21) "Financial institution" means:

(A) A bank;

(B) A trust company;

(C) Reserved;

(D) A credit union;

(E) A corporation licensed to engage in the business of money transmission in this state on April 1, 1975, or so licensed pursuant to Article 4 of this chapter;

(F) Business development corporations existing on April 1, 1975, pursuant to the former "Georgia Business Development Corporation Act of 1972," approved April 3, 1972 (Ga. L. 1972, p. 798), or organized pursuant to Article 6 of this chapter;

(G) An international bank agency doing business in this state on April 1, 1975, pursuant to the former "International Bank Agency Act," approved April 6, 1972 (Ga. L. 1972, p. 1140), or authorized to do business in this state pursuant to Article 5 of this chapter;

(H) In addition, as the context requires, a national bank, savings and loan association, or federal credit union for the purpose of the following provisions:

(i) Code Section 7-1-2, relating to findings of the General Assembly;

(ii) Code Section 7-1-8, relating to supplementary principles of law;

(iii) Code Section 7-1-37, relating to restrictions on officials and personnel;

(iv) Code Section 7-1-70, relating to disclosure of information;

(v) Code Section 7-1-90, relating to judicial review of department actions;

(vi) Code Sections 7-1-111 and 7-1-112, relating to emergency closings and business restrictions;

(vii) Paragraph (3) of subsection (a) of Code Section 7-1-394, relating to criteria to be considered in approving new banks;

(viii) Code Section 7-1-840, relating to criminal prosecutions; and

(ix) Code Section 7-1-841, relating to application of Title 16 provisions;

(I) A bank holding company as defined in Code Section 7-1-605 for the purposes of Code Sections 7-1-61, 7-1-71, and 7-1-91;

(J) Banks chartered by states other than Georgia for the purposes of paragraph (10) of Code Section 7-1-261, relating to agency relationships;

(K) Federal credit unions for the purposes of Part 6 of Article 2 of this chapter, relating to deposits, safe-deposit agreements, and money received for transmission, and Article 8 of this chapter, relating to multiple-party accounts; and

(L) Banks and credit unions chartered by states other than Georgia, national banks, federal credit unions, and federal savings and loan associations for the purposes of paragraph (1) of Code Section 7-1-650, provided that such institutions have federal deposit insurance.

(22) "Insolvency" means:

(A) Inability to meet liabilities as they become due in the regular course of business; or

(B) Insufficiency in actual cash market value of assets to pay liabilities to depositors and other creditors.

(22.5) "Main office" means the principal banking location of a bank as such location appears in the records of the Department of Banking and Finance. If a bank does not designate a main office, the department shall choose a banking location of the bank to be the main office.

(23) "National bank" means a national banking association organized pursuant to 12 U.S.C. Section 21-215b.

(24) "Net worth" shall have the same meaning as set forth in12 C.F.R. 702.2 and as reported in the credit union's most recent call report required to be filed under 12 C.F.R. 741.6. If significant capital changes occur after the filing of the call report which causes the net worth to increase or decrease by 5 percent or more, then the net worth shall be immediately recalculated at the time of the capital change and it shall be effective until the filing of the next call report.

(25) "Paid-in capital" means the sum of the considerations received in the sale or exchange of shares of a bank or trust company in excess of the amount of the capital stock and includes the surplus, if any, created by or arising out of a reduction of the capital stock of such financial institution effected in a manner permitted by law, any amounts properly regarded as surplus of such financial institution on April 1, 1975.

(26) "Person" means an individual, trust, general or limited partnership, unincorporated association (except a joint-stock association), or any other form of unincorporated enterprise.

(27) "Principal court" means the superior court of the county where the registered office of a financial institution is located or, in the case of a proposed financial institution, will initially be located, as shown in its articles or application for authority to commence business. Whenever under this chapter the principal court is authorized to take any action but lacks, because of constitutional restrictions, jurisdiction or venue over the person or corporation against which such action is to be taken or over the subject matter which is to be affected by its action, then such action may be taken by the superior court of this state in which jurisdiction and venue are proper or, in the absence of any such court, by a court of another state, a federal court, or a court of a foreign country in which jurisdiction and venue are proper.

(28) "Public body" means an agency, authority, board, commission, instrumentality, or similar entity which is part of or connected with the government or political subdivision referred to in the context.

(29) "Public sale" means a sale:

(A) Held at a place reasonably available to persons who might desire to attend and submit bids;

(B) At which those attending shall be given the opportunity to bid on a competitive basis;

(C) At which the sale, if made, shall be made to the highest and best bidder; and

(D) Except as otherwise provided in Title 11 for advertising or dispensing with the advertising of public sales, of which notice is given by advertisement once a week for two weeks in the newspaper in which the sheriff's advertisements are published in the county where the sale is to be held, and which notice shall state the day and hour, between 9:00 A.M. and 5:00 P.M., and the place of sale and shall briefly identify the goods to be sold.

(29.5) "Registered agent" means the person or corporation on whom service of process is to be made in a proceeding against a bank. Written notice of any change in the identity or address of a bank's registered agent must be delivered to the Department of Banking and Finance in addition to and at the same time as such notice is filed with the Secretary of State. The provisions of Part 1 of Article 5 of Chapter 2 of Title 14 shall apply to any such registered agent.

(30) "Registered office" means the location of the registered agent and may be a banking location.

(30.5) "Retained earnings" means the balance of the net profits, income, gains, and losses from the date of incorporation or from the latest date when a deficit was last eliminated of a financial institution whose articles were granted by the Secretary of State and excludes subsequent distributions to shareholders and transfers to appropriated retained earnings. Retained earnings shall also include any portion of paid-in capital or appropriated retained earnings or, in the case of other organizations, equivalent funds, allocated to retained earnings in mergers, consolidations, or acquisitions of all or substantially all of the property or assets of another such financial institution or other organization permitted by law.

(31) "Savings and loan association" means an association created pursuant to the Home Owners' Loan Act, 12 U.S.C. Sections 1461-1470, including a federal savings bank.

(32) "Savings bank" means a state chartered bank that has powers no greater than a state bank as provided in this chapter but that may lend and invest in commercial loans in an aggregate amount that does not exceed 50 percent of its total assets. Such bank may elect, subject to department approval, or the department may require that the savings bank comply with selected provisions of the Home Owners' Loan Act that in the judgment and discretion of the department would be consistent with the charter and purpose of the bank. For the purposes of this paragraph, the term "commercial loan" means a loan for business, commercial, corporate, or agricultural purposes.

(33) "Shareholder" means the owner of shares in a financial institution.

(34) "Shares" means the units into which the proprietary interest of the institution is divided.

(34.1) "State savings and loan association" means a bank which pays interest on substantially all of its depositors' funds and the majority of whose loans are secured by first liens on or other security interest in residential real property or upon the security of its deposits.

(35) "Statutory capital base" means the sum of the common equity tier 1 capital, as defined by applicable federal law, and the allowances for credit losses, as defined by applicable federal law or guidance, as reported in the bank's most recent Consolidated Report of Condition and Income; provided, however, that the department may enact regulations to phase in the revision to this definition for those banks that will have a decreased statutory capital base as of July 1, 2017. If significant capital changes occur after the filing of the Consolidated Report of Condition and Income which causes the common equity tier

1 capital to increase or decrease by 5 percent or more, then the statutory capital base will be immediately recalculated at the time of the capital change and it will be effective until the filing of the next Consolidated Report of Condition and Income.

(36) "Subject to check" includes withdrawal or transfer by negotiable or transferable order or authorization even though such order or authorization does not constitute a check under Code Section 11-3-104.

(37)(A) "Subsidiary" means a corporation or a company, as defined in Code Section 7-1-605, that is controlled by a financial institution. A financial institution shall be deemed to control such corporation or company if:

(i) Such financial institution, directly or indirectly or acting through one or more other persons, owns, controls, or has the power to vote more than 50 percent of any class of voting securities of such corporation or company;

(ii) Such financial institution controls in any manner the election of a majority of the directors or trustees of such corporation or company; or

(iii) The department determines, after notice and opportunity for hearing, that such financial institution, directly or indirectly, exercises a controlling influence over the management or policies of such corporation or company.

(B) Notwithstanding subparagraph (A) of this paragraph, a financial institution shall not be deemed to control a corporation or company solely due to the financial institution's ownership or voting power of securities of such corporation or company that is:

(i) Held in a fiduciary capacity, unless such financial institution has sole discretionary authority to exercise voting rights with respect to such corporation or company; or

(ii) Acquired in securing or collecting a debt previously contracted in good faith for a period of two years after the date of acquiring such ownership or voting power of securities.

(38) "Third-party payment service" means any system employing checks, drafts, computer transmissions, or other techniques by which a depositor may effect payment to third parties.

(39) "Treasury shares" means shares of a financial institution which have been issued, have been subsequently acquired by, and belong to the financial institution otherwise than in a fiduciary capacity and have not been canceled. Such shares shall be deemed to be "issued" but not "outstanding" shares.

(40) "Trust company" means a corporation existing under the laws of this state on April 1, 1975, or organized under this chapter and authorized by law to engage in the business of acting as a fiduciary.

History.

Code 1933, § 41A-102, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 1; Ga. L. 1977, p. 730, § 1; Ga. L. 1980, p. 972, § 1; Ga. L. 1981, p. 1566, § 1; Ga. L. 1982, p. 3, § 7; Ga. L. 1982, p. 2496, §§ 1, 2; Ga. L. 1983, p. 493, § 2; Ga. L. 1984, p. 949, § 1; Ga. L. 1985, p. 258, § 1; Ga. L. 1986, p. 458, § 1; Ga. L. 1991, p. 94, § 7; Ga. L. 1995, p. 673, §§ 1, 2; Ga. L. 1996, p. 6, § 7; Ga. L. 1998, p. 795, §§ 1, 2; Ga. L. 2000, p. 174, § 1; Ga. L. 2001, p. 362, § 24; Ga. L. 2001, p. 970, § 1; Ga. L. 2005, p. 826, § 1/SB 82; Ga. L. 2006, p. 72, § 7/SB 465; Ga. L. 2007, p. 502, § 1/SB 70; Ga. L. 2009, p. 86, § 1/HB 141; Ga. L. 2011, p. 518, § 1/HB 239; Ga. L. 2012, p. 775, § 7/HB 942; Ga. L. 2015, p. 344, § 1/HB 184; Ga. L. 2015, p. 996, § 3C-1/SB 65; Ga. L. 2016, p. 390, § 7-1/HB 811; Ga. L. 2017, p. 193, § 1/HB 143; Ga. L. 2019, p. 828, § 1/HB 185; Ga. L. 2023, p. 651, § 1/HB 55, effective July 1, 2023; Ga. L. 2024, p. 354, § 1-1/HB 876, effective July 1, 2024; Ga. L. 2024, p. 1052, § 1(a)(3)/SB 448, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2023, substituted "money transmission" for "selling payment instruments" in subparagraph (21)(E); substituted the present provisions of paragraph (24) for the former provisions, which read: "Reserved."; and, in the first sentence of paragraph (35), substituted "allowances for credit" for "allowance of loan and lease" and inserted "or guidance".

The first 2024 amendment, effective July 1, 2024, rewrote paragraph (37).

The second 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "means a relationship" for "is a relationship" in paragraph (1.5) and, in paragraph (7), substituted "purposes" for "purpose" and "multiple-party" for "multiple deposit".

Editor's notes.

The Georgia Business Development Corporation Act of 1972, referred to in subparagraph (21)(F) of this section, was enacted by Ga. L. 1972, p. 798, and repealed by Ga. L. 1974, p. 705, § 3(k). The International Bank Agency Act, referred to in subparagraph (21)(G) of this Code section, was enacted by Ga. L. 1972, p. 1140, and repealed by Ga. L. 1974, p. 705, § 3(j).

Ga. L. 1983, p. 493, § 1, not codified by the General Assembly, provides that: "It is the intent of this Act to implement certain changes required by Article III, Section VI, Paragraph V(a) of the Constitution of the State of Georgia."

Ga. L. 2015, p. 996, § 1-1/SB 65, not codified by the General Assembly, provides:

"(a) This Act shall be known and may be cited as the 'Debtor Creditor Uniform Law Modernization Act of 2015.'

"(b) To promote consistency among the states, it is the intent of the General Assembly to modernize certain existing uniform laws promulgated by the Uniform Law Commission affecting debtor and creditor rights, responsibilities, and relationships and other federally recognized laws affecting such rights, responsibilities, and relationships."

Administrative rules and regulations.

Agency Relationship of Financial Institutions; Bank Service Contracts, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Banks, Rule 80-1-2-.01 et seq.

Law reviews.

For survey article on commercial law, see 34 Mercer L. Rev. 31 (1982).

For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions,

decisions under former Ga. L. 1919, p. 135 are included in the annotations for this Code section.

Corporation did not meet definition of person. — Corporation was not an eligible "payable on death" (POD) beneficiary on certificates of deposit or a trust account because under O.C.G.A. § 7-1-810(11), a POD payee on a death account had to have been a person, and under § 7-1-810(2), a beneficiary on a trust account had to have been a person; under O.C.G.A. § 7-1-4(26), a "person" was defined as an individual, trust, general or limited partnership, unincorporated association (except a joint-stock association), or any other form of unincorporated enterprise. Thus, the corporation did not meet the statutory definition of person. Tuvim v. United Jewish Cmtys., Inc., 285 Ga. 632, 680 S.E.2d 827, 2009 Ga. LEXIS 308 (2009).

Issuance of passbook. — Deposit is or is not, according to agreement, subject to check on bank with which the deposit was actually placed, and may or may not bear interest, and may be or may not be payable on demand. Issuance of a passbook is not conclusive evidence, but is material on the question whether the transaction is simply that of a borrower and lender in the ordinary sense or that of a deposit. Citizens Bank v. Mobley, 166 Ga. 543, 144 S.E. 119, 1928 Ga. LEXIS 354 (1928), (decided under former GA. L. 1919, p. 135).

Execution and delivery of certificates of deposit. — In suit by depositor against bank, upon certificates of deposit issued by bank to depositor or depositor's agent, depositor made prima facie case of liability by proof of execution and delivery of certificates as alleged. Bank of Emanuel v. Hall, 33 Ga. App. 358, 126 S.E. 728, 1925 Ga. App. LEXIS 773 (1925), (decided under former Ga. L. 1919, p. 135).

OPINIONS OF THE ATTORNEY GENERAL

"Receiving deposits". — Arrangement by which business corporation would receive money from individuals and in return issue to the individuals the corporation's debt securities redeemable by negotiable checks would involve "receiving deposits" within the meaning of O.C.G.A. § 7-1-4(7), and only persons or entities authorized to engage in the banking business by O.C.G.A. § 7-1-241 may lawfully engage in such arrangements. 1982 Op. Att'y Gen. No. 82-68.

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, §§ 1, 13, 14, 146, 147, 176 et seq., 308, 328, 711 et seq. 18 Corporations, §§ 1-4, 28 to 41, 55. 11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1017 et seq., 1032, 1034, 1046 et seq. 18A Am. Jur. 2d, Corporations, §§ 194, 270, 425, 439, 721. 18B Am. Jur. 2d, Corporations, § 1171. 19 Am. Jur. 2d, Corporations, § 2136 et seq.

C.J.S.

9 C.J.S., Banks and Banking, §§ 2, 3, 171, 267 et seq., 274, 497, 596, 622. 12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions, § 1 et seq. 18 C.J.S., Corporations, § 1 et seq. 19 C.J.S., Corporations, § 707 et seq.

ALR.

What is a bank or banking corporation within exemption provision of Bankruptcy Act, 97 A.L.R. 1087.

What are "financial corporations" or "moneyed institutions" within state tax laws, 145 A.L.R. 354.

Maintenance of computer terminal in retail store for purpose of effecting transfer of funds between financial institution and its depositors as conduct of banking business by store, 73 A.L.R.3d 1282.

7-1-5. Unauthorized activity as a financial institution.

Whenever it shall appear to the department that any person or corporation is conducting business as a financial institution without authority pursuant to this chapter, the department may determine, for purposes of Parts 4, 7, 8, and 9 of this article, that such person or corporation is a financial institution as defined in paragraph (21) of Code Section 7-1-4.

History.
Code 1933, § 41A-410, enacted by Ga. L. 1978, p. 1717, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 3.

C.J.S.
9 C.J.S., Banks and Banking, §§ 20, 21, 773.

7-1-6. Notices; waivers of notice.

Except as otherwise expressly provided:

(1) Any notice required to be given under this chapter may be delivered in person or by first-class mail or statutory overnight delivery to the last known address of the person or corporation or to the registered office of the corporation. If the notice is sent by first-class mail or statutory overnight delivery, it shall be deemed to have been given when deposited in the United States mail or with a commercial firm regularly engaged in the business of document delivery;

(2) In addition to the methods of notice provided for in paragraph (1) of this Code section, notice of meetings, including annual and special meetings, may be delivered by electronic transmission, including but not limited to emails, pursuant to Code Section 14-2-141;

(3) If such notice is of a meeting, it shall specify the place, day, and hour of the meeting. Notice of a meeting of shareholders shall be given not less than ten nor more than 60 days before the meeting. Notice of a special meeting shall specify the general nature of the business to be transacted;

(4) Any written notice required to be given under this chapter need not be given if there is a waiver thereof in writing signed by the person or on behalf of the corporation entitled to such notice or by their proxy, whether before or after the time when the notice would otherwise be required to be given, provided that no such waiver shall apply by its terms to more than one required notice;

(5) Attendance of a person, either in person or by proxy, at any meeting shall constitute a waiver of notice of such meeting, except

where a person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting was not lawfully called or convened; and

(6) If the language of a proposed resolution or a proposed plan requiring approval by shareholders is included in a written notice of a meeting of shareholders, the shareholders' meeting considering the resolution or plan may adopt it with such clarifying or other amendments as do not enlarge its original purpose without further notice to shareholders not present in person or by proxy.

History.

Code 1933, § 41A-107, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2005, p. 826, § 2/SB 82; Ga. L. 2006, p. 72, § 7/SB 465; Ga. L. 2015, p. 344, § 2/HB 184; Ga. L. 2018, p. 214, § 1/HB 780; Ga. L. 2024, p. 1052, § 1(a)(4)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "emails" for "e-mails" in paragraph (2).

Editor's notes.

Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

RESEARCH REFERENCES

Am. Jur. 2d.

18A Am. Jur. 2d, Corporations, § 954 et seq. 18B Am. Jur. 2d, Corporations, § 1344.

C.J.S.

9 C.J.S., Banks and Banking, §§ 50, 51, 167.

7-1-7. Publication of notices or advertisements.

(a) Except as otherwise expressly provided, any notice or advertisement required by this chapter to be published in a newspaper shall be published once a week for four weeks in the newspaper which is, on the date of the first such publication, the official organ (as determined pursuant to Code Section 9-13-142) of the county which is or is to be the location of the main office of the financial institution.

(b) The department may waive or modify any requirement to publish a notice:

(1) In order to facilitate a merger, consolidation, or sale of assets when one of the parties is a failed or failing bank as determined by the commissioner;

(2) Whenever it determines that the public benefit is not significantly served by a second or subsequent publication in a situation where a series of transactions would otherwise require multiple publications;

(3) Where a similar publication required by another state or federal regulator serves substantially the same purpose;

(4) By regulation or order, whenever it determines that a lesser number of publications will reduce administrative burden and will adequately serve the public benefit of the notice; or

(5) For other reasons of regulatory parity.

(c) The department may require proof of publication or modified publication having been completed prior to consummation of the underlying transaction.

History.
Code 1933, § 41A-108, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1980, p. 972, § 2; Ga. L. 1987, p. 1586, § 1; Ga. L. 1995, p. 673, § 3; Ga. L. 1998, p. 795, § 3; Ga. L. 2000, p. 136, § 7; Ga. L. 2000, p. 174, § 2.
Code Commission notes.
The amendment of this Code section by Ga. L. 2000, p. 136, § 7, irreconcilably conflicted with and was treated as superseded by Ga. L. 2000, p. 174, § 2. See County of Butts v. Strahan, 151 Ga. 417 (1921).
Administrative rules and regulations.
Notification of Filing and Protest, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Banks, Applications, Registrations, and Notifications, Rule 80-1-1-.04 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
18A Am. Jur. 2d, Corporations, § 954 et seq. 18B Am. Jur. 2d, Corporations, § 1431 et seq.

C.J.S.
19 C.J.S., Corporations, § 791 et seq.

7-1-8. Applicability of common law.

Unless expressly or impliedly displaced by this chapter, general principles of common law shall apply to financial institutions.

History.
Code 1933, § 41A-109, enacted by Ga. L. 1974, p. 705, § 1.

7-1-9. Reservation of power over financial institutions.

The General Assembly shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon financial institutions that are subject to this chapter. The General Assembly shall have the power to amend, repeal, or modify this chapter at pleasure.

History.
Code 1933, § 41A-110, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 20.

C.J.S.
9 C.J.S., Banks and Banking, §§ 5, 7.

7-1-10. Rules of construction.

(a) The rules of statutory construction contained in Chapter 3 of Title 1 shall apply to this title.

(b) Unless otherwise specifically indicated and to the full extent permitted by the Constitution of Georgia, any reference in this title to an existing statute or regulation shall mean to such statute or regulation as has been or may in the future be amended or have material added to it. If in any case such construction is not constitutionally permissible, such reference shall mean to the statute or regulation as it existed on January 1, 2023.

(c) Any reference in this title to an action by a superior court or other court shall authorize a judge of such court to take such action in term or in vacation, whether present in the county or absent from it.

History.
Code 1933, § 41A-105, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2016, p. 390, § 7-2/HB 811; Ga. L. 2023, p. 651, § 2/HB 55, effective July 1, 2023.

Amendments.
The 2023 amendment, effective July 1, 2023, substituted "January 1, 2023" for "July 1, 2016" at the end of the last sentence of subsection (b).

PART 2

ORGANIZATION AND PERSONNEL OF DEPARTMENT OF BANKING AND FINANCE

7-1-30. Department created.

There is created the Department of Banking and Finance.

History.
Ga. L. 1919, p. 135, art. 2, § 1; Code 1933, § 13-301; Ga. L. 1972, p. 1015, § 1101; Ga. L. 1972, p. 1198, § 2.

7-1-31. Position and term of commissioner.

(a) The head of the department shall be the commissioner who shall exercise supervision and control over all divisions and employees of the department.

(b) The commissioner shall be appointed by the Governor, by and with the advice and consent of the Senate, for a four-year term. The initial term of the commissioner shall terminate on January 20, 1976. Each succeeding term of office shall be for four years commencing on the

expiration date of the previous term. Beginning July 1, 1999, the salary of the commissioner shall be set by the Governor.

History.
Ga. L. 1919, p. 135, art. 2, § 2; Code 1933, § 13-302; Ga. L. 1972, p. 1015, §§ 1101, 1102; Ga. L. 1972, p. 1198, §§ 2, 3; Code 1933, § 41A-201, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1999, p. 910, § 1; Ga. L. 1999, p. 1213, § 1.

Editor's notes.
The amendment of this Code section by Ga. L. 1999, p. 910, § 1, was superseded by the amendment by Ga. L. 1999, p. 1213, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 104.

C.J.S.
9 C.J.S., Banks and Banking, § 139.

7-1-32. Qualifications of commissioner.

The commissioner shall be of good moral character, shall not have been convicted in any court of competent jurisdiction of any crime involving moral turpitude, shall have been a citizen of this state for not less than three years, and shall have attained the age of 30 years but be less than 70 years. In addition, the commissioner shall have had at least five years' experience as an active officer of a bank or national bank or as an examiner or other officer in a federal or state agency supervising such institutions.

History.
Ga. L. 1919, p. 135, art. 2, § 4; Code 1933, § 13-304; Code 1933, § 40-3597, enacted by Ga. L. 1972, p. 1015, § 1102; Ga. L. 1972, p. 1198, § 3; Code 1933, § 41A-202, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 104.

C.J.S.
9 C.J.S., Banks and Banking, § 139.

7-1-33. Removal or suspension of commissioner.

The commissioner may be suspended or removed by the Governor whenever the Governor has in his judgment trustworthy information that the commissioner is insane or has absconded or grossly neglected his duties or is guilty of conduct plainly violative of his duties or the restrictions of Code Section 7-1-37.

History.
Ga. L. 1919, p. 135, art. 2, § 7; Code 1933, § 13-307; Code 1933, § 41A-203, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, § 45 et seq.

C.J.S.
9 C.J.S., Banks and Banking, § 139.

7-1-34. Vacancy in office of commissioner.

In the event there shall be a vacancy in the office caused by death, resignation, disability, disqualification, suspension, or removal of the commissioner, the senior deputy commissioner of banking and finance previously designated by the commissioner as provided in Code Section 7-1-35 shall exercise the powers and perform the duties of the commissioner until a successor is appointed and qualified to serve for the unexpired term of the commissioner.

History.
Ga. L. 1919, p. 135, art. 2, § 3; Code 1933, § 13-303; Code 1933, § 41A-204, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1211, § 1; Ga. L. 1997, p. 485, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Lack of deputy commissioner at time vacancy occurs. — In event of vacancy in office of superintendent of banks (now commissioner of banking and finance), the assistant superintendent (now deputy commissioner) shall act, or if there be none, the Governor shall appoint a superintendent who shall in turn appoint an assistant. 1948-49 Ga. Op. Att'y Gen. 16.

7-1-35. Deputy commissioners, examiners, and assistants.

(a) The commissioner shall appoint from time to time, with the right to discharge at will, a senior deputy commissioner of banking and finance. The commissioner may appoint additional deputy commissioners as needed. All deputy commissioners shall also be ex officio examiners. The commissioner may appoint such additional examiners and assistants as he or she may need to discharge in a proper manner the duties imposed upon the commissioner by law, subject to any applicable state laws or rules or regulations and within the limitations of the appropriation to the department as prescribed in this chapter. Hiring, promotion, and other personnel policies of the department shall be consistent with guidelines or directives of the state, shall be in writing, and shall be made available upon request to employees of the department.

(b) Within the limitations of its annual appropriation, the department may expend funds pursuant to the authority granted under Article VIII, Section VII, Paragraph I of the 1983 Constitution of Georgia necessary to the recruitment, training, and certification of a professional staff of financial examiners. The department may provide for the participation of examiners in such educational, training, and

certification programs as the commissioner deems necessary to the continued qualification and recognition of the professional status of examiners. The department may recognize independent certification of professional qualifications as supplemental to the rules and regulations of the State Personnel Board in considering the personnel actions relative to its examiners.

History.

Ga. L. 1919, p. 135, art. 2, §§ 10, 12; Ga. L. 1920, p. 102, § 1; Ga. L. 1922, p. 63, § 1; Code 1933, §§ 13-310, 13-312; Ga. L. 1943, p. 257, § 1; Ga. L. 1945, p. 403, § 1; Ga. L. 1947, p. 673, § 1a; Ga. L. 1949, p. 526, § 1; Ga. L. 1965, p. 540, § 3; Code 1933, § 41A-205, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1986, p. 458, § 2; Ga. L. 1989, p. 1211, § 2; Ga. L. 1996, p. 848, § 1; Ga. L. 1997, p. 485, § 3; Ga. L. 2005, p. 826, § 3/SB 82; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-3/HB 642.

Editor's notes.

Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

OPINIONS OF THE ATTORNEY GENERAL

Classification of position. — Position of deputy commissioner of banking and finance is a position of unclassified service within the State Merit System. 1975 Op. Att'y Gen. No. U75-57.

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 104.

C.J.S.

9 C.J.S., Banks and Banking, § 139.

7-1-36. Oath of commissioner, deputy commissioner, and examiners.

(a) Before entering office, the commissioner shall take an oath before the Governor or one of the Justices of the Supreme Court to support the Constitution of the United States and the Constitution of Georgia and to execute faithfully the duties of his or her office, which oath shall be in writing and subscribed to by the commissioner and filed in the Governor's office. Before entering their respective offices, each deputy commissioner and examiner shall take an oath of office before the commissioner to support the Constitution of the United States and the Constitution of Georgia and to execute faithfully the duties of their respective offices which shall be in writing and subscribed by the deputy commissioner or examiner and filed with the department.

(b) The commissioner, each deputy commissioner, and each examiner shall:

(1) Faithfully discharge, execute, and perform all and singular the duties required of such officer and which may be required by the Constitution and laws of the State of Georgia;

(2) Faithfully account for all moneys that may be received by such officer from time to time by virtue of his office; and

(3) Safely deliver to the successor of such office all books, moneys, vouchers, accounts, and effects whatever belonging to said office.

History.

Ga. L. 1919, p. 135, art. 2, §§ 6, 11; Code 1933, §§ 13-306, 13-311; Code 1933, § 41A-206, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1984, p. 22, § 7; Ga. L. 1989, p. 1211, § 3; Ga. L. 2016, p. 390, § 1-1/HB 811; Ga. L. 2017, p. 774, § 7/HB 323.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2016, a period was added following "Governor's office" at the end of the first sentence of subsection (a).

JUDICIAL DECISIONS

Liability of commissioner. — In a suit against the superintendent of banks (now commissioner of banking and finance), and surety on the superintendent's bond for loss suffered by depositor by the superintendent's failure to discover insolvency of certain savings and loan company, the superintendent could not be held civilly liable for the superintendent's erroneous judgment that the superintendent had no supervisory powers over the corporation unless facts were alleged to show that the superintendent's judgment was willful, malicious, fraudulent, and corrupt. Gormley v. State, 54 Ga. App. 843, 189 S.E. 288, 1936 Ga. App. LEXIS 777 (1936).

Stockholders have no recourse against commissioner. — Director of bank, and not superintendent of banks (now commissioner of banking and finance), is in charge of business and stockholders of a failed bank have no recourse against the superintendent of banks, or the superintendent's bond, because of the mismanagement of the directors and officers. Hill v. Fidelity & Deposit Co., 44 F.2d 624, 1930 U.S. Dist. LEXIS 1438 (D. Ga. 1930).

7-1-37. Prohibited transactions.

(a) Except as provided in subsections (c), (d), and (e) of this Code section, the commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibilities, or any examiner employed by the department shall not directly or indirectly:

(1) Receive any money or property as a loan from or become indebted to any financial institution or from or to any director, officer, agent, employee, attorney, or subsidiary of a financial institution, unless such employee does not examine or exercise supervisory responsibility over any financial institution;

(2) Receive any money or property as a gift from any financial institution or from any director, officer, agent, employee, attorney, or subsidiary of a financial institution, unless consistent with the ethics in government policy of this state;

(3) Give any money or property as a gift to any financial institution or to any director, officer, agent, employee, attorney, or subsidiary of a financial institution, unless consistent with the ethics in government policy of this state;

(4) Own any share in or securities of a financial institution or otherwise have an ownership interest in a financial institution; or

(5) Engage in the business of a financial institution.

(b) For purposes of this Code section and subject to subsection (c) of this Code section, the term "financial institution" shall include a bank holding company and any subsidiary of a bank holding company.

(c) Notwithstanding the provisions of subsection (a) of this Code section, the commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibilities, or any examiner employed by the department may borrow money from and otherwise deal with any financial institution or subsidiary thereof existing under the laws of the United States or of any state other than this state, provided that the obligee financial institution or subsidiary is not examined or regulated by the department. For the purposes of this subsection, a financial institution shall not be considered regulated solely because it is required to file an exemption from licensing under Code Section 7-1-1001 or solely because it is owned or controlled by another bank or corporation which is or may be examined or regulated by the department.

(d) Nothing in this Code section shall prohibit the commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibilities, or any examiner of the department from maintaining a deposit in any financial institution, purchasing banking services other than credit services, or owning a single share in a credit union in the ordinary course of business and under rates and terms generally available to other customers of the financial institution. The provisions of this Code section shall not be applicable in the cases of a lender credit card obligation to a financial institution where the maximum outstanding credit does not exceed $25,000.00 nor to any other credit obligation fully secured by the pledge of a deposit account in the lending institution, provided that the financial institution is not within the employee's assigned examination authority and provided that the rates and terms of all such obligations are not preferential in comparison to similar obligations of the financial institution's other customers. Such exempt obligations shall be reported

to the commissioner within ten days of execution of the credit obligation if the financial institution is regulated or examined by the department, and the employee shall be disqualified from any dealings with the obligee financial institution.

(e)(1) The commissioner, a deputy commissioner, a department employee with financial institution or licensee supervisory responsibilities, or an examiner of the department may be permitted to own securities of a financial institution under any of the following circumstances:

(A) A deputy commissioner, a department employee with financial institution or licensee supervisory responsibilities, or an examiner of the department may own such a security if the security was obtained prior to commencement of employment with the department;

(B) A deputy commissioner, a department employee with financial institution or licensee supervisory responsibilities, or an examiner of the department may own such a security if the ownership of the security was acquired through inheritance; gift; stock split or dividend; merger, acquisition, or other change in corporate structure; or otherwise without specific intent on the part of the employee to acquire the interest; and

(C) The commissioner, a deputy commissioner, a department employee with financial institution or licensee supervisory responsibilities, or an examiner of the department may own such a security if the security is part of an investment fund, provided that, upon initial or subsequent investment by the employee, excluding ordinary dividend reinvestment, the fund does not have invested, or indicate in its prospectus the intent to invest, more than 30 percent of its assets in the securities of one or more Federal Deposit Insurance Corporation insured depository institutions or Federal Deposit Insurance Corporation insured depository institution holding companies and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund.

(2) In the case of permissible acquisitions pursuant to subparagraphs (A) and (B) of paragraph (1) of this subsection, the employee shall make a full, written disclosure to the commissioner within 30 days of beginning employment or acquiring the interest. The employee is disqualified from participating in or sharing information regarding any matter or activity that concerns the financial institution. Such disqualification must not, in the judgment of the commissioner, unduly interfere with the employee's duties.

(3) In the event any covered person inadvertently and without intent on his or her part acquires an interest in a security that is not

allowed by this subsection, such security shall be disposed of within 90 days of acquisition.

(f) No examiner, which for the purposes of this Code section shall include a supervisor as defined by the department, may examine a financial institution to which he or she is indebted or of which he or she owns securities under the exceptions in subparagraphs (e)(1)(A) and (e)(1)(B) of this Code section, nor may an examiner obtain credit from a financial institution if he or she has examined such financial institution in the preceding 12 months. An examiner who wishes to borrow funds from any financial institution he or she has examined in the past five years must first obtain the written permission of the commissioner. This subsection is included as an additional precaution and is not intended to preclude the operation of any other applicable law or regulation.

(g) The commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibility, or any examiner shall not directly or indirectly:

(1) Receive any money or property as a loan from any department licensee or any director, officer, agent, employee, or attorney of a department licensee, unless such employee does not examine or exercise supervisory responsibility over that licensee;

(2) Receive any money or property as a gift from any department licensee or any director, officer, agent, employee, or attorney of a department licensee, unless consistent with the ethics in government policy of this state;

(3) Give any money or property as a gift to any department licensee or any director, officer, agent, employee, or attorney of a department licensee, unless consistent with the ethics in government policy of this state; or

(4) Engage in the business of a department licensee.

(h) No director, officer, agent, employee, or attorney of a financial institution, individually or in his or her official capacity, shall knowingly participate in a violation of this Code section. However, nothing in this Code section shall restrict the right of the commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibilities, or any examiner to deal as any other consumer with such director, officer, agent, employee, or attorney in the ordinary course of business in consumer areas of trade or commerce not regulated by the department and under terms and conditions which are not preferential.

(i) The commissioner, any deputy commissioner, any department employee with financial institution or licensee supervisory responsibili-

ties, or any examiner employed by the department who shall violate or participate in a violation of this Code section shall be guilty of a misdemeanor. Violation of this Code section shall be grounds for removal from office.

(j) The commissioner may adopt additional supplementary administrative policies and departmental rules governing ethical conduct and conflicts of interest on the part of employees of the department and providing certain definitions and clarifications to effectuate the purposes of this Code section.

History.

Ga. L. 1919, p. 135, art. 2, §§ 4, 10; Ga. L. 1919, p. 135, art. 20, § 6; Code 1933, §§ 13-304, 13-310, 13-9906; Code 1933, §§ 41A-207, 41A-9904, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 2; Ga. L. 1980, p. 919, § 1; Ga. L. 1983, p. 532, § 1; Ga. L. 1985, p. 149, § 7; Ga. L. 1995, p. 673, § 4; Ga. L. 1997, p. 485, § 4; Ga. L. 2002, p. 1220, § 2; Ga. L. 2019, p. 828, § 2/HB 185; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2022, p. 220, § 1/HB 891; Ga. L. 2024, p. 1052, § 1(a)(5)/SB 448, effective July 1, 2024.

Amendments.

The 2022 amendment, effective July 1, 2022, deleted the former last two sentences of subsection (c), which read: "All extensions of credit, including but not limited to such permitted loans, which obligate the commissioner or any deputy commissioner to such a financial institution or subsidiary, directly or contingently by way of guaranty, endorsement, or otherwise, or which renew or modify existing obligations shall be reported by the individual concerned to the Attorney General in writing, within ten days after the execution thereof, showing the nature of the undertaking and the amount and terms of the loan or other transaction. All credit obligations of a similar nature to those set forth above on the part of any other department employee with financial institution or licensee supervisory responsibilities or examiner shall be reported to the commissioner within ten days after the execution thereof."; in subsection (d), substituted "does not exceed $25,000.00" for "may not exceed $10,000.00" and "provided that the rates" for "provided the rates" in the second sentence, and substituted "shall be reported to the commissioner within ten days of execution of the credit obligation if the financial institution is regulated or examined by the department," for "shall, however, be reported as provided in subsection (c) of this Code section," in the third sentence; and deleted the former last two sentences of paragraph (g)(1), which read: "Any debt owed by a deputy commissioner, department employee with financial institution or licensee supervisory responsibility, or examiner of a department licensee must be reported to the commissioner. Reporting by the commissioner shall be made to the Attorney General".

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "any examiner" for "examiners" in subsection (c).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2002, a comma was added following "licensee supervisory responsibilities" near the beginning of subparagraph (e)(1)(C).

RESEARCH REFERENCES

ALR.

Validity and enforceability of agreement with bank officer or employee individually in connection with bank accommodation, 41 A.L.R. 349.

7-1-38. Commissioner's office expenses.

The commissioner shall be provided with suitable offices and equipment, the expense of which shall be paid by the state in the same manner as the expenses of other offices of the state government are paid.

History.
Ga. L. 1919, p. 135, art. 2, § 8; Ga. L. 1920, p. 102, § 1; Ga. L. 1925, p. 119, § 1; Code 1933, § 13-308; Ga. L. 1963, p. 369, § 1; Code 1933, § 41A-208, enacted by Ga. L. 1974, p. 705, § 1.

7-1-39. Seal of department; evidentiary effect.

The department shall adopt an official seal. Any paper executed under the seal of the department shall prima facie be deemed to have been executed by a duly authorized official of the department.

History.
Code 1933, § 41A-209, enacted by Ga. L. 1974, p. 705, § 1.

7-1-40. Delegation of authority by commissioner.

(a) Any authority, power, or duty vested in the commissioner or department by a provision of this chapter may be exercised, discharged, or performed by a deputy, assistant, examiner, or employee of the department acting in the commissioner's name and by his delegated authority. In the case of any matters involving the exercise of discretion, the delegation of authority shall be in writing. Any such delegation by the commissioner may be revoked in the same manner in which it was granted.

(b) The commissioner shall be responsible for the official acts of such persons who act in his name and by his authority.

History.
Code 1933, § 13-324, enacted by Ga. L. 1973, p. 526, § 2; Code 1933, § 41A-210, enacted by Ga. L. 1974, p. 705, § 1.

7-1-41. Prescribing fees; payment procedure.

(a) The department may, by regulation, prescribe annual examination fees, license fees, registration fees, and supervision fees to be paid by the institutions and entities assigned to the department by this title for regulation, supervision, licensure, or registration. In addition, the department may, by regulation, prescribe reasonable application and related fees, special investigation fees, hearing fees, mortgage loan fees, and fees to provide copies of any book, account, report, or other paper filed in its office or for any certification thereof or for processing any papers as required by this title. Such fees may vary by type of institution regulated and nature of the work performed.

(b) The department, in its discretion, may require the payment of such fees in any manner deemed to be efficient, including collection through automated clearing-house arrangements or other electronic means, so that the state receives funds no later than the date the payment is required to be made.

History.
Code 1933, § 41A-212, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 3; Ga. L. 1996, p. 848, § 2; Ga. L. 2002, p. 1220, § 3.

7-1-42. Enforcement of payment.

In the event any financial institution shall fail or refuse to pay on demand any amount owed to the department, including, but not limited to, outstanding fees, the department may proceed through the Attorney General to collect the same by action at law.

History.
Ga. L. 1919, p. 135, art. 3, § 6; Code 1933, § 13-406; Ga. L. 1966, p. 692, § 23; Code 1933, § 41A-213, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2016, p. 390, § 1-2/HB 811.

7-1-43. Disposition of fees collected; payment of expenses from appropriations.

Fees prescribed by this chapter shall be collected by the department and deposited with the Office of the State Treasurer. The department may, at its discretion, remit such amounts net of the cost of recovery, which cost may include fees paid to a collection agency or attorney for recovery of moneys due the department. All of the expenses incurred in connection with the conduct of the business of the department shall be paid out of the appropriations of funds to the department by the General Assembly. Such expenses shall include all expenses incurred as travel expenses by personnel of the department when away from their official station as assigned by the commissioner.

History.
Ga. L. 1919, p. 135, art. 2, §§ 13, 14; Code 1933, § 13-313; Code 1933, § 13-305, enacted by Ga. L. 1965, p. 540, § 1; Code 1933, § 41A-211, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1995, p. 673, § 5; Ga. L. 2003, p. 843, § 1; Ga. L. 2010, p. 863, § 2/SB 296.

Part 3

Operations of Department of Banking and Finance

Law reviews.
For note discussing the interrelationship between the International Banking Act, the provisions of the Financial Institutions Code relating to domestic banking, and the Foreign Corporations Chapter of the Corporation Code in the regulation of international banking in Georgia and comparing Georgia provisions with those of New York and California, see 27 Mercer L. Rev. 827 (1976).

7-1-60. General scope of supervision.

Except where otherwise specifically provided, the department shall enforce and administer all laws of this state relating to financial institutions and shall exercise general supervision over financial institutions in accord with the underlying objectives of this chapter.

History.
Code 1933, § 41A-301, enacted by Ga. L. 1974, p. 705, § 1.

Law reviews.
For review of 1996 banking and finance legislation, see 13 Ga. St. U.L. Rev. 1 (1996).

For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001).

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, §§ 11 et seq., 137.

7-1-61. Rules and regulations.

(a) The department shall have the authority to promulgate rules and regulations to effectuate the objectives or provisions of this chapter. Without limiting the generality of the foregoing, the department is expressly authorized to make rules and regulations, consistent with this chapter, relating to organization, operations, and powers of financial institutions to:

(1) Enable financial institutions existing under the laws of this state to compete fairly with financial institutions and others providing financial services in this state existing under the laws of the United States, other states, or foreign governments; or

(2) Protect financial institutions jeopardized or challenged by new economic or technological conditions or by significant changes in the legal environment.

(b) In the exercise of the discretion permitted by this Code section, the commissioner shall consider:

(1) The ability of financial institutions to exercise any additional powers in a safe and sound manner;

(2) The authority of any federally chartered bank, as the term "bank" is defined in Code Section 7-1-621, operating pursuant to federal law, regulation, or authoritative pronouncement;

(3) The powers of other entities providing financial services in this state; and

(4) Any specific limitations on financial institution operations or powers contained in this chapter.

(c) Rules and regulations promulgated by the department may provide for controls, registration, or restrictions reasonably necessary to:

(1) Prevent unfair or deceptive business practices which are prohibited under Code Section 10-1-393;

(2) Prevent deceptive or misleading business practices by financial services providers which may occur by way of alternate delivery systems for the provision of financial products and services such as the internet or other telecommunication capabilities; or

(3) Prevent or control unfair or deceptive business practices which would operate to the detriment of any competing business or enterprise or to persons utilizing the services of any financial institution, its subsidiary, or affiliate.

(d) All rules and regulations shall be promulgated in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," including the requirements for hearing as stated in that chapter. Regulations issued under this or other provisions of this chapter may make appropriate distinctions between types of financial institutions and may be amended, modified, or repealed from time to time.

History.

Code 1933, § 41A-302, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1249, § 1; Ga. L. 1995, p. 673, § 6; Ga. L. 1997, p. 485, § 5; Ga. L. 2000, p. 174, § 3; Ga. L. 2005, p. 826, § 4/SB 82; Ga. L. 2015, p. 344, § 3/HB 184; Ga. L. 2024, p. 1052, § 1(a)(6)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised capitalization in paragraph (c)(2).

Administrative rules and regulations.

Investment Securities, Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Banks, Rule 80-1-4-.01 et seq.

Borrowed Money, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Banks, Rule 80-1-9-.01 et seq.

Public Disclosure of Information, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Banks, Rule 80-1-11-.01 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.

2 Am. Jur. 2d, Administrative Law, § 52.

C.J.S.

9 C.J.S., Banks and Banking, §§ 10 et seq., 137. 73 C.J.S., Public Administrative Law and Procedure, §§ 112 et seq., 139.

7-1-61.1. Expansion of power for banks and credit unions; role of commissioner; documentation to legislative committees.

(a) For purposes of this Code section, the term "power" means any banking or corporate power, right, benefit, privilege, or immunity of a financial institution, the deposits of which are federally insured, as set forth in any federal statute or any regulation, ruling, circular, bulletin, order, or interpretation issued by the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, National Credit Union Administration, or Federal Reserve System.

(b) To provide parity with financial institutions whose deposits are federally insured, the commissioner may, by specific order directed to a category of banks or credit unions, grant any power conferred upon a financial institution, subject to the supervision of the federal government, to:

(1) State chartered banks and credit unions to enable such banks and credit unions to compete; and

(2) Subsidiaries of state chartered banks and credit unions to the same extent powers are granted to subsidiaries of national banks or federal credit unions to enable such subsidiaries of state chartered banks and credit unions to compete.

(c) No order provided for in subsection (b) of this Code section shall be issued unless the commissioner determines that such activity will not present undue safety and soundness risks to the banks or credit unions involved. In making such determination, the commissioner shall consider the financial condition and regulatory safety and soundness ratings of the banks or credit unions affected and the ability of management to administer and supervise the activity. The department shall make any order issued pursuant to this Code section available for public review.

(d) No later than ten days after the issuance of any order by the commissioner pursuant to this Code section, the commissioner shall provide a copy of such order to the chairpersons of the House Committee on Banks and Banking and Senate Banking and Financial Institutions Committee.

History.
Code 1981, § 7-1-61.1, enacted by Ga. L. 2015, p. 344, § 4/HB 184; Ga. L. 2018, p. 214, § 2/HB 780.

Editor's notes.
Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur.2d, Banks and Financial Institutions, § 253 et seq.

C.J.S.
9 C.J.S., Banks and Banking, § 222 et seq.

7-1-62. Accounting procedures.

The department may promulgate regulations concerning the manner in which the books of financial institutions will be maintained in order to assist the department in its examinations and other supervisory activities, provided that, in all events:

(1) A financial institution shall enter on its books a complete and accurate account of all of its assets, whether the assets are in its name or the name of others, at values which shall not, without the prior approval of the department, exceed the actual cost of the assets to the financial institution; and

(2) A financial institution shall enter on its books a complete and accurate account of its liabilities, its borrowings, and the security interests it has granted and shall maintain additional accounts for losses and expenses.

History.
Code 1933, § 41A-303, enacted by Ga. L. 1974, p. 705, § 1.

Cross references.
Authority of department to issue orders requiring financial institutions to open and keep such books as will allow the department to ascertain true conditions of financial institutions, § 7-1-91.

7-1-63. Retention of records.

(a) The department shall issue regulations classifying records kept by financial institutions and prescribing the period, if any, for which records of each class shall be retained and the form in which such records shall be maintained. Such periods may be permanent or for a lesser term of years. In issuing such regulations, consideration shall be given to the objectives of this chapter and to:

(1) Evidentiary effect in actions at law and administrative proceedings in which the production of records of financial institutions might be necessary or desirable;

(2) State and federal statutes of limitation applicable to such actions or proceedings;

(3) Availability of information contained in the records of the financial institution from other sources;

(4) Requirements of electronic systems of transferring funds; and

(5) Other pertinent matters;

so that financial institutions will be required to retain records for as short a period as is commensurate with interests of customers, shareholders, and the people of this state.

(b) The regulations of the department shall not require financial institutions to maintain originals of checks or items for the payment of money or original computer tapes or original records with respect to accounts which have been inactive for a period of 12 successive months. Where a financial institution employs computers, its records may consist of legible products of computer operations.

History.
Ga. L. 1953, p. 70, § 3; Ga. L. 1966, p. 692, §§ 45-47; Code 1933, § 41A-304, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 4; Ga. L. 2011, p. 99, § 4/HB 24.

Cross references.
Hearsay rule exceptions; availability of declarant immaterial, § 24-8-803.
Self authentication, § 24-9-902.
Public records, § 24-10-1005.

Editor's notes.
Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews.
For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011).

JUDICIAL DECISIONS

Applicability. — O.C.G.A. § 7-1-63 was not applicable in an action alleging that a bank improperly cashed certificates of deposit and a savings account. Emmett v. Regions Bank, 238 Ga. App. 455, 518 S.E.2d 472, 1999 Ga. App. LEXIS 778 (1999), cert. denied, No. S99C1430, 1999 Ga. LEXIS 879 (Ga. Oct. 22, 1999).

7-1-64. Department examinations and investigations; disclosure of information or prior notice regarding examinations of financial institutions.

(a) Except as otherwise provided in subsection (b) of this Code section, the department shall examine all financial institutions at least once each year and may examine or investigate any financial institution more frequently at any time it deems such action necessary or desirable. At least once annually, the examination shall consist of a comprehensive review of the accounts, records, and affairs of the institution.

(b) The department may, consistent with the objectives of this chapter and the purposes listed below, alter the examination frequency and scope as set out in subsection (a) of this Code section:

(1) To achieve cooperation and coordination with other state and federal regulatory authorities, including but not limited to examination programs of banks or bank holding companies having multistate operations;

(2) To assure that appropriate time and attention are devoted to the supervision of troubled financial institutions; or

(3) To minimize the examination burden on well-managed financial institutions which have consistently been operated with safe and sound banking practices.

(c) In the case of a financial institution which is a member of the Federal Reserve System or whose deposits are insured by a public body of the United States, the department may accept, in lieu of any examination required by this Code section, examinations or reports thereof made pursuant to the Federal Reserve Act or statutes of the United States authorizing such insurance.

(d) Employees of the department shall not divulge any information or provide prior notice, directly or indirectly, to any officer, director, agent, representative, or employee of a financial institution concerning the time or date of examination of the financial institution except in accordance with internal policy prescribed by the commissioner. Employees violating the policy of the commissioner relating to information or prior notice concerning examinations shall be subject to immediate dismissal.

History.

Ga. L. 1919, p. 135, art. 3, §§ 1, 2; Ga. L. 1925, p. 165, § 10; Ga. L. 1927, p. 344, § 3; Code 1933, §§ 13-401, 13-402, 25-122, 109-503; Ga. L. 1935, p. 114, § 1; Ga. L. 1937-38, Ex. Sess., p. 307, § 5; Ga. L. 1943, p. 279, § 1; Ga. L. 1945, p. 253, §§ 1, 2; Ga. L. 1956, p. 742, § 4; Ga. L. 1960, p. 977, § 1; Ga. L. 1960, p. 1175, § 1; Ga. L. 1962, p. 74, § 3; Ga. L. 1966, p. 692, §§ 18, 19; Ga. L. 1968, p. 465, § 8; Code 1933, § 41A-305, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 1; Ga. L. 1995, p. 673, § 7; Ga. L. 1997, p. 485, § 6; Ga. L. 2024, p. 1052, § 1(a)(7)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (a) and in paragraph (b)(1).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1995, "are" was substituted for "is" in paragraph (b)(2).

U.S. Code.

The Federal Reserve Act, referred to in subsection (c) of this Code section, is codified generally throughout 12 U.S.C. See 12 U.S.C. § 226.

JUDICIAL DECISIONS

Liability of commissioner. — In a suit against the superintendent of banks (now commissioner of banking and finance), and surety on the superintendent's bond for loss suffered by the depositor by the superintendent's failure to discover insolvency of certain savings and loan companies, the superintendent could not be held civilly liable for the superintendent's erroneous judgment that the superintendent had no supervisory powers over the corporation unless facts were alleged to show that the superintendent's judgment was willful, malicious, fraudulent, and corrupt. Gormley v. State, 54 Ga. App. 843, 189 S.E. 288, 1936 Ga. App. LEXIS 777 (1936).

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1192, 1194.
C.J.S.
9 C.J.S., Banks and Banking, §§ 11 et seq., 137.
ALR.
Use or publication of reports of, or information obtained by, bank examiners, as affected by their alleged confidential character, 123 A.L.R. 1278.

7-1-65. Examinations and investigations on request.

When requested in writing by the board of directors or holders of a majority of the shares of a financial institution, the department, at a time fixed by it, shall examine or investigate the affairs and condition of the financial institution. However, this provision shall not be construed to mean that such institution, directors, or shareholders shall have any greater right to require the department to disclose the results of such examination or investigation than they have in case of any examination or investigation at the insistence of the department nor shall the department be required under this Code section to make more than one examination per year of any financial institution.

History.
Code 1933, § 41A-306, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

ALR.
Use or publication of reports of, or information obtained by, bank examiners, as affected by their alleged confidential character, 123 A.L.R. 1278.

7-1-66. Method of examination and investigations; special examiners; subpoenas.

(a) Examinations and investigations shall be made by the commissioner or by qualified examiners or employees empowered in writing by the department to make examinations or investigations. The department may, when the occasion requires, appoint special examiners and prescribe their duties and powers.

(b) Officials authorized to make examinations or investigations shall have the power and authority to administer oaths and to examine under oath any person (including any officer, director, agent, attorney, member, or employee of any financial institution) whose testimony may be relevant to the examination or investigation. Such officials shall have the authority and power to compel the appearance and attendance of any such person and the production by such person of pertinent books and papers, including books and papers to which the person has access because of his position with a financial institution, and for such

purposes shall have the authority to issue a subpoena requiring the appearance and attendance of any such person or for the production of any pertinent books and papers.

(c) If any person shall fail or refuse to obey an order or subpoena issued by the department, a court of appropriate jurisdiction, upon application by the department, may issue an order requiring such person to appear before the court to show cause as to why he or she should not be adjudged in contempt and punished accordingly for refusal to obey the subpoena.

History.
Ga. L. 1919, p. 135, art. 2, § 18; Ga. L. 1919, p. 135, art. 3, § 3; Ga. L. 1919, p. 135, art. 20, § 1; Code 1933, §§ 13-318, 13-403, 13-9901; Ga. L. 1966, p. 692, § 20; Code 1933, §§ 41A-307, 41A-9903, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 19; Ga. L. 2017, p. 193, § 2/HB 143.

Cross references.
Authority of department to issue orders requiring financial institutions to submit records and affairs to legally conducted examinations or investigations by department, § 7-1-91.

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1192, 1194.
C.J.S.
9 C.J.S., Banks and Banking, §§ 11 et seq., 137.

ALR.
Bank's liability, under state law, for disclosing financial information concerning depositor or customer, 81 A.L.R.4th 377.

7-1-67. Reports of examinations.

(a) Any official who shall make an examination pursuant to this chapter shall reduce the result thereof to writing in such form as shall be prescribed by the department. Such report shall contain a full, true, and correct statement of the condition of the financial institution in the case of a comprehensive examination or of the matter subject to inquiry in the case of other examinations.

(b) Each report shall be the property of the regulatory agency which generates such report; provided, however, that a copy of such report may be furnished to the examined financial institution for its internal, confidential use. A financial institution or any officer, director, or employee thereof shall not disclose a report or any portion of its contents. If a subpoena or discovery request is received for a report or any portion of its contents, the financial institution must deliver a copy of such subpoena or discovery request to the department immediately.

History.
Ga. L. 1919, p. 135, art. 3, § 4; Code 1933, § 13-404; Ga. L. 1966, p. 692, § 21; Code 1933, § 41A-308, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1998, p. 795, § 4.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, §§ 11 et seq., 137.
ALR.
Use or publication of reports of, or information obtained by, bank examiners, as affected by their alleged confidential character, 123 A.L.R. 1278.

7-1-68. Reports to department; penalty for noncompliance.

(a) The department may require reports on the condition of or any particular facts concerning any financial institution at any time the department deems it necessary or advisable.

(b) The form of all reports, the information to be contained in them, and the date on which they shall be due shall be prescribed by the department. The reports shall be verified by the oath or affirmation of the president, secretary, or other managing officer of the institution.

(c) Any financial institution which fails to prepare any report in accordance with this Code section, or fails to provide any facts or information requested under subsection (a) of this Code section, shall pay the department a penalty of $100.00 for each day after the time fixed by the department for filing such report, but the department may, in its discretion, relieve any financial institution from the payment of such penalty, in whole or in part, if good cause be shown. If a financial institution fails to pay a penalty from which it has not been relieved, the department may, through the Attorney General, maintain an action at law to recover it.

History.
Ga. L. 1919, p. 135, art. 4, §§ 1, 2, 5; Ga. L. 1920, p. 102, § 1; Ga. L. 1925, p. 165, § 10; Ga. L. 1927, p. 344, § 3; Code 1933, §§ 13-501, 13-502, 25-122, 109-503; Ga. L. 1935, p. 114, § 1; Ga. L. 1937, p. 425, § 1; Ga. L. 1937-38, Ex. Sess., p. 307, § 5; Ga. L. 1943, p. 279, § 1; Ga. L. 1956, p. 742, § 4; Ga. L. 1960, p. 977, § 1; Ga. L. 1960, p. 1175, § 1; Ga. L. 1962, p. 74, § 3; Ga. L. 1968, p. 465, § 8; Code 1933, § 41A-309, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 5; Ga. L. 1981, p. 1366, § 2; Ga. L. 1995, p. 673, § 8; Ga. L. 1998, p. 795, § 5; Ga. L. 2009, p. 86, § 2/HB 141; Ga. L. 2016, p. 390, § 1-3/HB 811.

OPINIONS OF THE ATTORNEY GENERAL

Publication required under former Code 1933, § 41A-309 (see now O.C.G.A. § 7-1-68) need not be an official organ designated pursuant to former Code 1933, §§ 39-1103 and 39-1107 (see now O.C.G.A. § 9-13-142). 1979 Op. Att'y Gen. No. U79-25.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, § 28.
ALR.
Use or publication of reports of, or information obtained by, bank examiners, as affected by their alleged confidential character, 123 A.L.R. 1278.

7-1-69. Retention of reports.

The reports of examinations and investigations made by the department and reports made by financial institutions shall be preserved by the department for a period of five years, after which they may be destroyed.

History.
Ga. L. 1919, p. 135, art. 2, § 19; Code 1933, § 13-319; Code 1933, § 41A-310, enacted by Ga. L. 1974, p. 705, § 1.

7-1-70. Disclosure of information.

(a) Records of the department, regardless of the medium by which stored, are confidential. Except as otherwise provided in this Code section, this chapter, or departmental rule or regulation, and, notwithstanding the provisions of Article 4 of Chapter 18 of Title 50, such records shall not be open to inspection by or made available to the public. The commissioner and all other officials and employees of the department shall not disclose facts and information obtained in the course of their duties, including information obtained from examinations, investigations, and reports as required or authorized in this part. The department may, however, provide by rule, regulation, or order for public access to certain records which, in the opinion of the commissioner, do not contain sensitive information and from which disclosure the public would benefit.

(b) Subject to the exceptions, safeguards, and limitations contained in subsection (c) of this Code section, the restrictions of subsection (a) of this Code section shall not apply to disclosures:

(1) Within the department or made to the Governor in the course of official duties;

(2) Required by law, including disclosures required by subpoena or other legal process of a court or administrative agency having competent jurisdiction in legal proceedings and, where applicable, when the financial institution is a party or where the information is not otherwise available upon direct subpoena of a financial institution;

(3) In prosecutions or other court actions to which the department or the commissioner is a party;

(4) Made to federal or state financial institution supervisory

agencies, other federal or state regulatory agencies with legal authority over such institution, the United States Department of Justice (including the Federal Bureau of Investigation), the United States Department of the Treasury, the Georgia Bureau of Investigation, or state or local law enforcement authorities;

(5) Made to any officer, attorney, or director of the involved financial institution, made to any officer, attorney, or director of the involved financial institution's holding company, or with the written consent of said financial institution or holding company;

(6) Made in a publication of the department which is available to the general public;

(7) Of general economic and similar data considered by the department in regard to requests for new articles, new branches, changes in the location of facilities, or similar matters made to parties interested in the department's action in regard thereto; and

(8) Made to a financial institution concerning the past job performance of a prospective employee with the written consent of such prospective employee, provided such written consent shall not be required in circumstances provided for in Code Section 7-1-840.

(c) The following exceptions, safeguards, and limitations shall apply:

(1) Disclosures made under subsection (b) of this Code section shall be made, where appropriate, under safeguards designed to prevent further dissemination of confidential data; provided, however, that, for disclosures of suspected criminal activity made under paragraph (4) of subsection (b) of this Code section, the confidentiality safeguards already in place within those agencies shall be considered adequate. Except for disclosures under paragraph (2) of subsection (b) of this Code section, the department shall not be required to make authorized disclosures where it deems such disclosures undesirable;

(2) All disclosures shall be limited to only those documents directly relevant to the inquiry or legal dispute at issue; and

(3) The documents listed below shall be considered absolutely privileged and confidential and shall be exempt from open inspection and not subject to disclosure by the department without a specific order of court pursuant to Code Section 7-1-90, which order specifically holds the public interest in the safety and soundness of the banking system and its regulation to be outweighed by other interests of justice. Such exempt documents shall include:

(A) Departmental internal investigations, documents, and notes which reflect the deliberative processes of employees;

(B) Opinions provided in confidence to the department regarding proposed new banks;

(C) Informal notes and memos of the department that are not purely factual in nature;

(D) Advisory opinions;

(E) Recommendations, summaries, and analyses that are utilized for departmental internal purposes and are not final orders or reports; and

(F) Other similar materials or notes.

(d) Notwithstanding any other provision of this Code section, the commissioner may, without waiving any privilege, authorize access to confidential supervisory information for any appropriate governmental, law enforcement, or other public purpose.

(e) Violation of this Code section shall be grounds for removal from office.

History.
Code 1933, § 41A-311, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 6; Ga. L. 1982, p. 3, § 7; Ga. L. 1989, p. 1211, § 4; Ga. L. 1998, p. 795, § 6; Ga. L. 2002, p. 1220, § 4; Ga. L. 2003, p. 843, § 2; Ga. L. 2024, p. 1052, § 1(a)(8)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (c)(1).

OPINIONS OF THE ATTORNEY GENERAL

Disclosure of deficiencies. — Department of Banking and Finance may report deficiencies uncovered during examination to local officials involved. To withhold knowledge of violations of law from officials who have placed public funds in a bank serves no legitimate interest of the bank and threatens serious injury to the public. 1979 Op. Att'y Gen. No. 79-12.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, §§ 11 et seq., 137.

ALR.
Use or publication of reports of, or information obtained by, bank examiners, as affected by their alleged confidential character, 123 A.L.R. 1278.

Bank's liability, under state law, for disclosing financial information concerning depositor or customer, 81 A.L.R.4th 377.

7-1-71. Removal of officers, directors, or employees.

(a) The department, by order of the commissioner, shall have the right to require the immediate suspension from office of any director, officer, or employee of any financial institution and to prohibit any such

person's participation in the affairs of any financial institution if the department finds such person:

(1) To be dishonest, incompetent, or reckless in the management of the affairs of the financial institution;

(2) To have persistently violated the laws of this state;

(3) To have violated the lawful orders, regulations, or conditions of a written agreement of or with the department;

(4) To have been indicted for any crime involving moral turpitude or breach of trust;

(5) To have evidenced an inability to conduct his or her own financial affairs or the affairs of a company in which such individual owns a majority interest or has responsibility for financial matters, in a fiscally responsible, diligent, or lawful fashion; or

(6) To have engaged in any unsafe or unsound practice in connection with any insured depository institution or to have demonstrated willful or continuing disregard for the safety and soundness of a financial institution.

(b) A prohibition order, which prohibits an individual from participating in any capacity in the affairs of a financial institution, may be issued by the commissioner in connection with a suspension order issued under the authority of this Code section. Such prohibition order may provide that if an officer, director, or employee has been removed from office temporarily or permanently at a financial institution, he or she may also be prohibited from participating in any manner in the conduct of the affairs of any financial institution or any financial institution's affiliate regulated by the department during the time the prohibition order is in effect.

(c) The department shall serve written notice upon the party of its determination to suspend such person from office or prohibit such person from participating in the affairs of a financial institution pursuant to subsections (a) and (b) of this Code section. A suspension order or a prohibition order shall be effective upon such service and shall specify whether the suspension is temporary, the duration and terms of the suspension if temporary, or if it is permanent. The prohibition order shall be consistent in duration with the suspension order.

(d) Any person suspended or prohibited under this Code section may request his or her reinstatement in writing delivered to the department within ten days of his or her suspension or prohibition. If such reinstatement is not requested, the director, officer, or employee shall be considered permanently removed and, if so ordered, permanently prohibited from participation in the affairs of any financial institution.

(e) Upon request for reinstatement, the department shall conduct an internal review of the matter during which such person has the opportunity to state his or her case to the commissioner. The department shall deliver the findings of the hearing to such person. If the person requests further review, the department may refer the matter to the Office of State Administrative Hearings under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," where a nonpublic hearing shall be held to review the department's decision. The final decision of the department shall be conclusive, except as it may be subject to judicial review under Code Section 7-1-90.

(f) Any order issued pursuant to this Code section shall also be delivered to the financial institution with which the party was associated at the time such order was issued.

History.
Ga. L. 1919, p. 135, art. 5, § 3; Code 1933, § 13-603; Code 1933, § 41A-312, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1983, p. 602, § 1; Ga. L. 1995, p. 673, § 9; Ga. L. 1997, p. 485, § 7; Ga. L. 2005, p. 826, § 5/SB 82; Ga. L. 2006, p. 72, § 7/SB 465; Ga. L. 2018, p. 214, § 3/HB 780.

Editor's notes.
Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

RESEARCH REFERENCES

Am. Jur. 2d.
2 Am. Jur. 2d, Administrative Law, §§ 41, 45, 47 et seq.

C.J.S.
9 C.J.S., Banks and Banking, §§ 11 et seq., 137.

7-1-72. Regulation of persons performing services for financial institutions.

(a) Notwithstanding any other provisions of law to the contrary and consistent with the objectives of this chapter as set forth in Code Section 7-1-3 and subject to the procedures provided in regulations of the department, a financial institution may provide financial services to its customers either directly or through employment of duly licensed persons, provided that such financial institution or its licensed employee or agent has qualified under other laws otherwise applicable to other providers of such financial services.

(b) Where financial services are being performed by a person or corporation for a financial institution, such person or corporation shall be subject to:

(1) Examination and investigation by the department to the same extent as if the services were performed by the financial institution on its own premises;

(2) Regulation by the department in regard to such services to the

same extent as if such services were being performed by the financial institution for its own internal benefit or as an extension of the range of financial services products offered to customers of the financial institution; and

(3) All enforcement proceedings made available to the department in this title.

(c) In the event of conflicting statutory responsibilities, except as otherwise provided by law, the department shall not grant licenses to providers of financial services to or through financial institutions. The department shall be the responsible authority in reviewing, authorizing, or otherwise regulating, consistent with this chapter, the contractual relationship entered into by financial institutions for the provision of such services or incidental to application for further licensing.

(d) For purposes of this Code section, "financial services" shall include, but is not limited to, business and consumer financial record keeping, investments, planning and advisory assistance, surety, brokerage, data processing, electronic fund transfers, information services, and protective services performed for a financial institution which are normally performed by the financial institution for its own benefit or provided to the customers of the financial institution incidental to its conduct of the banking business. The department may further define "financial services" to include other activities of a financial nature which it determines to be consistent with the safe and sound operation of a banking business, not otherwise in violation of this chapter, and in the public interest.

(e) The department may, by regulation, prescribe fees to be paid for examinations of a person or corporation that performs financial services for a financial institution.

(f) Notwithstanding Code Section 7-1-70, the department may furnish a copy of any report of a financial service provider prepared by the department to the financial institution serviced by the financial service provider.

History.
Code 1933, § 13-411, enacted by Ga. L. 1973, p. 526, § 3; Code 1933, § 41A-313, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 7; Ga. L. 1987, p. 1586, § 3; Ga. L. 2004, p. 458, § 1; Ga. L. 2017, p. 193, § 3/HB 143.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, §§ 5, 7.

7-1-73. Regulation of affiliates.

The department may examine or investigate any affiliate of a financial institution for the purpose of determining the condition of the financial institution to the same extent and in the same manner as it may examine or investigate the financial institution itself.

History.
Code 1933, § 13-411, enacted by Ga. L. 1973, p. 526, § 3; Code 1933, § 41A-314, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 8.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, §§ 5, 7.

7-1-74. Annual report of department.

For each calendar year the department shall compile and publish in print or electronically an annual report in such form and containing such information as it may determine necessary to summarize reasonably its operations. The report may contain recommendations which the department may have for changes in the laws governing financial institutions.

History.
Ga. L. 1919, p. 135, art. 2, §§ 15, 16, 17; Ga. L. 1919, p. 135, art. 7, § 28; Ga. L. 1920, p. 102, § 1; Ga. L. 1922, p. 63, § 1; Ga. L. 1925, p. 119, § 1; Code 1933, §§ 13-315, 13-316, 13-317; Code 1933, § 41A-315, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1997, p. 485, § 8; Ga. L. 2010, p. 838, § 10/SB 388.

7-1-75. Discretion of department.

Whenever in this chapter the department is authorized but not required to take any action, the taking of such action shall be within the discretion of the commissioner or his duly authorized deputy. The department shall not be required to grant opportunity for hearing except where such hearing is specifically required by this chapter or Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The department shall maintain accurate memoranda or transcripts of all hearings conducted by the department pursuant to this Code section.

History.
Code 1933, § 41A-316, enacted by Ga. L. 1974, p. 705, § 1.

7-1-76. Department may act after time limit without resubmittal; withdrawal of applications and requests; imposition of conditions; nullification.

(a) Failure of the department to act within any of the time limits

established by this chapter or regulations issued pursuant thereto shall not deprive the department of jurisdiction thereafter to act in regard to the matter involved without need for resubmittal of any application, request, or similar action.

(b) Any action, application, or request requiring department approval under this chapter may be withdrawn by the applicant prior to department action thereon without prejudice to the applicant's right to resubmit such application at a later date. If such application has been forwarded to the department through the Secretary of State, the department shall notify the Secretary of State of any such withdrawal and that the application or request is no longer pending.

(c) The department may impose conditions on any approval, including but not limited to conditions designed to address competitive, financial, managerial, safety and soundness, convenience and needs, compliance, and other concerns, to ensure that such approval is consistent with the provisions of this chapter.

(d) The department may nullify a decision on any request, action, or application if:

(1) The department becomes aware of any material misrepresentation or omission by the applicant;

(2) The department is not promptly informed by the applicant of a subsequent material change in circumstances;

(3) The decision is contrary to law, regulation, or departmental policy; or

(4) The decision was granted due to clerical or administrative error or was based on a material mistake of law or fact.

History. Code 1933, § 41A-317, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1998, p. 795, § 7.

7-1-77. Approval by commissioner of state rules and regulations affecting financial institutions.

Any rule, regulation, order, or administrative directive issued by a state official, agency, or entity which is intended to be applicable to banks, banking associations, bank holding companies, savings and loan associations, credit unions, or companies engaged in selling money orders or any other company or financial institution under the supervision of the commissioner and required to report to the commissioner or subject to rules and regulations issued by the commissioner shall be effective as to any such company or financial institution only after the rule, regulation, order, or other directive has been approved in writing by the commissioner. Nothing in this Code section shall be construed to modify, limit, or otherwise restrict the authority of the department to

conduct an examination, bring a civil or administrative action, or otherwise enforce state or federal laws against a financial institution.

History. Code 1933, § 41A-318, enacted by Ga. L. 1979, p. 950, § 1; Ga. L. 2016, p. 390, § 7-3/HB 811.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, §§ 11 et seq., 137.

7-1-78. Agreements with other supervisory or regulatory authorities.

(a) The department may, at its discretion, enter into cooperative or reciprocal agreements with other supervisory or regulatory authorities or law enforcement and may furnish to such entities information contained in the examinations, reports, and institution files, provided that the information is to be used for confidential, regulatory purposes.

(b) Furnishing information as permitted by this Code section shall not be deemed to change the confidential character of the information furnished.

(c) The department may accept reports of examination and other records from such entities in lieu of conducting its own examination.

(d) Any examination reports, reports of investigation, or other information obtained from such entities shall be deemed the property of the providing entity and not available for public review. Any requests for such information shall be made to the providing entity.

(e) The department may take such actions as are reasonably necessary, either independently or with such entities, to facilitate the regulation of financial services providers doing business in this state.

History. Code 1981, § 7-1-78, enacted by Ga. L. 1995, p. 673, § 10; Ga. L. 2004, p. 458, § 2; Ga. L. 2015, p. 344, § 5/HB 184.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 19 et seq.

7-1-79. Discretionary expedited approval process; considerations.

(a) The department may determine that formal approvals for certain transactions or activities to be conducted by its regulated entities are

not necessary but may be replaced by a discretionary expedited approval process to begin with written notice to the department by the entity which describes the transaction or activity in a form and with a specificity acceptable to the department. For such instances, the department shall promulgate rules and regulations consistent with the authority provided to it in this chapter.

(b) In the exercise of the discretion permitted by this Code section, the commissioner shall consider:

(1) Whether the transaction or activity poses unacceptable safety and soundness risks;

(2) Whether the transaction or activity is warranted only for financially strong and well-managed institutions, as such institutions are further defined in department regulations;

(3) Whether the transaction or activity is necessary to reduce the burden on financial institutions or other entities which the department regulates;

(4) Whether the transaction or activity will assist regulated entities in remaining competitive and responsive to both economic and consumer demands; and

(5) Whether the transaction or activity is consistent with the objectives of this Code section.

History.
Code 1981, § 7-1-79, enacted by Ga. L. 1997, p. 485, § 9.

Part 4

Proceedings Involving the Department of Banking and Finance

7-1-90. Judicial review of department actions.

(a) Any final action of the department or refusal of the department to act may be subject to judicial review by any person or corporation affected by such action. Such action shall be brought within 60 days of the final action or refusal of action by the department as a special statutory proceeding in the county in which the affected person or corporation resides or is domiciled if within this state (which in the case of a corporation shall be the county of its registered office if it has such an office) or in Fulton County if the affected person or corporation resides or is domiciled outside of this state. The review shall be conducted by the court without a jury. The court shall not substitute its judgment for that of the department but may:

(1) Compel department action unlawfully withheld; or

(2) Hold unlawful and set aside department action found to be:

(A) In violation of constitutional or statutory provision;

(B) In excess of statutory authority;

(C) Made upon unlawful procedure; or

(D) Arbitrary, capricious, or otherwise in abuse of discretion,

provided that any action reviewable under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," or through the injunction procedure of Code Section 7-1-155 shall be reviewed under that chapter or Code section and not under this Code section.

(b) Appeals from all final orders and judgments entered by the superior court under this Code section may be taken to the Court of Appeals or the Supreme Court in the same manner as in other cases.

History. Code 1933, § 41A-401, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 9; Ga. L. 1981, p. 1366, § 3.

RESEARCH REFERENCES

C.J.S.
73A C.J.S., Public Administrative Law and Procedure, §§ 315, 317.

7-1-91. Orders by department; enforcement; civil penalty.

(a) Whenever it shall appear to the department that the capital stock of a financial institution has been reduced below the minimum required by law or below the amount required by its articles, the department may issue a written order directing such corporation to restore the deficiency within such period as shall be specified in the order.

(b) Whenever it shall appear to the department that any financial institution is not keeping its books and accounts in such manner as to enable the department, with reasonable facility, to ascertain the true condition of the financial institution, the department may issue a written order requiring such financial institution, within such period as shall be specified in the order, to open and keep such books as the department may, in its discretion, reasonably determine are essential for the purpose of keeping accurate and convenient records of the transactions and accounts of such financial institution.

(c) Whenever any financial institution shall refuse to submit its records and affairs to a legally conducted examination or investigation by the department, the department may issue a written order requiring such financial institution to permit the commissioner or other duly authorized examiner to make such examination or investigation, within such period as shall be specified in the order.

(d) Whenever it shall appear to the department that any financial institution has violated its articles or any law of this state or any order or regulation of the department or that any financial institution is conducting business in an unsafe or unauthorized manner, the department may issue a written order requiring the financial institution to cease and desist from such unsafe and unauthorized practices.

(e) Whenever a financial institution shall fail to comply with the terms of an order of the department which has been properly issued under the circumstances, the department, upon notice of three days to the financial institution, may, through the Attorney General, petition the principal court for an order directing the financial institution to obey the order of the department within such period as shall be fixed by the court. Upon the filing of such petition, the court shall allow a rule to show cause why it should not be granted. Whenever, after a hearing upon the merits or after failure of the financial institution to appear when ordered, it shall appear that the order of the department was properly issued, the court shall grant the petition of the department.

(f) Any financial institution which violates the terms of any order issued pursuant to this Code section shall be liable for a civil penalty not to exceed $1,000.00. Each day during which the violation continues shall constitute a separate offense. In determining the amount of penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of the institution, the good faith efforts of the financial institution to comply with the order, the gravity of the violation, the history of previous violations by the financial institution, and such other factors or circumstances as shall have contributed to the violation. The department may at its discretion compromise, modify, or refund any penalty which is subject to imposition or has been imposed pursuant to this Code section. The financial institution or other person assessed as provided in this subsection shall have the right to request a hearing into the matter within ten days after notification of the assessment has been served upon the financial institution involved; otherwise, such penalty shall be final except as to judicial review as provided in Code Section 7-1-90.

(g) All penalties recovered by the department pursuant to this Code section shall be paid into the state treasury to the credit of the general fund; provided, however, that the department at its discretion may remit such amounts recovered, net of the cost of recovery, in the same manner as prescribed for judgments received through derivative actions pursuant to the provisions of Code Section 7-1-441.

(h) The term “financial institution” as used in this Code section shall include a bank holding company as defined in Code Section 7-1-605 and those entities required to be licensed pursuant to Article 4A of this chapter and any officer, director, employee, agent, or other person

participating in the conduct of the affairs of the financial institution subject to the orders issued pursuant to this Code section.

History.

Ga. L. 1919, p. 135, art. 5, § 1; Code 1933, § 13-601; Code 1933, § 41A-402, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 10; Ga. L. 1985, p. 258, § 2; Ga. L. 1998, p. 795, § 8; Ga. L. 2009, p. 86, § 3/HB 141; Ga. L. 2017, p. 193, § 4/HB 143.

Cross references.

Issuance of subpoenas for production of books and papers pursuant to examinations and investigations of financial institutions, § 7-1-66.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1985, a comma was deleted following "written order" in subsection (b), and "institution" was substituted for "institutions" the last time that word appears in the third sentence of subsection (f).

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 286.

C.J.S.

9 C.J.S., Banks and Banking, §§ 11 et seq., 28, 137. 73A C.J.S., Public Administrative Law and Procedure, § 481 et seq.

ALR.

Bank's duty to customer or depositor not to disclose information as to his financial condition, 92 A.L.R.2d 900.

Bank's liability, under state law, for disclosing financial information concerning depositor or customer, 81 A.L.R.4th 377.

7-1-92. Forfeiture proceedings.

(a) Articles of financial institutions existing under the laws of this state are subject to forfeiture:

(1) In the case of an institution subject to such requirements, for failure to file its annual report with the Secretary of State or its annual license or occupation tax return within the time required by law;

(2) For failure to maintain a registered office in this state as required by the provisions of Title 14, relating to corporations, or by Code Section 7-1-132;

(3) For having procured its articles through fraud;

(4) For failure to organize and proceed to do business within a period of 24 months from the date of the certificate of incorporation;

(5) For failure to obey a final court order issued pursuant to subsection (a) of Code Section 7-1-91 within the time specified in such order; or

(6) Where, because of violation of law or its articles or the unsafe condition or manner of operation of the financial institution, its continued existence is likely to injure the public or the institution's creditors or depositors.

(b) Where such grounds exist, the department, through the Attorney General and in the name of the state, is authorized to institute quo warranto or other appropriate proceedings in the principal court to vacate and forfeit the articles of any financial institution.

(c) Where the articles of any financial institution shall be forfeited, the department shall, if it has not already done so, take charge of the business and assets of such institution and proceed to liquidate it in the same manner as is herein provided in cases where the department takes possession of a financial institution directly.

(d) No action to forfeit the articles of any financial institution shall be brought except as provided herein, but any person or corporation shall have the right to submit to the department any facts which under the law would authorize the forfeiture of the articles of a financial institution.

(e) On and after April 1, 1975, the provisions of Title 14, relating to forfeiture, shall not be applicable to financial institutions.

History.
Ga. L. 1919, p. 135, art. 15, §§ 1-4; Ga. L. 1925, p. 165, § 10; Code 1933, §§ 13-1601, 13-1602, 13-1603, 13-1604, 25-122; Ga. L. 1935, p. 114, § 1; Ga. L. 1937-38, Ex. Sess., p. 307, § 7; Ga. L. 1943, p. 279, § 1; Ga. L. 1949, p. 442, § 1; Ga. L. 1956, p. 742, § 4; Ga. L. 1960, p. 977, § 1; Ga. L. 1962, p. 74, § 3; Ga. L. 1968, p. 465, § 8; Code 1933, § 41A-403, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 11.

Cross references.
Declaration by Secretary of State of forfeiture of charter of Secretary of State corporations, § 14-4-160.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, §§ 166 et seq., 527.

7-1-93. Injunction and other actions by department.

The department may bring an appropriate civil action to enforce any provision of this chapter or regulations issued hereunder, whether by injunction or otherwise, in the superior court of this state having jurisdiction over one or more of the defendants.

History.
Code 1933, § 13-208, enacted by Ga. L. 1960, p. 67, § 7; Ga. L. 1970, p. 954, § 6; Code 1933, § 41A-404, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

C.J.S.
73A C.J.S., Public Administrative Law and Procedure, §§ 481, 483.

7-1-94. Evidential value of results of examinations or investigations; editing out of information tending to undermine public confidence in financial institution.

When the record of any examination or investigation of a financial institution by the department or the report by the examiner or employee of the department who conducted such examination or investigation is admissible in evidence under Title 24, the department, with the permission of the court, may edit out of the record or report any portion thereof which is not pertinent to the issue in question before the court or which would tend unnecessarily to affect adversely the public confidence in the financial institution.

History.
Ga. L. 1919, p. 135, art. 2, § 20; Ga. L. 1919, p. 135, art. 3, § 10; Ga. L. 1920, p. 102, § 1; Code 1933, §§ 13-320, 13-410; Ga. L. 1966, p. 692, § 27; Code 1933, § 41A-405, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 12; Ga. L. 2011, p. 99, § 5/HB 24.

Cross references.
Hearsay rule exceptions; availability of declarant immaterial, § 24-8-803.
Self authentication, § 24-9-902.
Public records, § 24-10-1005.

Editor's notes.
Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews.
For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011).
For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 108.
11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1192, 1194.

C.J.S.
9 C.J.S., Banks and Banking, §§ 11 et seq., 137.

7-1-95. [Reserved] Admissibility of department's certificates and copies.

History.
Ga. L. 1974, p. 705, § 1; repealed by Ga. L. 2011, p. 99, § 6/HB 24, effective January 1, 2013.

Editor's notes.
Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that this Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.
Ga. L. 2015, p. 5, § 7/HB 90, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, reserved the designation of this Code section.

Law reviews.
For article on the 2011 repeal of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

7-1-96. [Reserved] Liability on bonds for nonperformance of duty.

History.
Ga. L. 1919, p. 135, art. 2, § 21; Code 1933, § 13-321; Code 1933, § 41A-407, enacted by Ga. L. 1974, p. 705, § 1; repealed by Ga. L. 2016, p. 390, § 1-4/HB 811, effective July 1, 2016.

Editor's notes.
Ga. L. 2016, p. 390, § 1-4/HB 811 repealed and reserved this Code section, effective July 1, 2016.

7-1-97. [Reserved] Costs of actions by or against department.

History.
Ga. L. 1919, p. 135, art. 2, § 22; Ga. L. 1931, p. 7, § 91; Code 1933, § 13-322; Code 1933, § 41A-408, enacted by Ga. L. 1974, p. 705, § 1; repealed by Ga. L. 2016, p. 390, § 1-4/HB 811, effective July 1, 2016.

Editor's notes.
Ga. L. 2016, p. 390, § 1-4/HB 811 repealed and reserved this Code section, effective July 1, 2016.

7-1-98. Department of Law to advise department.

It shall be the duty of the Department of Law to advise the department on any question of law submitted by it.

History.
Ga. L. 1919, p. 135, art. 2, § 23; Ga. L. 1931, p. 7, § 91; Code 1933, § 13-323; Code 1933, § 41A-409, enacted by Ga. L. 1974, p. 705, § 1.

7-1-99. Duties and responsibilities of department regarding interest and usury complaints; advisory opinions; effect.

(a) Except as provided in Chapter 3 of this title, as amended, and Chapter 22 of Title 33, as amended, the department is designated as the appropriate agency of this state to receive and investigate complaints or allegations regarding violations of the interest and usury laws of this state. In processing such matters, the department may refer complaints or allegations to other state or federal officials or agencies which have jurisdiction over the lender involved for investigation or other action.

(b)(1) The department, in consultation with the Department of Law, may render and publish advisory opinions for the assistance and guidance of financial institutions as defined in this chapter.

(2) Reliance in good faith upon an opinion issued as provided in paragraph (1) of this subsection shall constitute prima-facie evidence of good faith on the part of any person charged with any violation, resulting from the reliance, which subjects him to forfeiture or other sanctions imposed by the interest and usury laws. The provisions of this paragraph shall apply even if, following the reliance, the opinion

is amended, rescinded, or determined by any judicial or other authority to be invalid.

History.
Code 1933, § 41A-411, enacted by Ga. L. 1979, p. 951, § 1; Ga. L. 1989, p. 14, § 7.

Law reviews.
For article surveying 1979 legislative developments in commercial law, see 31 Mercer L. Rev. 13 (1979).

RESEARCH REFERENCES

ALR.
Constitutionality, construction, and effect of statutes relating to inspection, dissolution and liquidation of building and loan associations, 78 A.L.R. 1090.

Usury in connection with loan calling for variable interest rate, 18 A.L.R.4th 1068.

Part 5

Permissive Closing Days, Emergency Closings, Business Restrictions, and Voluntary Liquidations

Cross references.
Taking of possession of the business and property of financial institutions by department, § 7-1-150 et seq.
Dissolution of business corporations generally, § 14-2-1401 et seq.
Forfeiture of charter and dissolution of Secretary of State corporations generally, § 14-4-160 et seq.

7-1-110. Permissive closing days; deferral of business conducted on Saturday.

Any financial institution may remain closed one day each week in addition to Sundays and other legal holidays; and any act authorized, required, or permitted to be performed at or by any such financial institution on a day when it is closed may be performed on the next succeeding business day; and no liability or loss of rights of any kind shall result from the delay. Saturday shall not be construed to be a business day and any business conducted on Saturday may be deferred to the next succeeding business day, provided that such deferral is applicable to all business conducted by said financial institution on that day and is in accordance with a resolution adopted by the board of directors of the institution. Customers of any financial institution adopting such a deferral policy shall be notified of any such deferral of business by prominent notice posted in the lobby of the financial institution and by circularization in regular statement mailings at least 30 days prior to the effective date of any such deferral policy. Any financial institution changing its permissive closing day, temporarily or otherwise, shall post a notice of the change and the effective date thereof in a conspicuous place at each location affected by the change at least 30 days preceding the date of the change. Notwithstanding the

foregoing, credit unions serving a limited membership base may establish uniform business hours and days consistent with the needs of their membership.

History.
Code 1933, § 41A-501, enacted by Ga. L. 1978, p. 1714, § 2; Ga. L. 1983, p. 602, § 2; Ga. L. 2020, p. 493, § 7/SB 429.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, § 224.

7-1-110.1. Posting notice of intent to close banking location.

Except in the case of an emergency closing, before a financial institution may close a banking location, it must post at such location in a conspicuous place at least 30 days in advance of such closing a notice of intent to close. Such notice must remain posted for at least 30 consecutive days. Customers of a banking location shall be considered to have received notice if the requirements of this Code section have been met.

History.
Code 1981, § 7-1-110.1, enacted by Ga. L. 1999, p. 674, § 1.

7-1-111. Emergency closings.

Whenever it appears to the Governor that the welfare of this state or any region thereof or the welfare and security of any financial institution or the lives of the employees of the financial institution or the safety of the funds of depositors and property of the shareholders are endangered or placed in jeopardy by any impending or existing emergency or other catastrophe, including, but not limited to, economic crises, hurricanes, tornadoes, fire hazards, disruption or failure of utility, transportation, communication, or information systems, or civil disorders, the Governor may proclaim that an emergency exists and such state of emergency proclamation shall authorize financial institutions to elect to close. The Governor may also proclaim that any financial institution or type of financial institution shall be subject to special regulation as herein provided until the Governor, by a like proclamation, declares the period of such emergency to have terminated. The department may declare emergencies in specific cases for cause shown, and its declaration shall remain in effect until terminated by the Governor or the commissioner, whichever occurs first.

History.
Code 1933, § 14-1811, enacted by Ga. L. 1971, p. 812, § 1; Code 1933, § 41A-501, enacted by Ga. L. 1974, p. 705, § 1; Code 1933, § 41A-502, enacted by Ga. L. 1978, p. 1714, § 4; Ga. L. 1999, p. 674, § 1; Ga.

L. 2015, p. 344, § 6/HB 184; Ga. L. 2016, p. 390, § 1-5/HB 811.

RESEARCH REFERENCES

ALR.

Statute relating to closing of bank and assessment of stockholders as subject to constitutional objection of conferring judicial power upon administrative or executive officers, 78 A.L.R. 774.

Legal questions presented by the reopening of closed bank, 80 A.L.R. 1487; 99 A.L.R. 1217.

Legal aspects and consequences of declaration of "bank holiday," 86 A.L.R. 1138; 95 A.L.R. 934.

7-1-112. Business restrictions.

(a) During the period of or as a result of any financial emergency proclaimed by the Governor or declared by the department, or during any impending or existing emergency situation as described in Code Section 7-1-111, the department, in addition to all of the powers conferred upon it by law, shall have the authority to order any one or more financial institutions to restrict all or any part of their business and to limit or postpone for any length of time the payment of any amount or proportion of the deposits in any of the departments of the financial institutions as it may deem necessary or expedient. The department may further regulate the payments of such financial institutions as to time and amount, as in its opinion the interest of the public or of such financial institutions or the depositors thereof may require.

(b) No liability or loss of any rights of any kind shall be incurred by any financial institution during any emergency period declared by the Governor or the department by reason of the delay in the payment of any item or by the return or transmission of any item or document if such delay is caused by orders of the Governor or the department, interruption of communication facilities, suspension of payments by another financial institution, war or emergency conditions, or other circumstances beyond the control of the financial institution if it exercises such diligence as the circumstances require.

History.

Code 1933, § 14-1812, enacted by Ga. L. 1971, p. 812, § 2; Code 1933, § 41A-501, enacted by Ga. L. 1974, p. 705, § 1; Code 1933, § 41A-503, enacted by Ga. L. 1978, p. 1714, § 5; Ga. L. 1999, p. 674, § 2.

RESEARCH REFERENCES

C.J.S.

9 C.J.S., Banks and Banking, § 130.

7-1-113. Voluntary dissolution prior to commencement of business; failure to properly file articles of dissolution; power of department to seek dissolution.

(a) A financial institution which has not transacted any business as a financial institution other than organizational business may propose to dissolve by the affirmative vote of shareholders entitled to cast at least two-thirds of the votes which all shareholders are entitled to cast on the plan and by delivering to the department articles of dissolution which shall be executed by two duly authorized officers or shareholders under the seal of the financial institution and which shall contain:

(1) The date of incorporation of the financial institution;

(2) A statement that it has not transacted any business as a financial institution other than organizational business;

(3) A statement that all liabilities of the financial institution have been paid or provided for;

(4) A statement that all amounts received on account of capital stock and paid-in capital, less amounts disbursed for expenses, have been returned to the persons entitled thereto; and

(5) The number of shares entitled to vote on the dissolution and the number of shares voted for and against it, respectively.

(b) The articles of dissolution shall be delivered to the department together with the filing fee required by Code Section 7-1-862. If the department is satisfied that the financial institution has not conducted any business other than organizational business and if it finds that the articles of dissolution satisfy the requirements of this chapter, it shall deliver them with its written approval to the Secretary of State and notify the financial institution of its action. If the department shall disapprove the articles of dissolution, it shall give written notice to the financial institution of its disapproval and a general statement of the reasons for its decision. The decision of the department shall be conclusive, except as it may be subject to judicial review under Code Section 7-1-90.

(c) If the department determines that a financial institution has not conducted any business other than organizational business and if articles of dissolution satisfying the requirements of this chapter are not delivered to the department together with the filing fee as required by Code Section 7-1-862, the department may make written demand upon the financial institution to immediately provide articles of dissolution or to provide cause why such dissolution should not be pursued directly by the department. If the financial institution fails to provide articles of dissolution as required within 60 days from the date

of demand by the department, the department may seek dissolution of the financial institution in organization directly from the Secretary of State's office.

History.
Code 1933, § 41A-502, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 13; Code 1933, § 41A-504, as redesignated by Ga. L. 1978, p. 1714, § 3; Ga. L. 1993, p. 917, § 1; Ga. L. 2011, p. 518, § 2/HB 239; Ga. L. 2015, p. 344, § 7/HB 184; Ga. L. 2019, p. 828, § 3/HB 185.

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1020, 1182.

C.J.S.
9 C.J.S., Banks and Banking, § 593 et seq.

7-1-114. Voluntary dissolution after commencement of business.

(a) A financial institution which has commenced business may elect to dissolve voluntarily upon:

(1) Adoption by the vote required of its shareholders under subsection (b) of this Code section of:

(A) A plan of dissolution involving both a provision for assumption of its liabilities by another financial institution and a provision for continuance of its business if such assumption of its liabilities is not effected; or

(B) Any other plan of dissolution providing for full payment of its liabilities; and

(2) Approval by the department of the plan of dissolution after application for approval thereof in a manner prescribed by the department.

(b) Adoption of the plan by the shareholders of the financial institution shall require the affirmative vote of the shareholders entitled to cast at least two-thirds of the votes which all shareholders are entitled to cast on the plan and, if any class of shareholders is entitled to vote on the plan as a class, of the holders of at least two-thirds of the outstanding shares of such class, provided that, in the case of a credit union, adoption of the plan may be made by the affirmative vote of at least two-thirds of the members present and entitled to vote at a meeting duly called for that purpose.

(c) Upon receipt of an application for approval of a plan of dissolution, the department shall conduct such investigation as it may deem necessary to determine whether:

(1) The plan satisfies the requirements of this chapter;

(2) The plan adequately protects the interests of depositors, other creditors, and shareholders; and

(3) If the plan involves an assumption of liabilities by another financial institution, such assumption would be consistent with adequate and sound banking and in the public interest on the basis of factors substantially similar to those set forth in Code Section 7-1-534.

(d) Within 90 days after receipt of the application, the department shall approve or disapprove the application on the basis of its investigation and shall immediately give to the financial institution written notice of its decision and, in the event of disapproval, a general statement of the reasons for its decision. The decision of the department shall be conclusive, except as it may be subject to judicial review under Code Section 7-1-90.

History.
Ga. L. 1919, p. 135, art. 14, §§ 1, 2, 10; Code 1933, §§ 13-1501, 13-1502, 13-1510; Ga. L. 1967, p. 597, § 1; Code 1933, § 41A-503, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1977, p. 730, § 2; Code 1933, § 41A-505, as redesignated by Ga. L. 1978, p. 1714, § 3; Ga. L. 2020, p. 493, § 7/SB 429.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 207 et seq.
11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1020, 1182.
C.J.S.
9 C.J.S., Banks and Banking, § 593 et seq.
ALR.
Trust or preference in respect of money placed in bank for purpose of transaction with third person where bank subsequently becomes insolvent, 31 A.L.R. 472; 93 A.L.R. 881.
Right of creditors or stockholders of insolvent bank in charge of liquidating officer who refuses or fails to enforce liability of third persons to bank, to maintain action for that purpose, and conditions of such right, 116 A.L.R. 783.

7-1-115. Winding up voluntary dissolution proceedings.

(a) The board of directors shall have full power to wind up and settle the affairs of a financial institution in voluntary dissolution proceedings.

(b) Within 30 days after the department's approval of voluntary liquidation and dissolution, the financial institution shall give notice of its dissolution:

(1) By mail to each depositor and creditor (except those as to whom the liability of the financial institution has been assumed by another financial institution pursuant to the plan), including a statement of the amount shown by the books of the financial institution to be due to such depositor or creditor and a demand that

any claim for a greater amount be filed with the financial institution before a specified date at least 60 days after the date of notice;

(2) By mail to each lessee of a safe-deposit box and each customer for whom property is held in safe deposit (except those as to whom the liability of the financial institution has been assumed by another financial institution pursuant to the plan), including a demand that all property held in a safe-deposit box or held in safe deposit by the financial institution be withdrawn by the person entitled thereto before a specified date at least 60 days after the date of the notice;

(3) By mail to each person interested in funds held in a fiduciary account or other representative capacity;

(4) By a conspicuous posting at each office of the financial institution; and

(5) By such publication as the department may prescribe.

(c) As soon as feasible after the department's approval of voluntary liquidation and dissolution, the financial institution shall resign all of its fiduciary appointments and take such action as may be necessary to settle its fiduciary accounts.

(d) Except where liabilities are to be assumed by another financial institution:

(1) All claims of depositors and creditors shall be paid promptly after the date specified in the notice given under paragraph (1) of subsection (b) of this Code section, and unearned portions of rentals for safe-deposit boxes shall be rebated to the lessee thereof;

(2) Safe-deposit boxes whose contents have not been removed after the date specified in the notice given under paragraph (2) of subsection (b) of this Code section shall be opened under the supervision of the department and the contents placed in sealed packages which, together with unclaimed property held by the financial institution in safe deposit, shall be transmitted to the department to be held by it subject to Article 5 of Chapter 12 of Title 44, provided that the department while holding such property may take such actions as it deems appropriate to protect the interests of the owner, including reducing such property to cash;

(3) After payment of amounts due to all known depositors and creditors, unclaimed amounts due to depositors and creditors shall be paid through the department and held by it subject to Article 5 of Chapter 12 of Title 44; and

(4) Assets remaining after the performance of all obligations of the financial institution under this subsection and subsection (c) of this Code section shall be distributed to its shareholders according to

their respective rights and preferences. Partial distributions to shareholders may be made prior to such time only if and to the extent approved by the department.

(e) During the course of dissolution proceedings, the financial institution shall make such reports as the department may require and shall continue to be subject to the provisions of this chapter concerning examinations and investigations of financial institutions. Furthermore, during the course of a voluntary dissolution, the financial institution with the written permission of the department may elect to use provisions of Article 14 of Chapter 2 of Title 14 that are not in conflict with this chapter.

(f) If, at any time during the course of dissolution proceedings, the department finds that the assets of the financial institution will not be sufficient to discharge its obligations, the department may then or at any time thereafter take possession of the business and property of the financial institution and complete the dissolution in accordance with this chapter.

History.
Ga. L. 1919, p. 135, art. 14, §§ 3-6; Code 1933, §§ 13-1504, 13-1505, 13-1506; Ga. L. 1967, p. 597, § 1; Code 1933, § 41A-504, enacted by Ga. L. 1974, p. 705, § 1; Code 1933, § 41A-506, as redesignated by Ga. L. 1978, p. 1714, § 3; Ga. L. 1989, p. 14, § 7; Ga. L. 2003, p. 843, § 3; Ga. L. 2020, p. 493, § 7/SB 429.

OPINIONS OF THE ATTORNEY GENERAL

Disposition of proceeds of accounts not claimed during voluntary liquidation. — Proceeds of accounts not claimed during a voluntary liquidation of a financial institution pursuant to former Code 1933, § 41A-506 (see now O.C.G.A. § 7-1-115) pass to the custody of the Department of Banking and Finance for ultimate disbursement pursuant to the former Disposition of Unclaimed Property Act (see now O.C.G.A. § 44-12-190 et seq.). 1975 Op. Att'y Gen. No. 75-135.

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1020, 1182.
C.J.S.
9 C.J.S., Banks and Banking, §§ 163, 164.
ALR.
Right of creditors or stockholders of insolvent bank in charge of liquidating officer who refuses or fails to enforce liability of third persons to bank, to maintain action for that purpose, and conditions of such right, 116 A.L.R. 783.
Bank's or safe deposit company's liability for denying access to box, 4 A.L.R.3d 1462.

7-1-116. Articles of dissolution where business commenced; procedure if not filed.

(a) When all the liabilities of the financial institution have been discharged and all of its remaining assets have been distributed to its

shareholders pursuant to Code Section 7-1-115 or its liabilities have been assumed by another financial institution, the articles of dissolution shall be signed by two duly authorized officers of the financial institution under its seal and shall contain:

(1) The name of the financial institution and the post office address of its principal place of business;

(2) A statement that the department has previously approved a plan to dissolve the institution and the date on which such approval was transmitted to the Secretary of State;

(3) A statement that all liabilities of the financial institution have been discharged and that the remaining assets of the financial institution have been distributed to its shareholders or that its liabilities have been assumed as provided in this chapter; and

(4) A statement that there are no actions pending against the financial institution.

(b) The articles of dissolution shall be delivered to the department together with the filing fee required by Code Section 7-1-862. If the department finds that the articles satisfy the requirements of this chapter, it shall deliver its written approval to the Secretary of State with a copy of the articles of dissolution attached.

(c) Where a financial institution fails to file articles of dissolution within 180 days after the department determines that dissolution proceedings have been completed as provided in this part, the department may cause notice to be published in accordance with this chapter to the effect that persons having claims against the financial institution should notify the department within 30 days of the date of initial publication. If the department receives no such notifications or if claims are otherwise satisfied, the department shall notify the Secretary of State that the articles of incorporation or charter are no longer valid and should be promptly canceled of record in the offices of the Secretary of State.

History.

Ga. L. 1919, p. 135, art. 14, §§ 7, 9; Code 1933, §§ 13-1507, 13-1509; Ga. L. 1967, p. 597, § 1; Code 1933, § 41A-505, enacted by Ga. L. 1974, p. 705, § 1; Code 1933, § 41A-507, as redesignated by Ga. L. 1978, p. 1714, § 3; Ga. L. 1980, p. 972, § 3; Ga. L. 1993, p. 917, § 2; Ga. L. 2015, p. 344, § 8/HB 184.

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 207 et seq.

11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1020, 1182.

7-1-117. Certificate of dissolution.

If all applicable fees, charges, and taxes required by law have been paid upon the receipt of the department's approval, under Code Section 7-1-113 or 7-1-116, of the articles of dissolution, the Secretary of State shall immediately issue to the financial institution a certificate of dissolution with the approved articles of dissolution attached thereto and shall retain a copy of such certificate, the approval of the department, and the articles; and the existence of the financial institution shall cease.

History.
Ga. L. 1919, p. 135, art. 14, § 12; Code 1933, § 13-1512; Ga. L. 1967, p. 597, § 1; Code 1933, § 41A-506, enacted by Ga. L. 1974, p. 705, § 1; Code 1933, § 41A-508, as redesignated by Ga. L. 1978, p. 1714, § 3.

Part 6

Names, Registered Offices, and Advertising

RESEARCH REFERENCES

ALR.
Duty of depositor to report loss or theft of unsigned check, 26 A.L.R. 613.

7-1-130. Permissible names.

(a) The name of a financial institution shall not contain the words "Government," "Official," "Federal," "National," or "United States" or any abbreviation of any such words and shall not in the opinion of the department:

(1) Be indistinguishable from the corporate name of another financial institution conducting a banking business in this state as reflected in the records of the department; or

(2) Contain any word which may lead to the conclusion that the financial institution is authorized to perform any act or conduct any business which it is unauthorized or forbidden to perform by law, its articles, or otherwise.

(b) A financial institution may, without regard to subsection (a) of this Code section, use:

(1) Its name in use on April 1, 1975;

(2) A name in use on April 1, 1975, by another financial institution which is adopted by:

(A) A financial institution which is the resulting institution in

a plan of merger or consolidation to which the institution using the name is a party; or

(B) A financial institution which is incorporated under this chapter in pursuance of a plan of segregating the banking business and the trust business of the institution using the name; or

(3) A name of another financial institution already transacting business with the consent of the latter institution, provided that the names are distinguishable in the records of the Secretary of State.

History.
Code 1933, § 41A-601, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1998, p. 795, § 10.

Cross references.
Further restrictions on use of names by banks and trust companies, § 7-1-243.
Restriction on use of terms "savings and loan," "building and loan," § 7-1-779.
Permissible corporate names generally, § 14-2-401.
Use of corporate names by Secretary of State corporations, §§ 14-4-22, 14-4-25.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 183.

C.J.S.
9 C.J.S., Banks and Banking, §§ 43, 528.

7-1-131. Reservation of name.

(a) The exclusive right to use a corporate name permitted to be used by a financial institution may be reserved by a person intending to incorporate such an institution, by a corporation intending to engage in business in this state as a financial institution, by a financial institution intending to change its name, or by a national bank, a federal credit union, or a savings and loan association intending to convert into a financial institution organized under the laws of this state.

(b) Such reservation may be made by filing with the department a letter form application to reserve a specified name. If the department concludes that the use of the name complies with the requirements of Code Section 7-1-130, is otherwise consistent with the purposes and provisions of this chapter, and is distinguishable upon the records of the Secretary of State from the name of any other corporation, limited partnership, or limited liability company, it shall approve the name and notify the Secretary of State to issue such name reservation.

(c) The right to the exclusive use of a name reserved pursuant to this Code section may be transferred to anyone who would be entitled to reserve such name under this Code section except for such prior reservation by filing with the department a notice of the transfer which shall be executed by the transferor who reserved the name and which

shall set forth the name and address of the transferee. The department shall send a copy of such notice to the Secretary of State.

(d) Notwithstanding any other provisions of law, the process set forth in this Code section shall be the exclusive process for reserving the corporate name of a financial institution. Such reservation shall be valid for a period of six months.

History.
Code 1933, § 41A-602, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 14; Ga. L. 1978, p. 1717, § 2; Ga. L. 1989, p. 1257, § 1; Ga. L. 1998, p. 795, § 11; Ga. L. 2021, p. 323, § 1/HB 111.

Cross references.
Use of corporate names by Secretary of State corporations, §§ 14-4-22, 14-4-25.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 183.

7-1-132. Registered agent and office.

(a) Every financial institution shall continuously maintain a registered agent and a registered office. Such agent and office shall be located in a county in this state where the financial institution is authorized to conduct its general business; and, in the case of financial institutions subject to Chapter 2 or 3 of Title 14, such agent and office shall be the same as is required under those chapters.

(b) Not later than September 30, 1998, every financial institution shall file with the department a statement designating the name of its registered agent and the place of its registered office by street, post office address, and county. In the event of the failure of an institution to file said statement, the registered agent shall be the chief executive officer of the bank and the registered office of the institution shall be the business address where the chief executive officer is located.

(c) A financial institution may change, and a new financial institution may establish, its registered agent and the location of its registered office by filing a statement with the department designating the name of the new registered agent or the street, post office address, and county of its new registered office or both, provided that no change in the registered agent or office shall affect actions or proceedings commenced before the time of said change.

(d) Nothing contained in this Code section shall affect the obligation of a financial institution to file information with the Secretary of State.

History.
Code 1933, § 41A-603, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1998, p. 795, § 12.

7-1-133. Prohibited advertising.

(a) No person or corporation doing business in this state shall advertise in or through any newspaper, radio, television, letters, circulars, billheads, or in any way or through any medium seeking to induce any person to purchase an instrument which is purported to be insured or guaranteed in a manner comparable to an insured deposit or share account in any financial institution authorized to have such deposits or accounts when in fact such instrument does not possess comparable insurance coverage as determined by the department. Whenever any person, firm, or corporation doing business in this state shall compare, in any such advertising media, an investment or a return on an investment, except an investment or return on an investment in the form of a deposit or share account, to a deposit or share account or a return on a deposit or share account in an authorized financial institution, it shall be clearly stated in such advertising or solicitation that the investment is not a deposit insured by a public body of the United States or of this state.

(b) No person or corporation shall use the terms "savings," "savings account," "deposit," or "withdrawal" or any equivalent thereof in any advertisement as above described in subsection (a) of this Code section indicating reference to instruments issued by or to be issued by the person or corporation.

History.
Code 1933, § 13-204.2, enacted by Ga. L. 1973, p. 534, § 1; Code 1933, § 41A-604, enacted by Ga. L. 1974, p. 705, § 1.
Cross references.
Duty of bank to post notice if deposit insurance maintained by bank is less than amounts insured by Federal Deposit Insurance Corporation, § 7-1-244.
False advertising generally, § 10-1-420 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 68, 107, 111, 419, 420.

7-1-134. Unfair competition, unfair trade practice, and trade name and trademark laws unaffected.

Nothing in this chapter shall abrogate or limit the law as to unfair competition or unfair trade practice nor derogate from the common law or principles of equity or the statutes of this state or of the United States with respect to the right to acquire and protect trade names and trademarks.

History.
Code 1933, § 41A-605, enacted by Ga. L. 1974, p. 705, § 1.

Cross references.
Deceptive or unfair trade practices generally, § 10-1-370 et seq.

Part 7

Receivership Powers and Procedures Generally

RESEARCH REFERENCES

ALR.
Trust or preference in respect of money placed in bank for purpose of transaction with third person where bank subsequently becomes insolvent, 32 A.L.R. 472; 93 A.L.R. 881.

Balance due other banks on clearing house settlement as preferred claim against insolvent bank, 44 A.L.R. 1535.

Right of savings bank to liquidate voluntarily and close business, 69 A.L.R. 1255.

When bank deemed insolvent, or "hopelessly" insolvent, in civil cases, 85 A.L.R. 811.

Time when suit may be brought on bond of officer taking charge of insolvent bank, 85 A.L.R. 964.

Bank conservators, 107 A.L.R. 1431.

7-1-150. Taking of possession by department; cumulative remedies.

(a) The department may in its discretion take possession of the business and property of any financial institution whenever such financial institution:

(1) Is insolvent or in an unsafe or unsound condition to transact its business;

(2) Has generally suspended payment of its obligations, without authority of law;

(3) Has violated any court order, statute, rule, or regulation or its articles and the department determines that its continued control of its own affairs threatens injury to the public, the financial community, or its depositors and other creditors; or

(4) Requests the department, by its board of directors, to take possession for the benefit of depositors, other creditors, and shareholders.

(b) The right of the department to take possession of a financial institution shall be in addition to and cumulative with all other rights, remedies, and powers of the department. The department may, in its discretion, before or after taking possession, petition the principal court for appointment of a receiver pursuant to subsection (c) of Code Section 7-1-151.

History.
Ga. L. 1919, p. 135, art. 7, § 1; Ga. L. 1925, p. 165, § 10; Code 1933, §§ 13-801, 13-802, 25-122; Ga. L. 1935, p. 114, § 1;

Ga. L. 1937-38, Ex. Sess., p. 307, § 7; Ga. L. 1943, p. 279, § 1; Ga. L. 1956, p. 742, § 4; Ga. L. 1960, p. 977, § 1; Ga. L. 1962, p. 74, § 3; Ga. L. 1967, p. 597, § 2; Ga. L. 1968, p. 465, § 8; Code 1933, § 41A-701, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2024, p. 1052, § 1(a)(9)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (a)(3) and in subsection (b).

JUDICIAL DECISIONS

Exercises of discretion not interfered with absent gross abuse. — Under banking laws of this state, the superintendent of banks (now commissioner of banking and finance), is vested with broad discretion in supervision of banks and in determining when a particular bank should be closed for purpose of liquidation; the superintendent's discretion in such matters will not be interfered with by the court, unless that discretion has been exercised arbitrarily or capriciously and thus grossly abused. McGinty v. Gormley, 181 Ga. 644, 183 S.E. 804, 1935 Ga. LEXIS 170 (1935).

Injunctive relief to enjoin interference with department's possession. — Court of equity will enjoin any unauthorized interference with possession of superintendent of banks (now department of banking and finance) of assets of insolvent bank. Especially will injunction in such case lie when the plaintiff also contests the justness of the laborers' liens sought to be enforced against the grantor in the security deed and property therein conveyed. Bennett v. Green, 156 Ga. 572, 156 Ga. 573, 119 S.E. 620, 1923 Ga. LEXIS 275 (1923).

RESEARCH REFERENCES

C.J.S.

9 C.J.S., Banks and Banking, § 133.

ALR.

Balance due other banks on clearing house settlement as preferred claim against insolvent bank, 44 A.L.R. 1535.

When bank deemed insolvent, or "hopelessly" insolvent, in civil cases, 85 A.L.R. 811.

Bank conservators, 107 A.L.R. 1431.

7-1-151. Status of department as receiver; restrictions on appointment.

(a) Upon taking possession of a financial institution, the department shall automatically become the receiver of said institution with all rights, powers, and duties conferred by this chapter and, to the extent not in conflict with this chapter, all rights, powers, and duties of a receiver appointed pursuant to Chapters 5 and 8 of Title 9, relating to injunctions and receivers.

(b) Except as provided in subsection (c) of this Code section, no court shall appoint anyone but the department as receiver of a financial institution. Whenever any court, at the instance of the department, a

depositor, a shareholder, or other person entitled by law to institute such proceedings, shall determine that a receiver should be appointed, for any reason whatsoever, it shall appoint the department as such receiver. When thus appointed receiver by a court, the department shall serve in the same manner and with the same limitations and shall have the same rights, powers, and duties as when it becomes receiver by operation of law and without appointment by any court. No court shall impose upon the department as receiver any duties or restrictions in conflict with this chapter.

(c) In any proceeding for the appointment of a receiver of an institution whose deposits or shares are insured by a public body of the United States, the court may upon the recommendation of the department (whether or not the department is a party) appoint said public body or its administrator as receiver. If said public body or its administrator accepts the appointment, it or he or she shall have all the rights, powers, and duties of the department as receiver under this chapter and all the rights, powers, and duties as conferred by other applicable law. The public body or its administrator may act as receiver without bond.

History.
Code 1933, § 41A-702, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2005, p. 826, § 6/SB 82.

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, § 1032 et seq.

C.J.S.
9 C.J.S., Banks and Banking, § 136.

ALR.
Bank conservators, 107 A.L.R. 1431.

7-1-152. General assignment prohibited; taking of possession upon request.

No financial institution shall make a general assignment of its business and property for the benefit of its creditors by the appointment of an assignee or a trustee or otherwise. In lieu of the power to make an assignment for the benefit of creditors, a financial institution may request the department to take possession as provided in this part. In such cases, the department shall take possession and become receiver in the same manner and subject to the same provisions of this chapter as when it takes possession of the business and property of a financial institution without the request of such financial institution.

History.
Ga. L. 1919, p. 135, art. 7, §§ 2, 4; Code 1933, § 13-804; Code 1933, § 41A-703, enacted by Ga. L. 1974, p. 705, § 1.

7-1-153. Posting of notice of taking possession.

The department, upon taking possession of the business and property of a financial institution as receiver, shall post notice of such fact on the front door of all offices of the institution open to the public for the transaction of business in person.

History.
Code 1933, § 41A-704, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, § 134.

7-1-154. Certificate of possession; naming deputy receiver.

The department shall immediately after taking possession file with the principal court a certificate to be known as the certificate of possession, setting forth the facts on the basis of which it has taken possession. The certificate shall state the name of the deputy receiver, if any, whom the department, pursuant to this chapter, appoints to take charge of the affairs of the financial institution, together with the duties of such deputy receiver. If the department does not appoint a deputy receiver prior to the date of the filing of the certificate of possession or if it appoints a new deputy receiver or an additional one or if it adds to the duties of the deputy receiver, it shall file a supplement to the certificate of possession setting forth such acts. The certificate of possession and any supplement thereto shall be listed in the judgment index in the name of the financial institution as defendant and of the department as plaintiff.

History.
Ga. L. 1919, p. 135, art. 7, § 5; Ga. L. 1927, p. 195, § 2; Code 1933, § 13-805; Code 1933, § 41A-705, enacted by Ga. L. 1974, p. 705, § 1.

7-1-155. Injunction to restrain department.

Any financial institution of whose business or property the department has taken possession as receiver may, at any time within ten days after the department has become receiver, apply to the principal court for an order requiring the department to show cause why it should not be enjoined from continuing as receiver. Service may be made in such action by serving the commissioner personally or by leaving a copy with the deputy in charge of his or her office in the department or by serving the deputy receiver appointed by the department to manage the affairs of such financial institution. The court shall, after a hearing upon the merits, either dismiss the application or order the department to surrender to the financial institution possession of its business and

property; but no such injunction shall issue where the department has been appointed receiver by action of a court of competent jurisdiction or by action of the financial institution itself, in accordance with this chapter. Such application for injunction may in the discretion of the court be heard at any time after service as provided in this Code section, with the right by either party to appeal, as in other cases of applications for temporary injunction.

History.

Ga. L. 1919, p. 135, art. 7, § 8; Code 1933, § 13-810; Code 1933, § 41A-706, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2016, p. 883, § 3-3/HB 927.

Editor's notes.

Ga. L. 2016, p. 883, § 1-1/HB 927, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Appellate Jurisdiction Reform Act of 2016.'"

Ga. L. 2016, p. 883, § 6-1/HB 927, not codified by the General Assembly, provides that: "Part III of this Act shall become effective on January 1, 2017, and shall apply to cases in which a notice of appeal or application to appeal is filed on or after such date."

Law reviews.

For article on the 2016 amendment of this Code section, see 33 Ga. St. U. L. Rev. 205 (2016).

7-1-156. Supervision of department by court.

(a) Except as otherwise provided in this chapter, the department, when it has taken possession of a financial institution, shall be responsible to the principal court and not to any other court. All actions against the department or any official of it involving a financial institution which is or has been in the department's possession shall be brought in the principal court.

(b) The principal court shall sit as a court of equity. It shall have the power, upon petition of the department, to make and enforce any appropriate order to enable the department, with the utmost dispatch, to discharge its duties in connection with the business and property of any financial institution of which it has taken possession.

(c) The court shall grant to any party against whom an order is sought the right to appear, within ten days after notice is given, to show cause why the order should not be made. The court shall have the power, at the end of the ten-day period, ex parte if the other party does not appear to show cause, or upon the merits if the party does appear, to issue the aforementioned order.

(d) Whenever this chapter empowers the department as receiver to take any action with the leave of court, the department shall give the financial institution and its creditors, depositors, and shareholders ten days' notice of its proposed action before seeking the approval of the court, provided that the court may, upon cause shown, shorten the time or dispense with such notice or direct that it be sent to only specified parties. In determining what, if any, notice shall be provided, the court may consider, among other factors, the necessity for immediate action

in the interest of the financial institution as a whole and whether the interests of potential addressees are actually at stake. Where parties object to the proposed action of the department, the court shall allow them an opportunity to present their views appropriate to the nature of the case.

History.
Ga. L. 1927, p. 195, § 15-A; Code 1933, § 13-809; Code 1933, § 41A-707, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 15.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, § 134.

7-1-157. General powers of department in possession.

(a) The department in possession shall be vested with all the rights, powers, and duties of such financial institution; with the title or the right to possession of all property to which the financial institution has title or the right to possession, including debts due, and liens and other security therefor; and with the financial institution's rights of action or redemption. This shall be so whether such property and debts due, such liens or other security therefor, or such rights of action or redemption are held in the name of such financial institution or in the name of some other corporation or person.

(b) The department shall be the representative of the creditors of the financial institution and shall be entitled, as such, to have vacated and set aside, for the benefit of the creditors, any judgment, execution, attachment, sequestration, payment, security interest, assignment, transfer, conveyance, or encumbrance which could have been avoided by any of the creditors or by which one creditor is given a preference over another. As used in this subsection, the term "preference" means all transfers of the assets of a financial institution made or suffered, either after or in contemplation of insolvency, for the purpose of allowing a creditor to gain more than his ratable share of the assets of the institution as determined by Code Section 7-1-202.

(c) The department is authorized to collect all moneys due to the financial institution and to do such other acts as are necessary to conserve its assets and business. In exercising its power as receiver, the department shall give first consideration to the interests of depositors and other creditors as a whole and shall give consideration to the interests of shareholders and other owners only when depositors and other creditors have received or are assured of full payment of their claims.

(d) The department as receiver shall have the power to execute in its

name or in the name of the financial institution any instrument necessary or proper to effectuate its powers or perform its duties as receiver. Any instrument executed in the name of the institution pursuant to the authority given by this subsection shall be valid and effectual for all purposes as though executed by proper officers of the institution by authority of its board of directors or other governing body.

History.
Ga. L. 1919, p. 135, art. 7, § 3; Ga. L. 1922, p. 63, § 1; Code 1933, §§ 13-803, 13-808; Code 1933, § 41A-708, enacted by Ga. L. 1974, p. 705, § 1.

JUDICIAL DECISIONS

Collection of debts. — While superintendent (now department) has possession of bank only superintendent or an authorized agent may collect debts. Bennett v. Simmons, 30 Ga. App. 529, 118 S.E. 493, 1923 Ga. App. LEXIS 522 (1923).

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 104.

C.J.S.
9 C.J.S., Banks and Banking, §§ 133 et seq., 147.

ALR.
Bank conservators, 107 A.L.R. 1431.

7-1-158. Appointment of deputy receivers, counsel, and other assistants.

The department may appoint one or more official agents, to be known as deputy receivers, to assist it in the management, reorganization, consolidation, liquidation, or distribution of the assets and affairs of any financial institution of which it has taken possession as receiver. The department may delegate to each deputy receiver any duty imposed upon or any right or power granted to it as receiver. The department may also employ such other assistants as it deems necessary, including such assistant attorneys general or other attorneys as may be appointed by the Attorney General or independently retained by the department in connection with the receivership. The department may also retain, to assist it in the management, reorganization, consolidation, liquidation, or distribution, any officer or other employee of the financial institution of which it has taken possession.

History.
Ga. L. 1919, p. 135, art. 7, § 9; Ga. L. 1931, p. 7, § 91; Code 1933, §§ 13-811, 13-812; Code 1933, § 41A-709, enacted by Ga. L. 1974, p. 705, § 1.

JUDICIAL DECISIONS

Designation of agent to perform duties connected with liquidation. — Although the superintendent (now department) is not required to transfer bank assets and affairs to the superintendent's office, the superintendent is not expected to be present at all times at the office of the bank, either in person or by agent clothed with the superintendent's power. The superintendent may designate an agent to perform such duties connected with liquidation as the superintendent could do personally. Bennett v. Simmons, 30 Ga. App. 529, 118 S.E. 493, 1923 Ga. App. LEXIS 522 (1923).

Department may surrender bank to bank's officers rather than appoint agent. — Circumstances of a particular case may not demand appointment of such agent. The superintendent (now department) may conclude to surrender the bank to the bank's officers. Bennett v. Simmons, 30 Ga. App. 529, 118 S.E. 493, 1923 Ga. App. LEXIS 522 (1923).

Authority to make collections. — Fact that some person is, during superintendent's (now department's) control, in building or office of bank, engaged in work upon the bank's books or papers, does not, without more, establish that the person has authority to make collections. This is true for the reason, among others, that the superintendent may employ such attorneys or others as may be necessary in liquidation and distribution of the assets. Bennett v. Simmons, 30 Ga. App. 529, 118 S.E. 493, 1923 Ga. App. LEXIS 522 (1923).

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 104.

ALR.
Bank conservators, 107 A.L.R. 1431.

7-1-159. Suspension or continuation of business.

The department is authorized, upon taking possession of the business and property of a financial institution as receiver, to continue or to suspend the business for such period as it may deem necessary to enable it to determine whether to surrender such possession to the financial institution, to authorize a merger or consolidation, to liquidate the affairs of such financial institution, or to take such other action as is authorized by law.

History.
Code 1933, § 41A-710, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 104.

C.J.S.
9 C.J.S., Banks and Banking, § 133.

7-1-160. Determination to liquidate; filing of supplemental certificate.

The department shall, within six months after the date on which it

takes possession of any financial institution as receiver, determine whether or not to liquidate the business and property and distribute the assets of the financial institution. If it shall determine to liquidate, it shall forthwith file with the principal court a supplement to the certificate of possession, setting forth this determination. The department shall then proceed to liquidate the affairs of the financial institution with as much dispatch as shall appear to be expedient under the circumstances.

History.
Code 1933, § 41A-711, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, § 1182.

C.J.S.
9 C.J.S., Banks and Banking, § 133.

7-1-161. Powers and duties of department before and after determination to liquidate.

Except where otherwise specifically provided, all powers and duties granted by this chapter to the department in possession of the business and property of a financial institution as receiver may be exercised by it both before and after its formal determination, pursuant to this chapter, to liquidate the affairs of such financial institution.

History.
Code 1933, § 41A-712, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, §§ 133, 136, 139.

7-1-162. Inventory and appraisement.

(a) When the department has taken possession of the business and property of a financial institution as receiver, it shall forthwith prepare a complete and detailed inventory of the assets of such financial institution. The inventory shall be verified by oath or affirmation of the commissioner or other person making it.

(b) As soon as expedient after taking possession, the department shall cause a complete appraisement of the assets of the financial institution to be made, in duplicate, under oath or affirmation, by not less than two nor more than three disinterested appraisers selected by

it. Such appraisement shall be included upon the same document or documents as the inventory. The value of the assets shall be computed in the appraisement as of the date on which the department took possession.

(c) The original and duplicate of the inventory and appraisement shall be filed in the office of the commissioner. However, if the commissioner shall determine, in accordance with this chapter, to liquidate the affairs of the financial institution, he shall immediately, after the determination to liquidate, file the duplicate inventory and appraisement with the principal court.

(d) When the department takes possession of business and property of a financial institution which in the two immediately preceding reports of condition filed in accordance with subsection (a) of Code Section 7-1-68 reported assets of less than $150,000.00, the department shall not be required to secure an appraisement of the assets of the financial institution under subsection (b) of this Code section or to file an appraisement of the assets with a determination to liquidate under subsection (c) of this Code section, unless the principal court, upon application by a shareholder or creditor, shall otherwise order.

History.
Ga. L. 1919, p. 135, art. 7, § 12; Code 1933, § 13-814; Code 1933, § 41A-713, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1976, p. 1681, § 1.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, § 759 et seq.

7-1-163. Notice to holders of assets; power of court to order transfer.

(a) Upon becoming receiver, the department shall forthwith give notice in writing of such fact to all corporations and persons having custody or possession of any assets or other property of the financial institution in receivership or of any other property with respect to which such institution has a right to possession or custody for any purpose whatsoever.

(b) The principal court shall have the power, except in cases where a jury trial is requested, upon petition of the department, to order any corporation or person which has custody or possession of assets or other property to which such financial institution shall have the right of custody or possession, for any reason whatsoever, to transfer or convey such property to the department and to execute and deliver any instrument necessary to accomplish that purpose.

(c) Any person aggrieved by an order of the court may request a jury trial to determine the validity of his claim.

History.
Ga. L. 1919, p. 135, art. 7, § 5; Ga. L. 1927, p. 195, § 2; Code 1933, § 13-805; Code 1933, § 41A-714, enacted by Ga. L. 1974, p. 705, § 1.

7-1-164. Power of department to borrow money.

The department may, without leave of court, borrow money from any federal or state public body or from any person or corporation and grant as security therefor any real or personal property of the financial institution for the purpose of facilitating the liquidation, reorganization, or rehabilitation of the financial institution. The repayment of money borrowed under this Code section and interest thereon shall be considered an expense of administration under Code Sections 7-1-197 and 7-1-202.

History.
Code 1933, § 41A-715, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, § 1083.
ALR.
Power of receiver or liquidating officer of insolvent bank or trust company to borrow and pledge assets and power of court to authorize him to do so, 91 A.L.R. 1119.

7-1-165. Surrender of burdensome assets.

The department may, with leave of court, surrender to the financial institution real or personal property which it finds to be burdensome and of no advantage to the depositors or other creditors of the institution. It may likewise, with leave of court, convey title to any holder of a mortgage, security deed, security interest, or a lien against property in its possession, where it shall appear that to continue to hold such property is burdensome and of no advantage to the financial institution, its depositors, or other creditors.

History.
Code 1933, § 41A-716, enacted by Ga. L. 1974, p. 705, § 1.

7-1-166. Compromise of claims; extension of mortgages or notes.

(a) The department may, with leave of court, compound or compromise any debt, claim, or judgment due to the financial institution in

receivership and discontinue any action or other proceeding pending therefor.

(b) The department may, without leave of court, enter into an agreement in writing upon such terms as shall seem reasonable to it to extend, for a period not to exceed three years, the maturity of any mortgage or security deed obligation in its possession. However, the department shall not enter into any agreement extending any such obligation which shall have been pledged by the financial institution of which it is in possession as receiver unless it shall first obtain the written consent of the pledgee of such mortgage to such extension. The department may likewise renew or extend, for limited periods, other notes and drafts held by the financial institution.

History.
Ga. L. 1919, p. 135, art. 7, § 7; Ga. L. 1922, p. 63, § 1; Code 1933, §§ 13-807, 13-808; Code 1933, § 41A-717, enacted by Ga. L. 1974, p. 705, § 1.

JUDICIAL DECISIONS

Conclusiveness of order granting application to settle doubtful claim. — Order of judge of superior court granted on application of state superintendent of banks (now commissioner of banking and finance), authorizing settlement of bad or doubtful claims, is conclusive on all the parties to the proceeding, including the bank, until set aside in a manner prescribed by law for setting aside judgments. Rucker v. Upshaw, 199 Ga. 529, 34 S.E.2d 602, 1945 Ga. LEXIS 324 (1945).

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, § 1083.

C.J.S.
9 C.J.S., Banks and Banking, § 139.

7-1-167. Payment of mortgages and liens; protection of equities.

The department may, with leave of court, pay off all mortgages, security deeds, security agreements, and liens of or upon any real or personal property which belong to the financial institution. It may, without leave of court, purchase, at a judicial sale or at any sale authorized by an order of a court of competent jurisdiction, any real or personal property in order to protect any equity which the financial institution has in such real or personal property.

History.
Ga. L. 1922, p. 63, § 1; Code 1933, § 13-808; Code 1933, § 41A-718, enacted by Ga. L. 1974, p. 705, § 1.

7-1-168. Sales of real property.

The department may, with leave of and upon the terms and conditions prescribed by the court, sell any real property of the financial

institution of which it is in possession as receiver. The order of the court authorizing such sale shall state whether the sale shall be entirely for cash or partly for cash and partly for evidences of indebtedness and whether it shall be public or private. Each such sale of real property shall be confirmed by the court if all the terms and conditions of its order authorizing such sale have been complied with. If the real property is located in this state but in a county other than the county of the principal court, the department shall file a certified copy of all orders relating to the property in the office of the clerk of the superior court of the county where the real property is located.

History.
Ga. L. 1919, p. 135, art. 7, § 7; Code 1933, § 13-807; Code 1933, § 41A-719, enacted by Ga. L. 1974, p. 705, § 1.

7-1-169. Leases of property.

The department may, without leave of court, enter into leases for a period not to exceed one year of real or personal property belonging to the financial institution in receivership. It may, with leave of court, enter into such leases for a period not to exceed ten years, upon the terms and under the conditions prescribed by the order of the court.

History.
Code 1933, § 41A-720, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, § 139.

7-1-170. Sales or exchanges of securities; sales of liens or personal property.

(a) The department may, without leave of court, sell on any stock exchange or otherwise, at such times and in such manner as it may deem advisable, listed or unlisted securities which belong to the financial institution in receivership.

(b) The department may, without leave of court, exchange listed or unlisted securities for other securities of the corporation issuing the securities or of a corporation which has merged or consolidated with or has taken over such corporation.

(c) The department may, without leave of court, sell any mortgage or other lien upon real property or any judgment, at such times and in such manner as it shall deem to be advisable.

(d) Except as otherwise specifically provided by this chapter, the department may, without leave of court, sell:

(1) At public sale; or

(2) At private sale, for a net consideration not below the amount at which such personal property has been valued in the appraisement required by this chapter,

any personal property which belongs to the financial institution in receivership or which such financial institution has the power to sell. It may, with leave of court, sell such personal property at private sale upon such terms and under such conditions as the court shall prescribe to be commercially reasonable.

History. Ga. L. 1919, p. 135, art. 7, § 7; Code 1933, § 13-807; Code 1933, § 41A-721, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, § 141.

7-1-171. Deposit of moneys by department.

All moneys received by the department as receiver of a financial institution except those moneys necessary to administer the liquidation shall be deposited by it in interest-bearing accounts with one or more institutions authorized by law to receive deposits and subject to the supervision of either federal or state regulatory authorities. It shall require of such depository security therefor, in such amount and of such nature as the department shall deem adequate.

History. Ga. L. 1919, p. 135, art. 7, § 22; Code 1933, § 13-824; Code 1933, § 41A-722, enacted by Ga. L. 1974, p. 705, § 1.

7-1-172. Disposition of property in safe-deposit vault or held for safekeeping.

(a) The department may, any time after taking possession of a financial institution as receiver, give written notice to anyone claiming or appearing on the books of such financial institution to be the owner or to be entitled to the possession of any personal property left with such financial institution as bailee for safekeeping or depository for hire and to anyone appearing on the books of the financial institution to be the lessee of any safe, vault, or safe-deposit box, notifying such bailor, depositor, or lessee, respectively, to remove all such personal property within the period fixed by the notice, provided that such period shall in no case be less than 60 days after the date of the notice.

(b) At the expiration of such period, if the lessee of a safe, vault, or safe-deposit box has not removed the contents thereof, the department may open such safe, vault, or safe-deposit box in the presence of a

notary public not an officer or employee of the financial institution or of the department. The contents, if any, of such safe, vault, or safe-deposit box shall then be sealed and marked by such notary with the name and address of the lessee in whose name such safe, vault, or safe-deposit box appeared on the books of the financial institution and with a list and description of the property therein. The department shall hold such property until it is delivered to the owner or those claiming through him or is disposed of under Article 5 of Chapter 12 of Title 44 and, while holding such property may take such action as it deems appropriate to protect the interest of the owner therein, including reducing the property to cash.

(c) The department shall follow the same procedure and have the same powers with regard to the property left with the financial institution as bailee for safekeeping or depository for hire and not called for within the period specified by the notice.

(d) The contract of bailment, deposit, or lease, if any, shall be considered at an end upon the date designated by the commissioner for the removal of the property therein. The amount of unearned rent or charges, if any, paid by the bailor, depositor, or lessee, shall become a debt of the financial institution.

History.
Code 1933, § 41A-723, enacted by Ga. L. 1974, p. 705, § 1.

Cross references.
Disposition by banks and trust companies of adverse claims to deposits and property held in safe deposit, § 7-1-353.

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, § 1013.

ALR.
Levy upon or garnishment of contents of safe deposit box, 19 A.L.R. 863; 39 A.L.R. 1215.

Liability for loss of contents of safe-deposit box, 42 A.L.R. 1304; 133 A.L.R. 279.

Rights of owners of securities deposited in bank upon its insolvency, 84 A.L.R. 1534; 126 A.L.R. 625.

Presumption as to ownership of property in safe deposit box, 101 A.L.R. 832.

Presumption and burden of proof, in action or proceeding against bank or its liquidator, as to reasons or justification for failure to return subject of special deposit on demand, 119 A.L.R. 831.

Bank's or safe deposit company's liability for denying access to box, 4 A.L.R.3d 1462.

7-1-173. Bringing or defending actions.

(a) For the purpose of executing any of the powers and performing any of the duties respectively conferred or imposed upon it, as receiver, by this chapter, the department may, in its name as receiver of such financial institution, prosecute any action at law or in equity in any

court of this state or of any other state or in any federal court, whether or not such action is pending on behalf of the financial institution at the time it takes possession. It may likewise defend any action at law or in equity pending against the financial institution at the time it takes possession. The department may, in its name as receiver of a corporation, institute and maintain any action which any director, officer, or such corporation or any shareholder or creditor thereof could have instituted or maintained.

(b) Notwithstanding the provisions of other laws to the contrary, the statute of limitations on all causes of action which may accrue to any financial institution over whose affairs the department is receiver shall be extended for a period of six months.

History.
Ga. L. 1922, p. 63, § 1; Code 1933, § 13-808; Code 1933, § 41A-724, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1984, p. 949, § 2.

JUDICIAL DECISIONS

Constitutionality. — See Shannon v. Mobley, 166 Ga. 430, 143 S.E. 582, 1928 Ga. LEXIS 320 (1928).

Section is confined to matters relating to bank's assets. — Statute does not give to superintendent of banks (now department of banking and finance) any authority to prosecute any cause of action which is vested by law in the bank or in the bank's stockholders or the creditors thereof. The section is in terms confined to such matters as relate to the assets of bank as such, debts and liabilities due to the bank in the bank's corporate capacity. Hines v. Wilson, 164 Ga. 888, 139 S.E. 802, 1927 Ga. LEXIS 303 (1927).

Action against directors causing insolvency lies by superintendent (now department), not by stockholders. Hinton v. Mobley, 167 Ga. 60, 144 S.E. 738, 1928 Ga. LEXIS 98 (1928).

Tax lien on realty. — Realty sold by department pursuant to court order carries with the realty any outstanding tax lien. Stephens v. First Nat'l Bank, 166 Ga. 380, 143 S.E. 386, 1928 Ga. LEXIS 311 (1928).

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, § 1083.

C.J.S.
9 C.J.S., Banks and Banking, §§ 614, 629, 630.

ALR.
Right of creditors or stockholders of insolvent bank in charge of liquidating officer who refuses or fails to enforce liability of third persons to bank, to maintain action for that purpose, and conditions of such right, 97 A.L.R. 169; 116 A.L.R. 783.

7-1-174. Surrender of possession by department prior to final liquidation; special liquidations and reorganizations.

(a) The department may, upon conditions approved by it, surrender possession of a financial institution in receivership at any time prior to final liquidation and distribution under the following circumstances:

(1) It may surrender possession to the financial institution itself when it finds the institution to be in a safe and sound condition to resume its business; or

(2) It may surrender to the financial institution itself or to any other corporation or person possession of all or part of the business, property, moneys, credits, or other assets of the financial institution in receivership, to permit to be carried into effect a special plan of liquidation, reorganization, or rehabilitation under the requirements of this Code section.

(b) Before the department may surrender possession of any of the assets of a financial institution pursuant to a special plan of liquidation, such plan shall have been approved by the principal court and a majority of creditors (including depositors) of the institution, both as to number of creditors and as to the amount of claims.

(c) Before the department may surrender possession of any of the assets of a financial institution pursuant to a special plan of reorganization or rehabilitation, such plan shall have the same approvals as required under subsection (b) of this Code section and, in addition, shall be approved by the affirmative vote of the holders of a majority of shares entitled to vote thereon.

(d) Whenever the department shall surrender possession under this Code section, it shall forthwith file with the principal court a supplement to the certificate of possession, setting forth in detail all the conditions and purposes of such surrender. This supplement shall be indexed in a manner which will, insofar as necessary, satisfy the prior record of the certificate of possession.

(e) Whenever the department shall, under this Code section, surrender possession of the entire business and property of a financial institution in receivership, it shall file in the principal court an account, which shall correspond to any other final account under this chapter. Such account shall be subject to exceptions by shareholders, or depositors, or other creditors, and to confirmation by the court, in the same manner as is provided by this chapter for any account filed by the department as receiver.

History.
Code 1933, § 41A-725, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, § 136.

7-1-175. Ability of department to reject executory contract or lease of financial institution in receivership.

Within 180 days after the department takes possession of a financial institution, the department, as receiver, may at its election reject any executory contract to which the financial institution is party without further liability to the financial institution or the receiver or may reject any obligation of the financial institution as a lessee of real or personal property. The department's election to reject a lease creates no claim for rent other than rent accrued to the date of termination or for actual damages, if any, for such termination, not to exceed the equivalent of six months' payment.

History.
Code 1981, § 7-1-175, enacted by Ga. L. 1984, p. 949, § 3.

7-1-176. Sale of assets of financial institution in receivership.

(a) Whenever the department as receiver, with leave of court as provided in Code Section 7-1-156, undertakes to sell all or part of the assets of a financial institution in its possession in consideration of the assumption by the purchaser of the liabilities due to depositors and other creditors other than the holders of subordinated securities, the department shall be under no further obligation to file any inventory, appraisement, partial accounting, or deliver any notice to creditors other than holders of subordinated securities until the filing of the final accounting unless otherwise directed by the court.

(b) Notwithstanding any other law to the contrary, in facilitation of a purchase of assets and assumption of liabilities as described in subsection (a) of this Code section, all or any part of the assets may be sold to the deposit insurer for the financial institution in liquidation notwithstanding such insurer's capacity as receiver or deputy receiver of the financial institution. Such insurer as receiver or deputy receiver may also borrow from itself in its corporate capacity any amounts necessary to facilitate the assumption of deposit liabilities by an existing financial institution or a newly chartered financial institution, assigning any part or all of the assets of the closed bank as security for such loan.

History.
Code 1981, § 7-1-176, enacted by Ga. L. 1984, p. 949, § 4.

PART 8

CLAIMS, PRIORITIES, AND ACCOUNTING IN RECEIVERSHIPS

RESEARCH REFERENCES

Am. Jur. Proof of Facts.

Liability for Torts Committed in Repossession, 42 POF 355.

ALR.

Trust or preference in respect of money placed in bank for purpose of transaction with third person where bank subsequently becomes insolvent, 31 A.L.R. 472; 93 A.L.R. 881.

Prerogative right of county or other political subdivision to preference in assets of insolvent, 52 A.L.R. 755; 90 A.L.R. 208.

Character of service contemplated by statutes giving a lien or preference, in event of insolvency, to servants, employees, laborers, 54 A.L.R. 567.

Right of one indebted to insolvent bank to setoff deposits which he has made as trustee, 55 A.L.R. 822.

Election of remedies or estoppel as regards claims against insolvent bank, 69 A.L.R. 456.

Insolvency of bank guaranty fund as affecting rights or obligations of member banks and their depositors, 78 A.L.R. 808.

Construction and effect of statutes or constitutional provisions in relation to priority or preference of deposits in assets of insolvent bank or trust company, 86 A.L.R. 1310; 93 A.L.R. 1017.

Rights against receiver or other liquidating officer of bank as to paper deposited before but not collected at the time bank closed its doors, 94 A.L.R. 1395.

Character or class of claims protected by deposit by foreign corporation as condition of doing business, and rank or priority of such claims, 104 A.L.R. 748.

Rights and preferences in respect of assets of insolvent bank as affected by its division into departments, 114 A.L.R. 680.

Rights of owners of securities deposited in bank, upon its insolvency, 126 A.L.R. 625.

7-1-190. Preservation of assets; proceedings in lieu of attachment, execution, or repossession.

(a) The status of all parties shall become fixed on the date the department takes possession of a financial institution. No corporation or person shall thereafter acquire any lien or charge against the financial institution for so long as it remains in receivership, provided that nothing in this Code section or elsewhere in this chapter shall be construed to impair any preferred claim arising pursuant to Code Section 11-4-214.

(b) No execution, attachment, or repossession (whether by action or otherwise) shall issue or be proceeded with against any assets owned by or in the custody or possession of a financial institution in receivership. In lieu of the right to issue an attachment or execution against assets of or lawfully in the possession or custody of the financial institution, a plaintiff may proceed by giving written notice of his claim to the department or to the deputy receiver of such financial institution; and he shall thereafter prove his claim in the regular manner prescribed by this chapter. If, in filing its account, the department rejects the claimed right to execution or attachment, the court shall adjudicate the matter as in the case of other disputed claims.

History.
Ga. L. 1919, p. 135, art. 7, § 3; Code 1933, § 13-803; Code 1933, § 41A-801, enacted by Ga. L. 1974, p. 705, § 1.

JUDICIAL DECISIONS

Purpose of Ga. L. 1919, p. 135 (see now O.C.G.A. § 7-1-190) is to protect possession of assets of bank by superintendent (now department) from interference by any legal proceedings, such as one for receivership, by levy of process upon such assets, or any proceedings by which possession of the superintendent would be disturbed. Berrien County Bank v. Alexander, 154 Ga. 775, 115 S.E. 648, 1922 Ga. LEXIS 465 (1922); Bennett v. Green, 156 Ga. 572, 156 Ga. 573, 119 S.E. 620, 1923 Ga. LEXIS 275 (1923).

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, § 181.
ALR.
Deposits on interest as waiver of state's priority, 42 A.L.R. 1296.
Trust or preference in assets of insolvent bank in respect of proceeds of collection as affected by notice or instructions with respect to collection, 90 A.L.R. 6.
Bank conservators, 107 A.L.R. 1431.
Rights and preferences in respect of assets of insolvent bank as affected by its division into departments, 114 A.L.R. 680.
Payment of depositor's debt to insolvent bank against which deposit might otherwise have been set off as affecting depositor's equivalent rights, 139 A.L.R. 723; 162 A.L.R. 1175.

7-1-191. Exclusivity of claims procedure; effect of receivership on pending actions.

All claims against the financial institution, action upon which has not been commenced prior to the time the department took possession, shall be presented in the regular manner provided by this chapter for the presentation of claims. Neither a depositor or other creditor of the financial institution nor any other claimant may maintain any action at law or in equity upon such claim, except by regular method provided by this chapter for exceptions to the accounting of the department as receiver. However, an action for the return of specific property or property with respect to which the plaintiff holds a perfected security interest or security title which could have been recovered by the plaintiff from the financial institution in receivership may be maintained in the principal court against the department in its name as receiver of the financial institution. All actions pending against the financial institution when the department takes possession shall be automatically stayed during the receivership, provided that all such actions, except those specified in subsection (b) of Code Section 7-1-190, may proceed with prior approval of the principal court.

History.
Code 1933, § 41A-802, enacted by Ga. L. 1974, p. 705, § 1.

JUDICIAL DECISIONS

Remedy exclusive. — Under state law, procedure provided in O.C.G.A. § 7-1-1 et seq. is an exclusive remedy. FDIC v. Willis, 497 F. Supp. 272, 1980 U.S. Dist. LEXIS 17238 (S.D. Ga. 1980).

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, § 1115.
C.J.S.
9 C.J.S., Banks and Banking, § 189.
ALR.
Right of creditors or stockholders of insolvent bank in charge of liquidating officer who refuses or fails to enforce liability of third persons to bank, to maintain action for that purpose, and conditions of such right, 97 A.L.R. 169; 116 A.L.R. 783.

7-1-192. Notice to depositors and other creditors to present claims.

(a) After filing a supplement to the certificate of possession setting forth its determination to liquidate the affairs of a financial institution in receivership, the department shall forthwith give notice of such determination to all corporations or persons who appear upon the books of the financial institution as depositors or other creditors or who are otherwise known to the department to be or who claim to be depositors or other creditors or who have given notice to the department claiming a right of execution or attachment against any assets owned by or legally in the custody or possession of the financial institution.

(b) The notice to depositors shall state the amount which the books or other records of the financial institution show to be due to such depositor. It shall also state that unless such depositor shall, within a specified time, present to the department his bank statement or passbook or other evidence of his account showing a different amount to be due or unless such depositor shall, within a specified time from the date of such notice, otherwise prove in the manner provided by this chapter that a different amount is due, the amount shown to be due by the books of the financial institution will be conclusively presumed to be correct unless the court, pursuant to this chapter, grants him an extension of time.

(c) The notice to each creditor, other than a depositor, shall inform such creditor that he must present his claim in the manner provided by this chapter within a specified time from the date of such notice or else be permanently barred from sharing in any distribution of the assets of the financial institution unless the court, pursuant to this chapter, grants him an extension of time.

(d) The department shall also advertise, in the manner prescribed by this chapter, its determination to liquidate the financial institution.

Such advertisement shall state that the department has filed an inventory and appraisement of the assets of the institution and shall designate the superior court with which such documents have been filed and shall describe the legal consequences to depositors and other creditors of failure to prove those claims within the time set in the notice. For purposes of this advertisement and other notices or advertisements required hereunder, the department may, to the extent it deems appropriate, describe shareholders of credit unions as such, not by use of the defined term "depositors" used in this chapter.

(e) The department shall specify as the last day upon which depositors and other creditors can prove their claims a date at least 30 days after the date of the sending of such notice to depositors and creditors. However, claims based upon deficiencies in, or surcharges with respect to, assets which such financial institution held in a fiduciary capacity may be proved at any time within six months after the appointment of a substituted fiduciary of the estate of which such assets were a part and the adjudication of the account of such estate by the competent court.

History.
Ga. L. 1919, p. 135, art. 7, § 13; Code 1933, §§ 13-815, 13-816; Code 1933, § 41A-803, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2016, p. 390, § 7-4/HB 811.

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, § 1115.

7-1-193. Proof of claims of depositors.

(a) Any depositor who disagrees with the amount shown by the books or other records of the financial institution to be due to him shall prove his claim by presenting his bank statement or passbook or other documentary indication of indebtedness to the department within the time and in the manner designated by the department pursuant to this chapter. Any such depositor who shall not have received or shall have lost his bank statement or passbook or other documentary evidence or who shall believe that the amount shown to be due him by such bank statement or passbook or other documentary evidence is incorrect shall, within the time designated by the department, present his claim to the department by whatever method, including affidavits, the department shall designate.

(b) Any depositor who shall not present his claim within the designated time and in the manner provided by this Code section shall be bound by the amount appearing to be due to him upon the books or records of the financial institution or, where the name of such depositor does not appear at all upon the books or records of the financial institution or appears on such books or records but with no balance

appearing to be due to him by the financial institution, shall be permanently barred from sharing in any distribution of the assets of the financial institution. However, the principal court may, upon petition and adequate cause shown, permit any depositor to file his claim at a later date, but no claim shall in any event be allowed to be filed after the last day for the filing of exceptions to the first account of the department.

(c) This Code section shall not, however, be construed to deprive any depositor of any right of action at law or in equity which he may have against an officer or employee or former officer or employee of the financial institution or upon the bond of such officer or employee or former officer or employee for any act committed by such officer or employee which resulted in such depositor's name not appearing upon the books of the financial institution or appearing upon them but being credited with an amount below that actually due.

(d) The department shall prescribe the form for the proof of claim of all depositors and for an affidavit as to the truth of statements therein to be included with the claim. Whenever requested by any such depositor to prepare such proof of claim or to take the affidavit thereto, the department may do so without any charge to such depositor if the department concludes that it would be burdensome or difficult for the depositor to prepare the proof.

History.
Ga. L. 1919, p. 135, art. 7, § 18; Ga. L. 1925, p. 119, § 1; Code 1933, § 13-820; Code 1933, § 41A-804, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 643.
11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1098, 1116.
C.J.S.
9 C.J.S., Banks and Banking, §§ 151 et seq., 213.
ALR.
Right of depositor to rescind, or to claim a trust in respect of a deposit because of insolvency of bank when it was made, 20 A.L.R. 1206; 81 A.L.R. 1078.
Admissibility of extrinsic evidence to explain or contradict bank deposit slips, deposit entries in passbooks, certificates of deposit, or similar instruments, 42 A.L.R.2d 600.

7-1-194. Proof of claims of creditors.

Creditors other than depositors shall not share in any distribution of the assets of the financial institution unless the creditor or his designated representative shall, within the time and in the manner specified by the department pursuant to this chapter, present to the department a statement of his claim, together with a copy of any book entries pertaining thereto, any evidence of indebtedness or other instrument

received as evidence thereof, the details with respect to any collateral or agreement of pledge received in connection therewith, and a description of any insurance pertaining thereto. The department shall prescribe the form for the proof of claim of creditors and for affidavit as to the truth of statements therein to be included with the claim. However, the court may, upon petition and adequate cause shown, permit any creditor to file his claim upon a later date, but no claim shall in any event be allowed to be filed after the last day for the filing of exceptions to the first account of the department.

History.
Ga. L. 1919, p. 135, art. 7, § 18; Ga. L. 1925, p. 119, § 1; Code 1933, § 13-820; Code 1933, § 41A-805, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1098, 1116.
ALR.
Balance due other banks on clearing house settlement as preferred claim against insolvent bank, 44 A.L.R. 1535.
Election of remedies or estoppel as regards claims against insolvent bank, 69 A.L.R. 456.

7-1-195. Allowance of claims.

For the purposes of the accounting provided for in this chapter, the department shall allow the claims of depositors for the amounts shown to be due to them upon the books or other records of the financial institution (unless it determines such books or records to be in error) or for such other amounts as they shall, within the time and in the manner provided by this chapter, prove to the satisfaction of the department are due to them. It shall likewise allow the claims of all other creditors, when presented within the time and in the manner provided by this chapter, if it shall be satisfied that the amounts claimed are rightfully due. In allowing claims, the department may change their rank to that which it determines to be proper and may reduce them by exercise of the financial institution's right of setoff against the claimant. It shall reject all other claims of depositors and other creditors.

History.
Ga. L. 1919, p. 135, art. 7, § 15; Ga. L. 1927, p. 195, § 4; Code 1933, § 13-817; Code 1933, § 41A-806, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1098, 1116.
C.J.S.
9 C.J.S., Banks and Banking, § 151 et seq.
ALR.
Election of remedies or estoppel as regards claims against insolvent bank, 69 A.L.R. 456.
Right to set off deposit in insolvent bank

against indebtedness to bank, 97 A.L.R. 588.

7-1-196. Advance payment of dividends to depositors.

(a) After filing a supplement to the certificate of possession setting forth its determination to liquidate the affairs of the financial institution, the department may, without leave of court and without filing an account, make an advance payment of a dividend to all depositors the amounts of whose claims, as they appear upon the books or other records of the financial institution, are undisputed. The dividend shall be calculated as if the claims of all other depositors, as they appear upon the books or other records of the financial institution, and the claims of all creditors or other corporations or persons who assert priority over or parity with depositors in the order of distribution of the assets, were valid and uncontested.

(b) However, the department shall not make such an advance payment of a dividend to any depositor until it shall have set aside an amount sufficient to pay in full the claims of all creditors or other corporations or persons asserting or entitled to priority over depositors in the order of distribution and to pay the proportionate dividend on the amounts claimed by the other depositors and by any creditors or other corporations or persons who are entitled to or who claim parity with depositors in the order of distribution provided for by law. The department shall likewise set aside, before making such advance payment, such amount as it shall deem necessary for the expenses of administration of the receivership.

History.
Ga. L. 1919, p. 135, art. 7, § 21; Code 1933, § 13-823; Code 1933, § 41A-807, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, § 1117.

C.J.S.
9 C.J.S., Banks and Banking, §§ 187, 195.

7-1-197. Expenses of administration.

Any reasonable expenditure made by the department as receiver of a financial institution, including any expense incurred in the management, reorganization, consolidation, liquidation, or distribution of the assets and affairs of the financial institution, any payment of a loan or interest thereon under Code Section 7-1-164, and any compensation paid to the deputy receiver, attorneys, or any other person employed to assist the department in such management, reorganization, consolidation, liquidation, or distribution shall be paid out of the assets of the financial institution, provided it is included in any partial or final

account filed by the department pursuant to this chapter and is approved by the principal court in which such account is filed. Where such expenses are incurred or such compensation is paid for the benefit of the estate of more than one financial institution in the possession of the department as receiver, an equitable portion of such expenses or compensation shall be paid out of the assets of each financial institution on whose behalf such expenditures were incurred or paid.

History.
Ga. L. 1919, p. 135, art. 7, § 23; Ga. L. 1925, p. 119, § 1; Ga. L. 1931, p. 7, § 91; Code 1933, § 13-825; Code 1933, § 41A-808, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1084, 1121.

C.J.S.
9 C.J.S., Banks and Banking, § 669 et seq.

7-1-198. Filing or ordering partial or final account; notice of filing; exceptions.

(a) At any time after the expiration of the period fixed by the department for the presentation of claims, it may file a partial account of its administration of the business and property of the financial institution, duly verified under oath or affirmation, with the principal court. If the department does not file its first account within one year after it takes possession of a financial institution, any depositor, other creditor, or shareholder of such financial institution may petition the court to order the department to file an account. The court may, in its discretion, grant or refuse the petition. Whenever it becomes economically advisable to wind up finally the affairs of a financial institution in liquidation, the department shall file with the principal court its final account, duly verified under oath or affirmation. The clerk of the principal court shall not be under any duty to recopy or otherwise to record any account and shall make no charge except the regular fee for filing such or similar papers.

(b) The account shall present the department's administration of the estate, including a statement of all receipts or expenditures, a list of all claims which have been allowed, and a separate list of claims which have been objected to or are disputed, showing as to all depositors and other creditors, their names and addresses, the amounts due or claimed to be due to them, and any priorities in the order of distribution granted to or claimed by them. A final account need not present matters previously settled incident to partial accounts.

(c) The department shall forthwith give written or printed notice of the filing of an account to all corporations or persons whom it knows to be, or who claim to be depositors or other creditors or who have given to

it notice claiming a right of attachment or execution. Such notice shall also state that unless an exception to the account or to any item therein is filed with the principal court within 30 days from the date of the filing thereof, it will be confirmed absolutely. The department shall also advertise such notice in a newspaper or newspapers as provided in this chapter, stating the date upon which it has filed its partial or final account and that all exceptions to the account must be filed within 30 days from the date of the filing of the account. The department shall forthwith file with the court, under oath or affirmation, a statement that it has, in the manner provided by this chapter, sent both the notice of its determination to liquidate and the notice of its filing of an account to all corporations or persons entitled thereto. The department shall also file the proofs of publication of the advertisements required by this Code section.

(d) Any corporation or person who is or who claims to be a depositor, other creditor, or shareholder of a financial institution or who has given to the department notice of his claim to the right of execution or attachment or who asserts any other type of claim against a financial institution may, within 30 days after the filing of an account by the department, file in the principal court specific exceptions in writing, under oath or affirmation, to such account or to any item therein. Notice of any exception to an individual item in an account shall forthwith be personally served upon or sent by registered or certified mail or statutory overnight delivery to the corporation or person whose claim is thus objected to or his counsel and also the department or the deputy receiver managing the affairs of the particular financial institution or the counsel of either. Affidavit of the serving or sending of such notice shall forthwith be filed with the court.

(e) Whenever an exception is filed to any expenditure made by the department as an expense of administration, the department shall keep an accurate record of the salaries and other expenses properly incurred by it in the contesting of such exception. If the exception is overruled and the expenditure is sustained, the court may, in its discretion, assess such expenses and salaries, together with the regular costs provided by law, upon the depositor, other creditor, or shareholder filing such exception.

History.
Ga. L. 1919, p. 135, art. 7, §§ 15-17; Ga. L. 1927, p. 195, §§ 4, 4A; Code 1933, §§ 13-817, 13-818, 13-819; Code 1933, § 41A-809, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2000, p. 1589, § 3.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, §§ 151 et seq., 175, 213.

7-1-199. Adjudication of rejected claims and exceptions to account.

(a) If any claim has been rejected by the department or any exception has been filed to the account or to any item thereof, the principal court shall, as soon as expedient after the expiration of the period for the filing of exceptions to the account, fix a date for hearing in court arguments on all rejected claims and all exceptions to the account or to any item thereof. The department shall give notice of such hearing to all corporations or persons whose claims have been rejected by the department or objected to in the manner provided by this chapter. It shall likewise give notice to all corporations or persons who have filed exceptions to the account or to any item thereof. Such notice shall set forth, insofar as possible, the reasons for the rejection of the claim or the nature of the exception to the item of the account and shall state that all parties whose claims are rejected or objected to must appear in the principal court upon the date fixed by the court to prove their claims or they will be bound by the ex parte decision of the court.

(b) The principal court in which the account is filed shall itself hear arguments upon any rejected claim or upon any exception to an account, or to any item thereof, upon the date fixed by it for this purpose. The court shall itself decide, without delay, all matters in controversy. If any party does not appear in court on the day fixed, the court shall conduct the hearing ex parte and shall render its decision upon the merits as they appear after such hearing.

History.
Code 1933, § 41A-810, enacted by Ga. L. 1974, p. 705, § 1.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1919, p. 135 are included in the annotations for this Code section.

Remedy exclusive. — Under state law, the procedure provided in O.C.G.A. § 7-1-1 et seq. is an exclusive remedy. FDIC v. Willis, 497 F. Supp. 272, 1980 U.S. Dist. LEXIS 17238 (S.D. Ga. 1980).

Prerequisite to suit under Ga. L. 1919, p. 135. — When the superintendent (now department) has given the required notice as to the presentment of claims, a suit cannot be brought against the bank upon any claim, unless the claim, with sworn proof thereof, has been filed with the superintendent of banks or office of bank and been rejected by the superintendent, and unless the suit be brought as required by Ga. L. 1919, p. 135 (see now O.C.G.A. § 7-1-199). Berrien County Bank v. Alexander, 28 Ga. App. 55, 110 S.E. 311, 1922 Ga. App. LEXIS 296 (1922) (decided under former Ga. L. 1919, p. 135).

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, §§ 151 et seq., 191, 213.

7-1-200. Confirmation of account; distribution of dividends; final disposition of assets insufficient for distribution; cancellation of articles.

(a) If the department has approved all depositors' claims, as proved by them pursuant to this chapter or if not proved as they appear upon the books or other records of the financial institution and if no exception has been filed to an account or to any item thereof within 30 days after the filing of such account by the department, the principal court shall confirm the account absolutely. If any funds are available for distribution, the department shall then declare and pay out of such funds a partial or a final dividend, according to the priorities established by law. If the department has rejected any deposit or claim or if any exception has been filed, the court shall confirm the account as to all other matters and claims. The department may then declare and pay out of the funds available for distribution, if any, a dividend, according to the priorities established by law. The dividend shall be calculated as if all deposits and other claims were valid and approved. The department, before paying any such dividend, shall set apart funds or assets sufficient to pay required distribution on any claim still being asserted which has been rejected or reduced in priority by the department or to which an exception has been filed if the amount and the priority claimed were sustained by the court. If any such claim shall be determined by the court to be valid, the department shall pay to the corporation or person entitled thereto the dividend which has been set apart in the manner provided by this Code section. If any such claim shall be determined by the court to be invalid, the dividend which has been set apart in the manner provided by this Code section shall be distributed in the order of the priorities established by law to those whose claims have been approved by the court; provided, however, that any final determination as to disputed claims may be appealed as provided by law and payments may be withheld pending the results of the appeal.

(b) The confirmation of any account after the adjudication of all claims therein which have been rejected or reduced in priority by the department or to which exceptions have been filed and of all other exceptions to such account shall be conclusive as to all matters therein. Except as otherwise provided in this chapter, no claim of any depositor or other creditor shall be valid if not listed and approved in the first account which has been filed. The confirmation of the final account and

distribution thereunder shall discharge the department, the commissioner, the deputy receiver, any other employee, and the legal counsel, as well as the surety for any of them, from all further civil liability for any act done in an official capacity with respect to the receivership.

(c) Upon confirmation of the final account, the department may impound the balance of the assets, including real property, remaining in its hands and shall not be obligated to sell such assets or actively to collect on the impounded assets. With regard to said assets, including real estate and including after-discovered assets, it shall, however, retain all of its powers to receive payment for them or, with leave of court, to adjust or compromise them. After its final accounting and discharge, the department shall have power to make further distribution to the creditors, depositors, and shareholders when, in its opinion, sufficient funds are realized to justify such distribution after deducting reasonable costs for collection, preservation, and distribution. If the department is of the opinion that the funds collected or probably to be collected will be insufficient to make a distribution practicable and that all interested claimants will not in the future have their claims satisfied, it shall, after deducting reasonable costs for collection and preservation, hold the remainder of such property subject to Article 5 of Chapter 12 of Title 44. Thereafter, the articles of incorporation or charter shall no longer be valid and the department shall notify the Secretary of State that the receivership has been concluded. The Secretary of State shall promptly cancel such articles or charter of record in that office.

History.
Ga. L. 1919, p. 135, art. 7, § 21; Code 1933, § 13-823; Code 1933, § 41A-811, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1980, p. 972, § 4; Ga. L. 2024, p. 1052, § 1(a)(10)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (c).

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, § 1117.

C.J.S.
9 C.J.S., Banks and Banking, §§ 151 et seq., 213.

7-1-201. Unclaimed dividends.

Whenever a dividend remains unclaimed six months after it has been declared and the department is unable to locate the depositor or other claimant to whom said dividend was payable, the dividend shall become a part of the general assets of the financial institution and be distributed as other assets.

History.
Ga. L. 1919, p. 135, art. 7, § 24; Ga. L. 1925, p. 119, § 1; Code 1933, § 13-826; Code 1933, § 41A-812, enacted by Ga. L. 1974, p. 705, § 1.

7-1-202. Order of payment of liabilities; secured or preferred claims and liens.

(a) In the distribution of the assets of a financial institution which is liquidated or dissolved, whether under this chapter or by any other method, the order of payment of liabilities of the financial institution in the event that its assets are insufficient to pay in full all its liabilities for which claims are duly made shall be:

(1) First, the payment of costs and expenses of administration of the liquidation or dissolution;

(2) Second, the payment of debts due depositors;

(3) Third, the payment of all state taxes;

(4) Fourth, judgments;

(5) Fifth, contractual obligations;

(6) Sixth, unliquidated claims for damages and the like; and

(7) Seventh, capital securities.

(b) Nothing in this chapter shall impair the validity or the priority otherwise accorded by law to any security interest, security title, preferred claim arising under Code Section 11-4-214, or any lien arising by force of law; provided, however, that any of the foregoing may be delayed in payment by the principal court until costs of administration including loans or interest payments under Code Section 7-1-164 or the costs of selling or otherwise disposing of assets under this chapter have been met in any case where the principal court determines that the claimant of the security interest, security title, preferred claim, or lien has expressly or impliedly consented to the administrative activities involved or has benefited from such activities.

History.
Ga. L. 1919, p. 135, art. 7, § 19; Ga. L. 1925, p. 119, § 1; Ga. L. 1927, p. 195, § 5; Ga. L. 1931, p. 7, § 91; Code 1933, § 13-821; Code 1933, § 41A-813, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2024, p. 1052, § 1(a)(11)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, inserted "and" at the end of paragraph (a)(6) and substituted "however, that" for "however," in subsection (b).

Cross references.
Priority of payment of notes, debentures, and other instruments issued by a bank or trust company which becomes insolvent or is liquidated, § 7-1-419.

JUDICIAL DECISIONS

Georgia Law 1927, p. 195, § 5 (see now O.C.G.A. § 7-1-202) does not violate Ga. Const. 1976, Art. VII, Sec. I, Para. IV (see now Ga. Const. 1983, Art. VII, Sec. II) even though the statute fixes the priority of other claims relative to taxes. Baggett v. Mobley, 171 Ga. 268, 155 S.E. 334, 1930 Ga. LEXIS 331 (1930).

Georgia Law 1927, p. 195, § 5 (see now O.C.G.A. § 7-1-202) does not violate Ga. Const. 1976, Art. VII, Sec. I, Para. III (see now Ga. Const. 1983, Art. VII, Sec. I, Para. III) since the statute does not affect the uniformity of taxes in any way, the statute does not in any way change or make less uniform the rate of taxes fixed upon the same class of subject, nor does the statute affect ad valorem taxes on all property subject to taxes within territorial limits of the state; even though the statute fixes the priority of other claims relative to taxes. Baggett v. Mobley, 171 Ga. 268, 155 S.E. 334, 1930 Ga. LEXIS 331 (1930).

Order of distribution of insolvent bank. — Order of distribution of assets upon insolvency of a bank which grants payment of debts due depositors priority over payment of state taxes is not an unconstitutional violation of Ga. Const. 1976, Art. VII, Sec. I, Paras. I, III, IV (see now Ga. Const. 1983, Art. VII, Sec. I, Paras. I, III and Art. VII, Sec. II). Felton v. McArthur, 173 Ga. 465, 160 S.E. 419, 1931 Ga. LEXIS 342 (1931).

Statute is general law. — Ga. L. 1927, p. 195, § 5 (see now O.C.G.A. § 7-1-202) does not violate Ga. Const. 1976, Art. I, Sec. II, Para. VII (see now Ga. Const. 1983, Art. III, Sec. VI, Para. IV) and is a general law and not a special law; and it was competent for the legislature to pass this general law without violating this provision of the constitution. Felton v. McArthur, 173 Ga. 465, 160 S.E. 419, 1931 Ga. LEXIS 342 (1931).

Georgia Law 1927, p. 195, § 5 does not attempt to exempt property from taxation. — Georgia Law 1927, p. 195, § 5 (see now O.C.G.A. § 7-1-202) may render execution issued by tax collector unfruitful, in view of fact that claims which are given priority may exhaust property classed among assets of the bank; but no attempt is made by the statute to exempt property from taxation; even though the statute fixes priority of other claims relative to taxes. Baggett v. Mobley, 171 Ga. 268, 155 S.E. 334, 1930 Ga. LEXIS 331 (1930).

Priorities set by Ga. L. 1927, p. 195, § 5 supersede O.C.G.A. §§ 48-5-28 and 48-2-56. — Priorities of payment established by Ga. L. 1927, p. 195, § 5, (see now O.C.G.A. § 7-1-202) which allow payment to depositors before payments of state taxes supersede the provisions of former Code 1933, §§ 92-5707 (see now O.C.G.A. § 48-5-28) and 92-5708 (see now O.C.G.A. §§ 48-2-56 and 48-5-28) which make tax collection a priority above other debts. Felton v. McArthur, 173 Ga. 465, 160 S.E. 419, 1931 Ga. LEXIS 342 (1931).

Property in possession of liquidating agent of bank cannot be levied upon. Gormley v. Askew, 176 Ga. 210, 167 S.E. 600, 1933 Ga. LEXIS 47 (1933).

Equity will enjoin levy on fieri facias against insolvent bank. — Equity will enjoin tax collector and sheriff from trying to enforce by levy and sale collection of tax fieri facias against insolvent bank taken over by superintendent of banks (now commissioner of banking and finance) for liquidation. Gormley v. Askew, 176 Ga. 210, 167 S.E. 600, 1933 Ga. LEXIS 47 (1933).

"Debts due depositors" must mean all depositors and there are several kinds. There are general deposits, special deposits, and deposits for specific purposes. Gormley v. Board of Comm'rs of Rds. & Revenues, 178 Ga. 439, 173 S.E. 667, 1934 Ga. LEXIS 69 (1934).

Effect of liquidation upon liability on checks deposited for collection. — When principal-agent relationship exists between the bank and the depositor for purpose of collecting a check and an agency ceases due to the failure of the bank and takeover of the bank by the superintendent of banks (now commissioner of banking and finance), the check and the check's proceeds are property of the depositor and not subject

to the provisions of this section. Hogansville Banking Co. v. Ware, 171 Ga. 167, 155 S.E. 4, 1930 Ga. LEXIS 296 (1930).

Ad valorem taxes on bank's assets are not administrative obligation or expense incurred by receiver but are a charge imposed by the sovereign. Taxes are referred to as expenses of administration only because it is a duty of the receiver to pay the taxes. Tharpe v. Gormley, 184 Ga. 605, 192 S.E. 211, 1937 Ga. LEXIS 589 (1937).

Taxes payable only after expenses of liquidation and claims of depositors. — State taxes are payable only after all costs and expenses of the administration of the liquidation or dissolution, and the payment of the claims of depositors. Roberts v. Gunter, 251 Ga. 276, 304 S.E.2d 369, 1983 Ga. LEXIS 757 (1983).

Waiver of state's right to first collect taxes extends to assets. — If, in administration of assets of insolvent bank, the superintendent of banks (now commissioner of banking and finance), comes into possession of deeds given to the bank conveying title to the land, leaving debtor to bank owner of a mere equity in premises conveyed, the state's waiver of the state's right to first collect the state's taxes (in favor of depositors' claims), as embodied in Ga. L. 1927, p. 195, § 5, naturally extends so as to include such taxes as are a liability upon the assets in the hands of the superintendent of banks. Gormley v. Askew, 176 Ga. 210, 167 S.E. 600, 1933 Ga. LEXIS 47 (1933).

OPINIONS OF THE ATTORNEY GENERAL

Credit union acting as receiver violates section by preferring unsecured creditor. — Credit union deposit insurance corporation, acting as receiver or deputy receiver of member credit union, cannot purchase an unsecured note with the assets of the credit union since such purchase would give an unsecured creditor priority over the depositors and other more senior claimants. 1977 Op. Att'y Gen. No. 77-7.

RESEARCH REFERENCES

Am. Jur. 2d.

11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1120, 1124.

C.J.S.

9 C.J.S., Banks and Banking, §§ 151 et seq., 213.

ALR.

Right of owner of check which the drawee bank held for him at time it closed its doors, to a preference, 17 A.L.R. 196.

Right of depositor to rescind, or to claim a trust in respect of a deposit because of insolvency of bank when it was made, 20 A.L.R. 1206; 81 A.L.R. 1078.

Balance due other banks on clearing house settlement as preferred claim against insolvent bank, 44 A.L.R. 1535.

Right, in absence of statute, to preference in respect of deposit of public funds in insolvent bank, 51 A.L.R. 1336; 65 A.L.R. 690; 90 A.L.R. 184; 103 A.L.R. 621; 167 A.L.R. 640.

Prerogative right of county or other political subdivision to preference in assets of insolvent, 52 A.L.R. 755; 90 A.L.R. 208.

Trust or preference in assets of insolvent bank or trust company in respect of funds which it held as executor, administrator, or testamentary trustee, 56 A.L.R. 806; 83 A.L.R. 1110; 94 A.L.R. 1123.

Deposit of funds except from claims of creditors of depositor, as entitled to preference out of the assets of insolvent depositee, 71 A.L.R. 1181.

Right of holder of cashier's check to preference out of assets of insolvent banks, 73 A.L.R. 66; 95 A.L.R. 676.

Right of depositor to preference in assets of insolvent bank because dissuaded by bank officials or employees from withdrawing deposit after insolvency, 80 A.L.R. 795.

Rights and preference in respect of assets of insolvent bank or trust company as

affected by its division into departments, 81 A.L.R. 1479; 89 A.L.R. 1218; 114 A.L.R. 680.

Constitutionality of statute relating to preferences in assets of insolvent bank, 83 A.L.R. 1080.

Garnishment of deposit by depositor's creditor as entitling latter to trust or preference out of assets of insolvent garnishee bank, 83 A.L.R. 1085.

Preference in assets of insolvent bank in respect of deposits of veterans' compensation or war-risk insurance proceeds or pension money, 83 A.L.R. 1089; 84 A.L.R. 1530.

Trust or preference in assets of insolvent bank or trust company in respect of deposit by receiver, 83 A.L.R. 1097.

Trust or preference in assets of insolvent bank or trust company as to deposits by trustee in bankruptcy, 83 A.L.R. 1105.

Trust or preference in assets of insolvent bank or trust company in respect of funds which it held as executor, administrator, or testamentary trustee, 83 A.L.R. 1110; 94 A.L.R. 1123.

Waiver of right of government to preference in the assets of insolvent debtor by taking security, 83 A.L.R. 1119.

Right of surety who discharges obligation due to government to be subrogated to priority or preference of latter, 83 A.L.R. 1131.

Rights of owners of securities deposited in bank upon its insolvency, 84 A.L.R. 1534; 126 A.L.R. 625.

Construction and effect of statutes or constitutional provisions in relation to priority or preference of deposits in assets of insolvent bank or trust company, 86 A.L.R. 1310; 93 A.L.R. 1017.

State's prerogative right of preference at common law, 90 A.L.R. 184; 167 A.L.R. 640.

Prerogative right of county or other political subdivision to preference in assets of insolvent, 90 A.L.R. 208.

Right of holder of cashier's check to preference out of assets of insolvent bank, 95 A.L.R. 676.

Trust or preference in assets of insolvent bank in respect of money deposited or left on deposit pursuant to agreement of bank to purchase bonds or make other investment for depositor, 105 A.L.R. 516.

7-1-203. Subrogation of insurer of deposits or shares.

Where the deposits or shares of a financial institution are insured by a federal public body or otherwise, the claims of depositors shall be subrogated in favor of said insurer to the extent that it pays or makes available for payment claims of such depositors against the financial institution, provided that the rights of such depositors to receive dividends or other distributions upon that portion of their claims not made available for payment shall not be affected by such subrogation.

History.
Code 1933, § 41A-814, enacted by Ga. L. 1974, p. 705, § 1.

7-1-204. Liquidation of excess assets by trustees.

If any unliquidated assets remain in the department's possession after the filing and confirmation of its final account, the payment in full of the claims of all depositors, creditors, and other claimants which have been approved by the court and the distribution to shareholders of any cash balance remaining thereafter, it shall call a meeting of all the shareholders of the financial institution by giving them written notice at least 30 days before the day fixed for the meeting. At such meeting,

the shareholders shall elect by ballot a trustee or trustees, who shall complete the liquidation. A majority of the shares present in person or by proxy shall be necessary to elect such trustee or trustees. The department shall file a certified copy of the minutes of said meeting with the principal court. If no trustee is elected in this manner on the day designated, the department shall petition the principal court for the appointment of a trustee or trustees. The trustee or trustees who are thus elected by the shareholders or appointed by the court shall give bond to the state, in such amount, with such surety, and under such conditions as the court may direct. The department shall then transfer to such trustee or trustees all the assets of the financial institution which are still in its possession. After such transfer by the department to a trustee or trustees for the benefit of the shareholders, the financial institution shall have no corporate powers or privileges whatsoever, except that its shareholders may elect a successor trustee or trustees upon death, removal, or inability of the first trustee or trustees to act. The trustee or trustees shall not succeed to any powers or privileges except such as shall be necessary to the liquidation of the remaining assets which have been transferred to such trustee or trustees by the department.

History.
Ga. L. 1919, p. 135, art. 7, §§ 24-27; Code 1933, §§ 13-827, 13-828, 13-829; Code 1933, § 41A-815, enacted by Ga. L. 1974, p. 705, § 1.

7-1-205. Destruction of records.

The department is authorized to destroy all records of the financial institution of which it was in possession as receiver and all records of such receivership at the expiration of six years from the date of the absolute confirmation of its final account, except where any provision of this chapter expressly provides a different method for the disposition of the records or a longer period for their preservation.

History.
Code 1933, § 41A-816, enacted by Ga. L. 1974, p. 705, § 1.

Part 9

Receivership Procedures Involving Trust or Pooled Assets

RESEARCH REFERENCES

ALR.
Trust or preference in respect of money placed in bank for purpose of transaction with third person where bank subsequently becomes insolvent, 31 A.L.R. 472; 93 A.L.R. 881.

Trust or preference in respect of money used to purchase exchange or to be transmitted, 57 A.L.R. 1168; 84 A.L.R. 1470; 93 A.L.R. 938; 101 A.L.R. 631.

Trust or preference in, or lien upon, assets of insolvent bank or trust company

in respect of funds which it held as executor, administrator, or testamentary trustee, 94 A.L.R. 1123.

7-1-220. Definitions and applicability.

(a) As used in this part, the term:

(1) "Pooled assets" means mortgages, securities, or other assets comprising any mortgage or securities pool operated by such financial institution (whether said assets are held in the name of the institution or a nominee therefor) or with respect to which undivided interests have been created, regardless of whether or not the financial institution is technically a trustee and regardless of whether or not certificates of participation have been issued with respect thereto.

(2) "Trust assets" means all assets held by financial institutions as trustee, administrator, executor, guardian, or in a similar fiduciary capacity but shall not include assets held by the commercial department of the financial institution or pooled assets, as defined in paragraph (1) of this subsection.

(b) In the event of conflict, this part and not other parts of this article or other articles of this chapter shall control as to the trust assets and the pooled assets of any financial institution in receivership.

History.
Code 1933, § 41A-901, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2020, p. 493, § 7/SB 429.

7-1-221. Status of department in relation to trust and pooled assets.

(a) Upon taking possession of a financial institution, the department shall hold trust and pooled assets separate from the assets of the financial institution itself. Trust and pooled assets shall not be available for distribution to depositors, other creditors, or shareholders.

(b) The department as receiver shall have all rights, powers, and duties of the financial institution in regard to trust and pooled assets, including title to the assets and the right to administer them.

History.
Code 1933, § 41A-902, enacted by Ga. L. 1974, p. 705, § 1.

7-1-222. Jurisdiction of court over trust and pooled assets.

The principal court shall have exclusive jurisdiction over all matters concerning trust and pooled assets during the period that such assets are held by the department as receiver.

History.
Code 1933, § 41A-903, enacted by Ga. L. 1974, p. 705, § 1.

7-1-223. Substituted trustee or manager for trust and pooled assets.

(a) Upon determining to liquidate a financial institution or if it otherwise deems it advisable, the department shall:

(1) With leave of court, transfer all of the trust assets or all of the pooled assets or all of both types of assets to another financial institution which shall assume the responsibilities of the institution in receivership in regard to such assets and act as substituted trustee or manager; or

(2) Give written notice, insofar as the giving of such notice is practicable, to all parties interested in trust or pooled assets that they must within 30 days after the giving of notice apply for the appointment of a substituted trustee or manager to take over the trust or pooled assets. In the event that no such application is made with respect to particular trust assets or pooled assets, the department shall itself apply for appointment of a substituted trustee or manager. Upon application by an interested party or parties or by the department, the court shall appoint as successor trustee or manager that person or corporation best able, in its judgment, to protect the interests of those interested in particular trust or pooled assets. The successor trustees or managers shall have all rights, powers, and duties of the financial institution in regard to the trust or pooled assets committed to them except as these relationships may be modified by the court in accordance with law.

(b) Nothing in this Code section or Code Section 7-1-222 shall be construed to impair any right of the grantor or beneficiaries of trust or pooled assets under applicable instruments or otherwise to secure or provide for the appointment of a substituted trustee or manager.

History.
Code 1933, § 41A-904, enacted by Ga. L. 1974, p. 705, § 1.

7-1-224. Transfers to substituted trustee or manager without accounting.

In the event that the department and a substituted trustee or manager agree as to the identity and amount of the trust or pooled assets to be paid to the substituted trustee or manager and the substituted trustee or manager waives in writing the right to an accounting, then the department may transfer the trust or pooled

assets to the substituted trustee or manager and will thereupon (together with the financial institution) be discharged from all liability or responsibility in connection with the trust or pooled assets.

History.
Code 1933, § 41A-905, enacted by Ga. L. 1974, p. 705, § 1.

7-1-225. Transfers to substituted trustee or manager with accounting; deficiencies.

Except as authorized by Code Section 7-1-224, the department shall, upon appointment of a substituted trustee or manager, file a full account with the appropriate court setting forth its administration of the trust or pooled assets and shall, upon the order of the court, transfer the trust or pooled assets to the substituted trustee or manager. Whenever the court shall determine that there is a deficiency in regard to the trust or pooled assets or that the financial institution is liable for a surcharge in connection therewith, the amount thereof shall constitute a claim against the financial institution. Such claim shall be filed in the manner of other claims with the principal court within 30 days of a final adjudication with respect to the amount thereof.

History.
Code 1933, § 41A-906, enacted by Ga. L. 1974, p. 705, § 1.

Part 10

Change in Control of Financial Institutions

Cross references.
Requirement that department approve of merger or consolidation of state banks or trust companies, § 7-1-534.

Requirement that department approve mergers, consolidations, and other activities involving national banks, § 7-1-550 et seq.

7-1-230. Definitions.

As used in this part, the term:

(1) "Concert with one or more persons" includes, but is not limited to, the following persons and relationships:

(A) A company and any controlling shareholder, partner, trustee, or management official of the company if both the company and the individual own voting securities of the financial institution;

(B) An individual and the individual's immediate family;

(C) Companies under common control;

(D) Persons that are parties to any agreement, contract, un-

derstanding, or other arrangement, whether written or otherwise, regarding the acquisition, voting, or transfer of control of voting securities of a financial institution;

(E) Persons that have made, or propose to make, a joint filing under Section 13 or 14 of the Securities Exchange Act of 1934 and the rules promulgated thereunder by the United States Securities and Exchange Commission; and

(F) A person and any trust for which the person serves as trustee.

(2) "Control" means the power directly or indirectly to direct the management or policies of a financial institution or to vote 25 percent or more of any class of voting securities of a financial institution.

(3) "Person" means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed in this paragraph.

(4) "Presumption of control" means a person which directly or indirectly owns, controls, or has the power to vote more than 10 percent but less than 25 percent of any class of voting securities of a financial institution if no other persons will own, control, or hold the power to vote a greater percentage of that class of voting securities immediately after the transaction.

History.
Code 1933, § 41A-1005, enacted by Ga. L. 1980, p. 1076, § 1; Ga. L. 2022, p. 220, § 2/HB 891.

Amendments.
The 2022 amendment, effective July 1, 2022, added paragraph (1), redesignated former paragraphs (1) and (2) as paragraphs (2) and (3), and added paragraph (4).

7-1-231. Acquisition of control without approval prohibited.

(a) For purposes of this Code section, the term "financial institution" shall include any "bank holding company" as such term is defined in subsection (a) of Code Section 7-1-605.

(b) It shall be unlawful for a person, acting directly or indirectly or through concert with one or more persons, to acquire control or the presumption of control of any financial institution through a purchase, assignment, pledge, or other disposition of voting stock of such institution, except with the approval of the department or as otherwise permitted by this part.

History.
Code 1933, § 41A-1001, enacted by Ga. L. 1980, p. 1076, § 1; Ga. L. 2022, p. 220, § 3/HB 891.

Amendments.

The 2022 amendment, effective July 1, 2022, added subsection (a), redesignated the existing provisions of this Code section as subsection (b), and inserted "or the presumption of control" in subsection (b).

Cross references.

Requirement that department be notified of change in ownership of or right to vote outstanding shares of bank or trust company which will result in control or change in control of the bank or trust company, § 7-1-236.

7-1-232. Procedure for approval or disapproval of proposed acquisition.

(a) For purposes of this Code section, the term "financial institution" shall include any "bank holding company" as that term is defined in subsection (a) of Code Section 7-1-605.

(b) The department shall be given at least 60 days' prior written notice of any such proposed acquisition. The department may extend the period during which a disapproval may issue for another 30 days. The period for disapproval may be further extended only if the department determines that any acquiring party has not furnished all the information required under Code Section 7-1-233 or that in its judgment any material information submitted is substantially inaccurate. An acquisition may be made prior to expiration of the disapproval period if the department issues written notice of its intent not to disapprove the action.

(c) Within three days after its decision to disapprove any proposed acquisition, the department shall notify the acquiring party in writing of the disapproval. Such notice shall provide a statement of the basis for the disapproval.

(d) Within ten days of receipt of such notice of disapproval, the acquiring party may request a hearing on the proposed acquisition. At the conclusion thereof, the department shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

(e) Any person whose proposed acquisition is disapproved after a department hearing under this Code section may obtain review in accordance with Code Section 7-1-90.

History.

Code 1933, § 41A-1002, enacted by Ga. L. 1980, p. 1076, § 1; Ga. L. 2022, p. 220, § 4/HB 891.

Amendments.

The 2022 amendment, effective July 1, 2022, rewrote the second sentence in subsection (b), which read: "If the department does not issue a notice disapproving the proposed acquisition within that time or extend the period during which a disapproval may issue for another 30 days, the proposed acquisition shall stand approved.".

Cross references.

Time for giving notice to department of change in control of bank or trust company resulting from change in ownership of or right to vote outstanding shares of the bank or trust company, § 7-1-236.

7-1-233. Notice of proposed acquisition.

Except as otherwise provided by regulation of the department, a notice filed pursuant to Code Section 7-1-232 shall contain the following information:

(1) The identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations during the past five years and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a state or federal court;

(2) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than 90 days prior to the date of the filing of the notice;

(3) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;

(4) The identity, source, and amount of the funds or other considerations used or to be used in making the acquisition and, if any part of these funds or other considerations has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons;

(5) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the financial institution, to sell its assets or merge it with any company, or to make any other major change in its business or corporate structure or management;

(6) The identification of any person employed, retained, or to be compensated by the acquiring party or by any person on his behalf to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition and a brief description of the terms of such employment, retainer, or arrangement for compensation;

(7) Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition; and

(8) Any additional relevant information in such forms as the department may require by regulation or by specific request in connection with any particular notice.

History.
Code 1933, § 41A-1003, enacted by Ga. L. 1980, p. 1076, § 1; Ga. L. 2022, p. 220, § 5/HB 891.

Amendments.
The 2022 amendment, effective July 1, 2022, substituted "financial institution" for "bank" in paragraph (5).

7-1-234. Grounds for disapproving proposal.

The department may disapprove any proposed acquisition if:

(1) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the business of banking in any part of this state;

(2) The effect of the proposed acquisition of control in any section of this state may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(3) The financial condition of any acquiring person is such as might jeopardize the financial stability of the financial institution or prejudice the interests of the depositors of the financial institution;

(4) The competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the financial institution or in the interest of the public to permit such person to control the financial institution;

(5) Any acquiring person neglects, fails, or refuses to furnish the department all the information required by it;

(6) In the case of trust companies, any individual who exercises control of a person that submits an application for approval under Code Section 7-1-232 has unsatisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation. The department shall be authorized to obtain conviction data with respect to any individual who exercises control of a person that submits an application for approval under Code Section 7-1-232, and such individual shall provide express written consent to the department to conduct a criminal background check and to use all information necessary to run such check, including, but not limited to, a

classifiable set of fingerprints. The individual who exercises control of a person that submits an application for approval pursuant to Code Section 7-1-232 shall be responsible for all fees associated with the performance of such criminal background check. Upon receipt of fingerprints, fees, and other required information, the Georgia Crime Information Center shall transmit the necessary information to the Federal Bureau of Investigation for a search of its records; or

(7) In the case of trust companies, any acquiring person or an individual who is a director or officer of such person has failed to demonstrate financial responsibility, character, and general fitness. The department shall be authorized to obtain personal history and work experience and other information, including, but not limited to, independent credit reports obtained from a consumer reporting agency described in the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681a(f) with respect to such acquiring person and an individual who is a director or officer of such person.

History.
Code 1933, § 41A-1004, enacted by Ga. L. 1980, p. 1076, § 1; Ga. L. 2019, p. 828, § 4/HB 185; Ga. L. 2020, p. 320, § 1/HB 781; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2021, p. 323, § 2/HB 111; Ga. L. 2022, p. 220, § 6/HB 891.

Amendments.
The 2022 amendment, effective July 1, 2022, substituted "financial institution" for "bank" twice each in paragraphs (3) and (4).

7-1-235. Part inapplicable to bank holding company transactions.

This part shall not apply to a transaction subject to Code Sections 7-1-605 through 7-1-608, relating to bank holding companies.

History.
Code 1933, § 41A-1006, enacted by Ga. L. 1980, p. 1076, § 1; Ga. L. 1984, p. 22, § 7.

7-1-236. Report of change in control.

Whenever a change occurs in the ownership of or right to vote the outstanding shares of any bank or trust company which will result in the control or a change in the control of the bank or trust company, the president or other officer of such bank or trust company shall, within ten days after knowledge thereof, report such facts to the department. Notwithstanding Code Section 7-1-230, as used in this Code section, the term "control" means the power to direct or cause, directly or indirectly, the direction of the management or policies of the institution. If there is any doubt as to whether a change in the ownership or voting rights of such shares is sufficient to result in control thereof or to effect a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the department.

History.
Code 1933, § 13-2006, enacted by Ga. L. 1965, p. 524, § 1; Code 1933, § 41A-2013, enacted by Ga. L. 1974, p. 705, § 1; Code 1981, § 7-1-442; Code 1981, § 7-1-236, as redesignated by Ga. L. 1986, p. 458, § 3; Ga. L. 2022, p. 220, § 7/HB 891.
Amendments.
The 2022 amendment, effective July 1, 2022, substituted "Notwithstanding Code Section 7-1-230, as" for "As" at the beginning of the second sentence.
Cross references.
Procedure for giving notice to department of proposed change in control of financial institution, § 7-1-230 et seq.
Editor's notes.
Ga. L. 1986, p. 458, § 3, redesignated former Code Section 7-1-442 as present Code Section 7-1-236.

Part 11

Costs on Judicial Process

7-1-237. Reimbursement of costs incurred in answering subpoena, garnishment, or order; subpoena to be answered within five days.

Any financial institution shall be reimbursed by the requesting party for costs which are reasonably necessary and which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data of a customer required or requested to be produced pursuant to a lawful subpoena, summons, warrant, garnishment, attachment, request for the production of documents, or court order where the financial institution is not a party to the action. Except as may otherwise be ordered by a judge of the court issuing the same, a financial institution shall have five business days from service of a subpoena within which to produce any books, papers, or records ordered produced pursuant to such subpoena. In the case of a garnishment or attachment of funds held by the financial institution, such reimbursement may be deducted prior to remission of such funds in response to the garnishment or attachment. Rates and conditions under which reimbursement may be made under this Code section shall be prescribed by regulations of the department.

History.
Code 1981, § 7-1-237, enacted by Ga. L. 1983, p. 602, § 3; Ga. L. 1985, p. 1467, § 1; Ga. L. 1987, p. 805, § 1.

RESEARCH REFERENCES

ALR.
Bank's liability, under state law, for disclosing financial information concerning depositor or customer, 81 A.L.R.4th 377.

PART 12

DEPOSITS OF DECEASED DEPOSITORS

7-1-239. Definitions; payment of large deposits of deceased intestate depositors; affidavit for disbursement; form for affidavit.

(a) As used in this Code section, the term:

(1) "Affidavit of the provider" means the form provided for in subsection (e) of this Code section.

(2) "Financial institution" means any federally chartered financial institution or state chartered financial institution, including, but not limited to, those chartered by states other than the State of Georgia whose deposits are federally insured.

(b) Except as provided in subsection (c) of this Code section and in Article 8 of this chapter, whenever any person dies intestate having a deposit of not more than $15,000.00 in a financial institution, such financial institution, upon receipt of an affidavit, shall be authorized to pay the proceeds of such deposit directly to the following individuals:

(1) To the surviving spouse;

(2) If no surviving spouse, to the children pro rata;

(3) If no children or surviving spouse, to the father and mother pro rata; or

(4) If none of the above, then to the brothers and sisters of the decedent pro rata.

Such affidavit shall state that such individuals qualify as the proper relation to the decedent as specified in this subsection, there is no known will of the decedent, and that there are no other known corresponding claimants to such deposit.

(c) Except as provided in Article 8 of this chapter and in paragraph (2) of subsection (d) of this Code section, if no application for the deposit is made by any person named in subsection (b) of this Code section within 45 days from the death of the intestate depositor, the financial institution shall be authorized to apply not more than $15,000.00 of the deposit of such deceased depositor in payment of the funeral expenses and expenses of the last illness of such deceased depositor upon the receipt of itemized statements of such expenses and the affidavit of the providers of such services that the itemized statements are true and correct and have not been paid. Except as otherwise provided in paragraph (2) of subsection (d) of this Code section, the financial

institution applying such deposit as authorized in this subsection shall pay such expenses in the order received after the death of the depositor.

(d)(1) Except as otherwise provided in paragraph (2) of this subsection, payments made in compliance with this Code section shall operate as a complete acquittal and discharge to the financial institution of liability from any suit, claim, or demand of whatever nature by any heir, distributee, or creditor of the decedent, or any other person. Except as otherwise provided in paragraph (2) of this subsection, the financial institution may rely on a properly executed affidavit in disbursing the funds in accordance with this Code section.

(2) The protection provided by paragraph (1) of this subsection does not extend to payments made after a financial institution has received:

(A) Written notification sent by any party able to request present payment or the legal representative of any such party to the registered agent of the financial institution by registered or certified mail, return receipt requested, or statutory overnight delivery, expressly stating that payments in accordance with the provisions of this Code section should not be permitted; or

(B) Service of notice upon the registered agent of the financial institution of a proceeding in the probate court in the estate of the deceased depositor in accordance with Chapter 11 of Title 53;

provided, however, that, if any payment is made pursuant to subsection (c) of this Code section by an employee of the financial institution who is without actual knowledge of such written notification or service of notice within three business days following the receipt of such written notification or service of notice by the registered agent of the financial institution, the protection provided by paragraph (1) of this subsection shall extend to any such payment.

(3) A financial institution that is asked to apply funds from the deposit of a deceased depositor as requested in an affidavit of the provider may, without risk of incurring any penalty or liability to any person:

(A) Rely on the written notification or service of notice provided by paragraph (2) of this subsection in refusing to disburse the funds as requested in the affidavit of the provider;

(B) Delay disbursement of the funds as requested in the affidavit of the provider for up to 180 days following the receipt by the financial institution of such affidavit of the provider; and

(C) Decline to disburse funds from the deposit of the deceased depositor except as authorized or directed in an order entered by

the probate court having jurisdiction over the estate of the deceased depositor.

(4) Notwithstanding subsection (c) of this Code section or any other provision of this subsection, payments made pursuant to an order entered by the probate court having jurisdiction over the estate of a deceased depositor shall operate as a complete acquittal and discharge to the financial institution of liability from any suit, claim, or demand of whatever nature by any heir, distributee, or creditor of the decedent, or any other person.

(5) Nothing in this subsection shall relieve the liability of or limit the availability of any remedies against any provider of services giving an affidavit in the form provided for in subsection (e) of this Code section for any violation of Code Section 16-10-71, Code Section 53-6-2, or other applicable law.

(e) A document substantially in the following form shall be used as the affidavit of the providers of services of funeral expenses and expenses of last illnesses of deceased depositors:

"State of Georgia County of _____

STATUTORY AFFIDAVIT FORM

_____ from _____ attests that
(Claimant) (Facility)
_____ died on the ____ day of _____, 20____.
(Deceased)

On information and belief, the Deceased has funds on deposit with
_____.
(Financial Institution)

Under O.C.G.A. § 7-1-239, such Financial Institution is authorized to pay the proceeds of the Deceased's deposits, but in no event more than $15,000.00, directly to the following persons identified, collectively, as potential recipient(s):

1. To the surviving spouse;
2. If no surviving spouse, to the children pro rata;
3. If no children or surviving spouse, to the father and mother pro rata; or
4. If none of the above, then to the brothers and sisters of the decedent pro rata.

Except as provided for by Article 8 in Title 7 of the O.C.G.A., if no request for the Deceased's deposit is made by a potential recipient(s) within 45 days from the Deceased's death, the Financial Institution is authorized to release up to $15,000.00 for funeral expenses and expenses of the last illness of the Deceased upon the receipt of itemized statements of such expenses and this executed attestation.

The Claimant attests that there is no known will of the Deceased and there is no known potential recipient of the Deceased's deposits. The Claimant also attests that funeral expenses or expenses of the last illness in the amount of $_____ were incurred related to the Deceased and that true and correct copies of the itemized receipts fully supporting such amount are attached to this affidavit. Finally, the Claimant further attests that such expenses have not been paid as of the date of execution of this affidavit.

Pursuant to O.C.G.A. § 7-1-239, the Claimant submits this form in order to receive payment in the amount of $_____ (shall not exceed $15,000.00) for outstanding funeral expenses or expenses of the last illness of the Deceased.

_____
Signature of Claimant

Sworn and subscribed
before me this ____ day
of _____, 20____.

_____
Notary public (SEAL)
My commission expires: _____."

History.
Code 1981, § 7-1-239, enacted by Ga. L. 1983, p. 661, § 1; Ga. L. 1985, p. 1241, § 1; Ga. L. 1986, p. 887, § 1; Ga. L. 1996, p. 848, § 3; Ga. L. 2019, p. 279, § 1/HB 490; Ga. L. 2020, p. 377, § 2-2/HB 865.

Law reviews.
For article surveying trust and estate law in 1984-1985, see 37 Mercer L. Rev. 443 (1985).

For annual survey of law of wills, trusts, and administration of estates, see 38 Mercer L. Rev. 417 (1986).

For annual survey article discussing wills, trusts and administration of estates, see 52 Mercer L. Rev. 481 (2000).

For annual survey on wills, trusts, guardianships, and fiduciary administration, see 71 Mercer L. Rev. 327 (2019).

7-1-239.1. Payment of checks or instruments payable to deceased intestate persons; affidavit included with application for payment.

(a) Whenever any person dies intestate having possession of or a right to possession of a check or other instrument payable to such deceased person and the amount of the check or instrument does not

exceed $15,000.00, the financial institution on which the check or instrument is drawn shall be authorized to accept and redeem the check or instrument by payment to the following persons:

(1) To the surviving spouse;

(2) If no surviving spouse, to the children pro rata;

(3) If no children or surviving spouse, to the father and mother pro rata; or

(4) If none of the above, then to the brothers and sisters of the decedent pro rata.

(b) If a check or other instrument is payable to more than one person, it may be accepted and redeemed as provided in subsection (a) of this Code section only if it has been endorsed by each payee other than the decedent.

(c) Payments made pursuant to this Code section shall operate as a complete acquittal and discharge to the financial institution of liability from any suit, claim, or demand of whatever nature by any heir, distributee, creditor of the decedent, or any other person. Such payment is authorized to be made as provided in this Code section without the necessity of administration of the estate of the decedent and without the necessity of obtaining an order that no administration is necessary.

(d) As used in this Code section, the term "financial institution" includes any federally chartered financial institution.

(e) Application by any claimant or claimants entitled in this Code section to receive payments of checks or other instruments at a financial institution upon which such instrument is drawn shall include an affidavit by the claimant or claimants which states that they qualify as the proper relation to the decedent as specified in this Code section and that the claimant or claimants know of no other corresponding claimant or claimants to such funds. The financial institution may rely on a properly executed affidavit in disbursing the funds according to this Code section.

History.

Code 1981, § 7-1-239.1, enacted by Ga. L. 1985, p. 1241, § 2; Ga. L. 1996, p. 848, § 4; Ga. L. 2019, p. 279, § 2/HB 490.

Law reviews.

For annual survey on wills, trusts, guardianships, and fiduciary administration, see 71 Mercer L. Rev. 327 (2019).

PART 13

BANK FEES

7-1-239.5. [Reserved] Fee for instruments drawn on other institutions.

History.
Code 1981, § 7-1-239.5, enacted by Ga. L. 1997, p. 572, § 1; repealed by Ga. L. 2016, p. 390, § 2-2/HB 811, effective July 1, 2016.
Editor's notes.
Ga. L. 2017, p. 774, § 7/HB 323, part of an Act to revise, modernize, and correct the Code, repealed the reservation of this Code section.
Ga. L. 2022, p. 352, § 7(1)/HB 1428, part of an Act to revise, modernize, and correct the Code, designated this Code section as reserved, effective May 2, 2022.

7-1-239.6. Convenience fees.

A financial institution or mortgage lender, as such term is defined by Code Section 7-1-1000, may charge a convenience fee provided that such fee is permissible in accordance with Code Section 13-1-15. For purposes of this Code section, the term "convenience fee" means any additional amount imposed to a consumer at the time of a transaction for the election of making a payment by electronic means. A convenience fee may include, but is not limited to, any fee charged for payment to an account with the assistance of a live representative or agent of the financial institution or mortgage lender, by telephone, using a voice response unit, or other electronic means. A convenience fee does not include a discount offered by a lender or merchant to a person for payment by cash, check, or similar means.

History.
Code 1981, § 7-1-239.6, enacted by Ga. L. 2017, p. 193, § 5/HB 143.

PART 14

SAVINGS PROMOTION RAFFLES

Cross references.
Lotteries, Ga. Const. 1983, Art. I, Sec. II, Para. VIII.
Gambling and related offenses, § 16-12-20 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
38 Am. Jur. 2d, Gambling, § 187 et seq.
C.J.S.
38 C.J.S., Gaming, § 14.

7-1-239.10. Definitions; conduct of savings promotion raffles; application.

(a) As used in this Code section, the term:

(1) "Bank" means a national bank or a state chartered bank, regardless of which state issued the charter, that has federal deposit insurance.

(2) "Credit union" means a federally chartered credit union or a state chartered credit union, regardless of which state issued the charter, that has federal deposit insurance.

(3) "Savings promotion raffle" means a contest in which the sole consideration required for a chance of winning a designated prize is obtained by the deposit of a specified amount of money in a savings account or other savings program offered by a bank or credit union, where each ticket or entry has an equal chance of being drawn.

(b) A bank or credit union may conduct a savings promotion raffle, provided that the raffle is conducted in a manner that does not:

(1) Jeopardize the ability of the bank or credit union conducting the savings promotion raffle to operate in a safe and sound manner; or

(2) Mislead depositors about the chances of winning.

(c) A bank or credit union conducting a savings promotion raffle:

(1) Shall provide each person making a deposit in a savings promotion raffle account with information regarding:

(A) The terms of the raffle;

(B) The verifiable retail value of each prize that a depositor has a chance of winning;

(C) The odds of a depositor winning a prize; and

(D) Any fees or penalties associated with such account;

(2) Shall not charge any fees associated with the underlying savings account or other savings program in excess of the fees charged for the savings account or other savings program offered by the bank or credit union that is the most similar to such savings promotion raffle account;

(3) May contract for and use the services of a third-party service provider to handle the administrative details of conducting a savings promotion raffle; and

(4) Shall maintain all records the department determines are necessary to conduct an examination or audit of a savings promotion raffle.

(d) The provisions of this Code section applicable to credit unions shall apply to an organization composed primarily of credit unions and

the provisions of this Code section applicable to banks shall apply to an organization composed primarily of banks.

History.
Code 1981, § 7-1-239.10, enacted by Ga. L. 2019, p. 736, § 1/HB 193.

ARTICLE 2

BANKS AND TRUST COMPANIES

Law reviews.
For survey article on business associations, see 34 Mercer L. Rev. 13 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Investment programs offered jointly by banks and brokerage firms. — Brokerage firm is not prohibited, by virtue of O.C.G.A. T. 7, C. 1, Art. 2 and O.C.G.A. § 7-1-241, from offering, in conjunction with a bank, an investment program whereby the brokerage permits customers to maintain special accounts and receives and transmits money in connection with such accounts. 1981 Op. Att'y Gen. No. 81-59.

RESEARCH REFERENCES

ALR.
Bank to which paper is sent for collection of principal or interest as agent of obligor, 55 A.L.R. 1168.

Effect of appointment of conservator for bank, 91 A.L.R. 234; 92 A.L.R. 1258; 107 A.L.R. 1431.

Legal questions presented by the reopening of closed bank, 99 A.L.R. 1217.

State banks, insurance companies, or building and loan associations, which are members of federal reserve bank or similar federal agency, or national banks, as within state social security or Unemployment Compensation Act, 165 A.L.R. 1250.

PART 1

GENERAL MATTERS

Cross references.
Limitations on legislature's powers, Ga. Const. 1983, Art. III, Sec. VI, Para. V.

Secretary of State corporations, § 14-4-1 et seq.

Forgery and criminal issuance of bad checks, § 16-9-1 et seq.

Criminal penalties for illegal use of credit cards or bank services cards, § 16-9-30 et seq.

Bond requirements for banks and trust companies acting as guardian of property, § 29-4-16.

Authority of notaries public who are officers, employees, or other representatives of banks to take acknowledgment of any party to any written instrument executed to or by such bank, § 45-17-12.

Appointment of banks and trust companies as state depositories, § 50-17-50 et seq.

RESEARCH REFERENCES

ALR.

Liability of bank which credits paper payable to a corporation to the personal credit of corporate officer who indorsed it, and pays out the proceeds on the latter's personal checks, 9 A.L.R. 346.

Duty and liability of bank under agreement to remit money or establish credit, 27 A.L.R. 1488; 45 A.L.R. 1052; 69 A.L.R. 673.

When bank deemed insolvent, or "hopelessly" insolvent, in civil cases, 85 A.L.R. 811.

Statute regulating banks and trust companies as special or class legislation, or as denying the equal protection of the laws, 111 A.L.R. 140.

Stipulation relieving bank from, or limiting its liability for disregard of, stop-payment order, 1 A.L.R.2d 1155.

Admissibility, in negligence action against bank by depositor, of evidence as to custom of banks in locality in handling and dealing with checks and other items involved, 8 A.L.R.2d 446.

Bank's liability for breach of implied contract of good faith and fair dealing, 55 A.L.R.4th 1026.

Bank's liability to customer for imposing allegedly excessive service charges, 73 A.L.R.4th 1028.

7-1-240. Powers and restrictions applicable when acting as bank and trust company.

Any financial institution authorized by law to act as both a bank and a trust company shall enjoy and be subject to the powers and restrictions of a bank of its type in regard to its banking activities and in like manner shall enjoy and be subject to the powers and restrictions of a trust company in regard to its trust activity. With respect to general corporate matters not identified with either banking or trust functions, it shall have the privileges and restrictions of a bank of its type.

History.

Code 1933, § 41A-1101, enacted by Ga. L. 1974, p. 705, § 1.

Law reviews.

For article, "An Argument Evaluating Price Controls on Bank Credit Cards in Light of Certain Reemerging Common Law Doctrines," see 9 Ga. St. U.L. Rev. 797 (1993).

For article, "An Economic Perspective on Interest Rate Limitations," see 9 Ga. St. U.L. Rev. 821 (1993).

For article, "Regulating Bank Reputation Risk," see 54 Ga. L. Rev. 523 (2020).

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 595 et seq.

C.J.S.

9 C.J.S., Banks and Banking, §§ 650, 661.

ALR.

Power of banking corporation to loan money for others, 33 A.L.R. 597.

7-1-241. Restrictions on engaging in banking business.

(a) No person or corporation may lawfully engage in this state in the

business of banking or receiving money for deposit or transmission or lawfully establish in this state a place of business for such purpose, except a bank, a national bank, a credit union to the extent provided in Article 3 of this chapter, a licensee engaged in money transmission to the extent permitted by Article 4 of this chapter, a foreign bank branch or foreign bank agency to the extent provided in Article 14 of this chapter, or a savings and loan association to the extent provided by the laws of the United States.

(b) None of the following shall be deemed to be engaged in the business of receiving money for deposit or transmission within the meaning of subsection (a) of this Code section:

(1) A club or hotel to the extent it receives money from members or guests for temporary safekeeping;

(2) An express, steamship, or telegraph company to the extent it receives money for transmission;

(3) An attorney at law, real estate agent, fiscal agent, insurance company, utility company, or any other person or corporation to the extent he or she or it receives and transmits money solely as an incident to a business or profession not governed by this chapter;

(4) Persons or corporations engaged in the business of cashing checks, dispensing cash through credit or debit card activated electronic devices, or recording of financial transactions resulting from and initiated at the point of the sale of goods or services; provided, however, that no such person or corporation shall receive deposits except as provided in Code Section 7-1-603 or otherwise engage in the business of banking; or

(5) A securities broker or dealer registered pursuant to the provisions of 15 U.S.C. Section 78o or Chapter 5 of Title 10 to the extent that such securities broker or dealer:

(A) Sells certificates of deposit or interest in certificates of deposit or other deposit instruments issued by a bank or savings association, provided such securities broker or dealer fully and fairly discloses at the time of solicitation and confirmation whether or not federal deposit insurance is available for that deposit instrument;

(B) Purchases certificates of deposit or other deposit instruments issued by a bank or savings association for the account of the customer of such securities broker or dealer, provided that such instruments are registered in the name of the customer or the custodian of such customer on the books or other records of the issuing bank or savings association; or

(C) Holds customer funds incidental to the purchase and sale of securities on behalf of such customer.

(c) The department is authorized to promulgate regulations and establish policy, consistent with the objectives of this chapter, which objectives include for the purposes of this Code section providing for appropriate competition between financial institutions and other financial organizations and protection of the interests of depositors, and to further define, restrict, or require registration of entities which provide financial products and services to the citizens of this state via the internet, other online access to financial products and services, or alternate methods of delivery which differ from geographically based banking.

History.

Ga. L. 1919, p. 135, art. 1, § 4; Code 1933, § 13-204; Ga. L. 1960, p. 1170, § 1; Ga. L. 1966, p. 691, § 1; Code 1933, § 41A-1102, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1985, p. 258, § 3; Ga. L. 1986, p. 458, § 4; Ga. L. 1990, p. 301, § 1; Ga. L. 1997, p. 485, § 10; Ga. L. 2004, p. 631, § 7; Ga. L. 2008, p. 381, § 2/SB 358; Ga. L. 2016, p. 390, § 7-5/HB 811; Ga. L. 2017, p. 774, § 7/HB 323; Ga. L. 2018, p. 1112, § 7/SB 365; Ga. L. 2019, p. 1056, § 7/SB 52; Ga. L. 2023, p. 651, § 3/HB 55, effective July 1, 2023; Ga. L. 2024, p. 1052, § 1(a)(12)/SB 448, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2023, substituted "a licensee engaged in money transmission to the extent permitted by Article 4 of this chapter, a foreign bank branch or foreign bank agency to the extent provided in Article 14 of this chapter" for "a licensee engaged in selling payment instruments to the extent permitted by Article 4 of this chapter, an international banking agency to the extent provided in Article 5 of this chapter" in subsection (a).

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised capitalization in subsection (c).

OPINIONS OF THE ATTORNEY GENERAL

Foreign state savings and loan association may not offer and sell certificates of deposit in Georgia through one or more broker-dealers located in Georgia. 1983 Op. Att'y Gen. No. 83-23.

"Business of banking" construed. — As used in O.C.G.A § 7-1-241 "the business of banking" is not a separate concept perhaps extending into areas beyond the business of receiving money for deposit or transmission. Rather, it is the receipt of money for deposit or transmission which defines the business of banking for purposes of Georgia law. 1981 Op. Att'y Gen. No. 81-59.

Activities reserved exclusively to regulated financial institutions. — Some activities, such as the lending of funds, while properly engaged in by banks and other regulated financial institutions, are not reserved exclusively to them. Under Georgia law, the only functions which are prohibited to persons and corporations in general are the receipt of deposits and the transmission of funds. 1981 Op. Att'y Gen. No. 81-59.

Automated teller operations limited to financial institutions. — A nonfinancial institution may not establish and operate on its own behalf an unmanned automated teller facility which provides cash withdrawal services. 1985 Op. Att'y Gen. No. 85-2.

Restriction on renting of, or accepting deposits for, safe deposit boxes. — No person or entity, other than

those specifically excepted by former Code 1933, § 41A-1102 (see now O.C.G.A. § 7-1-241), may lawfully engage in the business of renting safe deposit boxes or receptacles for purpose of receiving money, or may accept deposits of money in such facilities. 1980 Op. Att'y Gen. No. 80-88.

Lockbox operations. — An out-of-state bank may not use a lockbox operator as a conduit for deposit-taking in Georgia; however, the operation of a lockbox in and of itself does not constitute engaging in the business of banking. 1985 Op. Att'y Gen. No. 85-3.

Operation of a lockbox in compliance with Department of Banking and Finance Proposed Rule 80-7-1-.06 is permissible under Georgia law. 1985 Op. Att'y Gen. No. 85-43.

Investment motive removes deposits from category of deposit which may be accepted pursuant to former Code 1933, § 41A-1102 (see now O.C.G.A. § 7-1-241). 1980 Op. Att'y Gen. No. 80-108.

Investment programs offered jointly by banks and brokerage firms. — Brokerage firm is not prohibited, by virtue of O.C.G.A. T. 7, C. 1, Art. 2 and O.C.G.A. § 7-1-241, from offering, in conjunction with a bank, an investment program whereby the brokerage permits customers to maintain special accounts and receives and transmits money in connection with such accounts. 1981 Op. Att'y Gen. No. 81-59.

Actions of a bank, participating with a brokerage in offering a particular type of investment program, do not constitute the business of banking in violation of O.C.G.A. § 7-1-241 or O.C.G.A. § 7-1-604. 1981 Op. Att'y Gen. No. 81-59.

Programs proposed to be offered by a brokerage firm, which would be directly involved in soliciting funds from the public primarily for the purpose of facilitating the making of deposits and the earning of interest, would be prohibited by O.C.G.A. § 7-1-241(a). 1988 Op. Att'y Gen. No. 88-10.

Issuance by corporations of debt securities redeemable by check. — Arrangement by which business corporation would receive money from individuals and in return issue to the individuals its debt securities redeemable by negotiable checks would involve "receiving deposits" within the meaning of O.C.G.A. § 7-1-4(7), and only persons or entities authorized to engage in the banking business by O.C.G.A. § 7-1-241 may lawfully engage in such arrangements. 1982 Op. Att'y Gen. No. 82-68.

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 19.

C.J.S.

9 C.J.S., Banks and Banking, § 5 et seq.

ALR.

Power of banking corporation to loan money for others, 33 A.L.R. 597.

Duty and liability of bank under agreement to remit money or establish credit, 27 A.L.R. 1488; 45 A.L.R. 1052; 69 A.L.R. 673.

Licensing and regulation of business of transmitting funds to foreign countries, 94 A.L.R.2d 496.

7-1-242. Restriction on corporate fiduciaries.

(a) No corporation, partnership, or other entity may lawfully act as a fiduciary in this state except:

(1) A financial institution authorized to act in such capacity pursuant to the provisions of Georgia law;

(2) A trust company;

(3) A national bank or a state bank lawfully doing a banking

business in this state and authorized to act as a fiduciary under the laws of the United States or another state;

(4) A savings bank or savings and loan association lawfully doing a banking business in this state and authorized to act as a fiduciary under the laws of the United States or another state;

(5) Attorneys at law licensed to practice in this state, whether organized as a professional corporation or otherwise;

(6) An investment adviser registered pursuant to the provisions of 15 U.S.C. Section 80b-3 or Chapter 5 of Title 10, provided that this exception shall not authorize an investment adviser to act in any fiduciary capacity subject to the provisions of Title 53, relating to wills, trusts, and the administration of estates, or Title 29, relating to guardianships and conservatorships;

(7) A securities broker or dealer registered pursuant to the provisions of 15 U.S.C. Section 78o or Chapter 5 of Title 10 acting in such fiduciary capacity incidental to and as a consequence of its broker or dealer activities; or

(8) A nonprofit corporation.

(b) Acting as a fiduciary for purposes of this Code section includes but is not limited to:

(1) Accepting or executing trusts or otherwise acting as a trustee;

(2) Administering real or tangible personal property located in Georgia or elsewhere. For the purposes of this paragraph, "administer" means to possess, purchase, sell, lease, insure, safekeep, manage, or otherwise oversee; and

(3) Acting pursuant to a court order as personal representative, executor, or administrator of the estate of a deceased person or as guardian or conservator for a minor or incapacitated person.

(c) Nothing in this chapter shall be construed to repeal or to change Article 15 of Chapter 12 of Title 53 or any other statutes or rules of law on such subject.

History.

Code 1933, § 109-302.1, enacted by Ga. L. 1973, p. 525, § 1; Code 1933, § 41A-1103, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1980, p. 972, §§ 5, 6; Ga. L. 1981, p. 1366, § 4; Ga. L. 1990, p. 301, § 2; Ga. L. 1991, p. 810, § 2; Ga. L. 1998, p. 795, § 13; Ga. L. 2004, p. 631, § 7; Ga. L. 2008, p. 381, § 3/SB 358; Ga. L. 2010, p. 579, § 2/SB 131.

Cross references.

Substitution of parties to contracts generally, § 13-4-20.

Impossibility as excuse for nonperformance, § 13-4-21.

JUDICIAL DECISIONS

Legislative intent. — It was not the intent of the General Assembly in enacting former Code 1933, § 41A-1103 (see now O.C.G.A. § 7-1-242) to repeal former Code 1933, § 22-5503 (see now O.C.G.A. § 14-5-42). McGonagle v. Duncan, 244 Ga. 308, 260 S.E.2d 44, 1979 Ga. LEXIS 1218 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Applicability to facilities conducting only trust business. — Branch banking and bank holding company restrictions apply to bank facilities conducting only trust business. 1980 Op. Att'y Gen. No. 80-156.

State-chartered credit unions not custodians of retirement funds. — State-chartered credit unions may not act as a custodian or trustee for retirement funds under the Employee Retirement Income Security Act of 1974. 1975 Op. Att'y Gen. No. 75-56.

Applicability to investment advisors. — Term "fiduciary" as used in O.C.G.A. § 7-1-242 includes the specific persons or entities identified in O.C.G.A. § 7-1-4(20) as well as other persons or entities who take possession of or title to assets of others or exercise control over such assets for the purpose of managing those assets. This definition of fiduciary and the restrictions of O.C.G.A. § 7-1-242 would also apply to corporate investment advisers who, in addition to offering advice for sale, also take custody of or exercise control over the customers' assets for the purpose of administering those assets, but this opinion does not address the issue of whether the restrictions of O.C.G.A. § 7-1-242 apply to a securities dealer who, incidental to the trading of securities, may hold uninvested client funds and securities subject to customer instruction and directives. 1989 Op. Att'y Gen. 89-25.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 19, 23.

C.J.S.
9 C.J.S., Banks and Banking, §§ 222, 223.

7-1-243. Restrictions on banking and trust nomenclature.

(a) Except as provided in subsection (c) of this Code section, no person or corporation except a bank, a national bank, a foreign bank as defined in Code Section 7-1-1100, a bank as defined in Code Section 7-1-628.1, a corporation lawfully owning the majority of the voting stock of a bank, a national bank, or a bank as defined in Code Section 7-1-628.1, or a subsidiary of such bank, national bank, bank as defined in Code Section 7-1-628.1, or corporation shall use the words "bank," "banker," "banking company," "banking house," or any other similar name indicating that the business done is that of a bank upon any sign at its place of business or elsewhere, or upon any of its letterheads, billheads, blank checks, blank notes, receipts, certificates, circulars, advertisements, or any other written or printed matter.

(a.1) Except as provided in subsection (c) of this Code section, no person or corporation except a credit union, a federal credit union, or credit union chartered by another state whose deposits are federally

insured or a subsidiary of such credit union, federal credit union, or credit union chartered by another state whose deposits are federally insured shall use the words "credit union" or any other similar name indicating that the business done is that of a credit union upon any sign at its place of business or elsewhere, or upon any of its letterheads, billheads, blank checks, blank notes, receipts, certificates, circulars, advertisements, or any other written or printed matter.

(b) Except as provided in subsection (c) of this Code section, no person or corporation except:

(1) A corporation lawfully authorized to exercise trust powers or any subsidiary thereof;

(2) A corporation lawfully owning the majority of the voting stock of any corporation authorized to exercise trust powers, or any subsidiary of such owner corporation;

(3) An enterprise whose structure is in the nature of a trust where the trustees include a corporation lawfully authorized to exercise trust powers in this state;

(4) An eleemosynary institution; or

(5) A foreign bank as defined in Code Section 7-1-1100

shall use the words "trust" or "trust company" or any similar name indicating that the business done is that of a trust company upon any sign at its place of business or elsewhere, or upon any of its letterheads, billheads, blank checks, blank notes, receipts, certificates, circulars, advertisements, or any other written or printed matter.

(c) Nothing in this Code section shall be construed to:

(1) Prevent the use of the words "banks," "banker," "banking," "banker's," "trust," or any similar word in a context clearly not purporting to refer to a banking or a trust business or to a business primarily engaged in the lending of money, underwriting or sale of securities, acting as a financial planner, financial service provider, investment or trust adviser, or acting as a loan broker;

(1.1) Prevent the use of the words "credit union" or any similar word in a context clearly not purporting to refer to a credit union or to a business primarily engaged in the lending of money, or accepting shares or deposits or acting as a loan broker;

(2) Prohibit advertisement in media distributed in or transmitted into this state by persons or corporations lawfully engaged in the banking, credit union, or trust business outside of this state; or

(3) Prevent any person or corporation from continuing to use its name legally in use on April 1, 1989.

(d) The department shall advise the Secretary of State of any corporate name or proposed corporate name it deems to be inconsistent with this Code section.

History.

Ga. L. 1927, p. 344, §§ 1, 2; Code 1933, § 109-502; Ga. L. 1974, p. 463, § 1; Code 1933, § 41A-1104, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1978, p. 1717, § 3; Ga. L. 1981, p. 1366, § 5; Ga. L. 1989, p. 1257, § 2; Ga. L. 1999, p. 674, § 3; Ga. L. 2009, p. 86, § 4/HB 141; Ga. L. 2010, p. 878, § 7/HB 1387; Ga. L. 2018, p. 214, § 4/HB 780; Ga. L. 2021, p. 323, § 3/HB 111; Ga. L. 2023, p. 651, § 4/HB 55, effective July 1, 2023; Ga. L. 2024, p. 1052, § 1(a)(13)/SB 448, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2023, inserted "a foreign bank as defined in Code Section 7-1-1100," in subsection (a) and, in subsection (b), deleted "or" at the end of paragraph (b)(3), added "; or" at the end of paragraph (b)(4), and added paragraph (b)(5).

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (a.1) and in paragraph (c)(1.1).

Cross references.

Further regulations pertaining to use of names by financial institutions, § 7-1-130.

Editor's notes.

Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

OPINIONS OF THE ATTORNEY GENERAL

Open-end investment fund not engaged in banking may use term "trust". — When open-end investment fund is not engaged in the banking business in this state, use of the term "trust" does not violate former Code 1933, § 41A-1104. 1975 Op. Att'y Gen. No. 75-92.

Name did not indicate that trust company business was conducted. — Use of the name Fidelity Daily Income Trust by a duly organized business trust does not indicate that the business being done by the fidelity is that of a "trust company"; therefore, fidelity is not in violation of former Code 1933, § 41A-1104 (see now O.C.G.A. § 7-1-243). 1975 Op. Att'y Gen. No. 75-92.

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 183.

C.J.S.

9 C.J.S., Banks and Banking, § 43.

ALR.

Modern status of the Massachusetts or business trust, 88 A.L.R.3d 704.

7-1-244. Deposit insurance requirements; public notices when deposits not properly insured.

(a) Every bank shall obtain and maintain deposit insurance satisfactory to the department; provided, however, that banks which have had their deposit insurance withdrawn or canceled may, in the discretion of the department, continue to accept deposits; provided, further, that such banks shall within six months after such withdrawal or cancellation of insurance obtain deposit insurance, satisfactory to the depart-

ment, written by an insurance company authorized to transact business in this state or by the Federal Deposit Insurance Corporation. The department may, in its discretion, for cause shown, extend the time limitation in which deposit insurance must be obtained.

(b) Deposit insurance required to be obtained in subsection (a) of this Code section need not be in excess of amounts insured by the Federal Deposit Insurance Corporation at the time the insurance is obtained; but wherever the insurance coverage is, in the opinion of the department, less than amounts insured by the Federal Deposit Insurance Corporation, the bank shall be required to post at a conspicuous place near the entrance of such bank a sign in boldface print, in letters at least four inches high, which states "Deposits Not Insured" or "Deposits Insured Up To (insert amount of deposit insurance)." Such wording shall also follow the name of the bank wherever it is written or printed and shall be posted in writing which is easily legible in letters at least one inch high at each window or desk receiving deposits.

History.

Ga. L. 1966, p. 692, § 17; Code 1933, § 41A-1105, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2020, p. 493, § 7/SB 429.

Cross references.

Restrictions on advertising for sale instruments purporting to be insured or guaranteed in manner comparable to insured deposit or shared account when such instrument does not in fact possess comparable insurance coverage, § 7-1-133.

For similar provisions as to deposit insurance requirements for credit unions, § 7-1-666.

RESEARCH REFERENCES

Am. Jur. 2d.

11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1086, 1087.

C.J.S.

9 C.J.S., Banks and Banking, § 25.

ALR.

Insurance of bank or trust company against loss by burglary or robbery as covering contents of safety deposit boxes rented to customers, 30 A.L.R. 623.

Liability on bond for security of public funds deposited in banks as affected by form of transaction, or nature or validity of deposit, 65 A.L.R. 798.

Purchaser or holder of draft, cashier's check or certified check as a depositor within statutes relating to guaranty or insurance of deposits or deposit liability, 111 A.L.R. 228.

Circumstances under which federal appellate court will allow Federal Deposit Insurance Corporation (FDIC) or Resolution Trust Corporation (RTC) to raise on appeal issues not raised at trial involving financial institution put in receivership or conservatorship after trial, 120 A.L.R. Fed. 469.

Determination, under 12 USCS § 1821(f), of disputes concerning insured nature of deposits as entitled to Federal Deposit Insurance Protection, 120 A.L.R. Fed. 485.

Part 2

General Powers of Banks and Trust Companies

RESEARCH REFERENCES

ALR.

Duty of bank when several checks which, in the aggregate, exceed the depositor's balance, are presented at the same time, 26 A.L.R. 1486; 66 A.L.R. 404; 109 A.L.R. 858; 114 A.L.R. 518.

Liability of bank for loss of liberty bonds and war savings stamps, 40 A.L.R. 899.

Right of savings bank to liquidate voluntarily and close business, 69 A.L.R. 1255.

Liability for interest or profits on funds of estate deposited in bank or trust company which is itself executor, administrator, trustee, or guardian, or in which executor, is interested, 88 A.L.R. 205.

Statute regulating banks and trust companies as special or class legislation, or as denying the equal protection of the laws, 111 A.L.R. 140.

7-1-260. General corporate powers.

Subject to restrictions contained in this chapter or in its articles, a bank or trust company shall have the power:

(1) To have perpetual duration unless a limited period of duration is stated in its articles. Each bank or trust company existing on April 1, 1975, shall have perpetual duration unless its articles are amended under this chapter to provide for a limited period of duration;

(2) To sue and be sued, complain and defend in its corporate name;

(3) To have a corporate seal, which may be altered at pleasure, and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced;

(4) To adopt, alter, and repeal bylaws pursuant to the procedures of Code Section 7-1-481 containing provisions for the regulation and management of affairs of the institution not inconsistent with law or its articles;

(5) To elect or appoint and remove officers and agents of the institution and to define their duties and fix their compensation;

(6) To make contracts;

(7) To make, irrespective of corporate benefit, loans, investments, contributions, and donations for community development and the promotion of the public welfare or for other religious, charitable, scientific, educational, hospital, civic, or similar purposes and in time of war or other national emergency in aid of the national effort with respect thereto;

(8) At the request or direction of the United States government or any public body thereof, to transact lawful business in time of war or national emergency in aid of the national effort in connection therewith;

(9) To procure, for its benefit, insurance on the life of any of its directors, officers, or employees or any other person whose death might cause financial loss to the bank or trust company; or, pursuant to any contract lawfully obligating the bank or trust company as guarantor or surety, on the life of the principal obligor; and

(10) To reimburse and indemnify litigation, liabilities, and expenses of directors, officers, and employees pursuant to agreements with them or otherwise and to purchase and maintain liability insurance for their benefit unless otherwise limited pursuant to this chapter.

History.

Ga. L. 1898, p. 78, § 3; Civil Code 1910, § 2817; Ga. L. 1917, p. 56, § 1; Ga. L. 1919, p. 135, art. 17, § 1; Ga. L. 1920, p. 76, § 1; Code 1933, §§ 13-1801, 109-201; Code 1933, § 41A-1201, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 946, § 67; Ga. L. 1989, p. 1257, § 3; Ga. L. 1995, p. 673, § 11.

Editor's notes.

The amendment to this Code section by Ga. L. 1989, p. 946, § 67, was superseded by the amendment by Ga. L. 1989, p. 1257, § 3, which was enacted later.

JUDICIAL DECISIONS

Operation of a general insurance agency does not qualify as an "incidental power" as it is not convenient or useful in connection with one of the bank's activities established pursuant to the exercise of the bank's express powers. The business of a general insurance agency encompasses selling various types of insurance to the general public. In operating such an agency, a bank would be engaged in an independent, profit-seeking venture unrelated to the bank's express powers. Independent Ins. Agents of Ga., Inc. v. Department of Banking & Fin., 248 Ga. 787, 285 S.E.2d 535, 1982 Ga. LEXIS 647 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Banking corporations of this state may not make political contributions. 1970 Op. Att'y Gen. No. 70-144.

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 595 et seq. 19 Am. Jur. 2d, Corporations, §§ 1979 et seq., 2071.

C.J.S.

9 C.J.S., Banks and Banking, §§ 222, 223.

ALR.

Right of setoff by or against bank or trust company as affected by division of its business into departments, 81 A.L.R. 1508.

Power of bank or trust company with respect to assistance of or cooperation with another bank financially embarrassed, 84 A.L.R. 1425.

Trust company's agreement to repay in cash principal of trust fund investment as ultra vires, 96 A.L.R. 453.

Dealings between bank or trust company and itself acting as executor, administrator, or trustee, 112 A.L.R. 780.

Power of savings bank or similar institution to provide checking facilities or negotiable orders of withdrawal (NOW) to customers, 64 A.L.R.3d 1314.

7-1-261. Additional operational powers.

Banks and trust companies shall, in addition, have the power:

(1) To act as agent of the United States or any public body thereof for the sale or issue of bonds, notes, or other obligations of the United States, or those for which the full faith and credit of the United States is pledged, and to grant security interests in its assets for the faithful performance of its duties as agent;

(2) To receive for safekeeping or to rent out receptacles or safe-deposit boxes for the deposit of papers and other personal property;

(3) To grant security interests in their assets for borrowings authorized by this chapter and to dispose of their assets in the same manner as corporations generally;

(4) To give bond in any proceeding in any court in which they are a party or upon any appeal in any such proceeding and to secure such bond;

(5) To acquire and hold real property to the extent permitted by Code Sections 7-1-262, 7-1-282, and 7-1-286;

(6) To acquire and hold stocks and investment securities subject, in the case of banks, to the restrictions of Code Sections 7-1-287 and 7-1-288 and, in the case of trust institutions, to the restrictions of Code Section 7-1-312;

(7) To acquire and hold personal property necessary in the exercise of powers conferred by this chapter;

(8) To acquire and hold any property in order to avoid loss on an evidence of indebtedness, agreement for the payment of money, or an investment security previously acquired lawfully and in good faith subject to the restrictions of Code Section 7-1-263;

(9) To hold property lawfully held on April 1, 1975, irrespective of any restriction or limitation in this chapter, subject to the inclusion of any such property in any computation of limitation on the acquisition of property of like character under this chapter;

(10) To enter into an agency relationship as defined in Code Section 7-1-4 subject to restrictions and qualifications prescribed by regulations of the department; and

(11) To have and exercise all powers necessary, convenient, or incidental to effect any and all purposes for which the bank or trust company and its subsidiaries and affiliates is organized, provided that the commissioner may establish approval procedures by regulation for additional powers as needed to satisfy the objectives of this chapter. Powers shall include but not be limited to: sale of securities,

annuities, and other investment products upon the order of and for the account of its customers, subject to applicable federal or state securities requirements; sale of insurance subject to state insurance laws, regulations, and licensing requirements, applicable federal laws, and departmental regulations and policies; sale or lease of excess computer capacity; expansion of customer services through the use of technology; other powers including those bank and trust powers authorized to subsidiaries of the bank or trust company pursuant to subparagraph (c)(2)(F) of Code Section 7-1-288; and other such powers to carry on banking, trust, or other activities determined by the commissioner to be financial in nature or incident or complementary to such financial activities and consistent with the objectives of this chapter and the regulations of the department.

History.

Ga. L. 1898, p. 78, § 3; Civil Code 1910, § 2817; Ga. L. 1917, p. 56, § 1; Ga. L. 1919, p. 135, art. 17, § 1; Ga. L. 1920, p. 76, § 1; Code 1933, §§ 13-1801, 109-201; Code 1933, § 13-1802, enacted by Ga. L. 1968, p. 1044, § 1; Code 1933, § 41A-1202, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1983, p. 602, § 4; Ga. L. 1989, p. 1249, § 2; Ga. L. 1995, p. 673, § 12; Ga. L. 1996, p. 6, § 7; Ga. L. 1997, p. 485, § 11; Ga. L. 2000, p. 174, § 4.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1997, commas were deleted preceding and following "and its subsidiaries and affiliates" in the first sentence in paragraph (11).

Law reviews.

For survey article on insurance, see 34 Mercer L. Rev. 177 (1982).

JUDICIAL DECISIONS

Section 33-3-23 and paragraph (10), (now paragraph (11)), must be construed in pari materia. — O.C.G.A. § 33-3-23 and O.C.G.A. § 7-1-261(10), (now paragraph (11)) were enacted at the same legislative session and relate to the same subject matter — permissible scope of bank's powers — and must, therefore, be construed in pari materia. Department of Banking & Fin. v. Independent Ins. Agents of Ga., Inc., 158 Ga. App. 556, 281 S.E.2d 265, 1981 Ga. App. LEXIS 2305 (1981), rev'd, 248 Ga. 787, 285 S.E.2d 535, 1982 Ga. LEXIS 647 (1982).

Approval of proposed exercises of incidental powers guided by § 7-1-3(a)(6). — O.C.G.A. § 7-1-261 establishes legislative intent that state banks be authorized to exercise "incidental powers" and delegates authority to approve such powers to the commissioner, who shall be guided in this determination by the statutory objective stated in O.C.G.A. § 7-1-3(a)(6) of making state banks competitive with national banks. Department of Banking & Fin. v. Independent Ins. Agents of Ga., Inc., 158 Ga. App. 556, 281 S.E.2d 265, 1981 Ga. App. LEXIS 2305 (1981), rev'd, 248 Ga. 787, 285 S.E.2d 535, 1982 Ga. LEXIS 647 (1982).

General words following list of particulars are construed to embrace only objects similar in nature to particulars. Independent Ins. Agents of Ga., Inc. v. Department of Banking & Fin., 248 Ga. 787, 285 S.E.2d 535, 1982 Ga. LEXIS 647 (1982).

Operation of general insurance agency does not qualify as "incidental power" as it is not convenient or useful in connection with one of the bank's activities established pursuant to the exercise of the bank's express powers. The business of a general insurance agency encompasses selling various types of insurance to the general public. In operating such an agency, a bank would be engaged

in an independent, profit-seeking venture unrelated to the bank's express powers. Independent Ins. Agents of Ga., Inc. v. Department of Banking & Fin., 248 Ga. 787, 285 S.E.2d 535, 1982 Ga. LEXIS 647 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Sale of data processing equipment and technology services by bank to other banks is authorized. 1974 Op. Att'y Gen. No. 74-121.

Banking corporations of this state may not make political contributions. 1970 Op. Att'y Gen. No. 70-144.

State trust company may establish foreign branch office for purpose of developing new international business. 1970 Op. Att'y Gen. No. 70-59.

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 595 et seq. 19 Am. Jur. 2d, Corporations, §§ 1979 et seq., 2071.

C.J.S.

9 C.J.S., Banks and Banking, §§ 222, 223.

ALR.

Levy upon or garnishment of contents of safety deposit box, 19 A.L.R. 863; 39 A.L.R. 1215.

Insurance of bank or trust company against loss by burglary or robbery as covering contents of safety deposit boxes rented to customers, 30 A.L.R. 623.

Liability for loss of contents of safe-deposit box, 42 A.L.R. 1304; 133 A.L.R. 279.

Power of bank or trust company with respect to assistance of or cooperation with another bank financially embarrassed, 84 A.L.R. 1425.

Trust company's agreement to repay in cash principal of trust fund investment as ultra vires, 96 A.L.R. 453.

Power of bank or trust company to create trust out of its securities and sell participation certificates therein, 97 A.L.R. 1182.

Presumption as to ownership of property in safe deposit box, 101 A.L.R. 832.

Dealings between bank or trust company and itself acting as executor, administrator, or trustee, 112 A.L.R. 780.

Power of savings bank or similar institution to provide checking facilities or negotiable orders of withdrawal (NOW) to customers, 64 A.L.R.3d 1314.

7-1-262. Power to hold real estate; prior approval of acquisitions.

(a) A bank or trust company may solely or jointly with other persons or corporations acquire and hold such real property as it:

(1) Occupies or intends to occupy primarily for the transaction of its business, the business of any subsidiary or affiliate, or the recreational use of its employees or partly so occupies and partly leases;

(2) Acquires for the purpose of providing parking or other facilities primarily for the use of its tenants, customers, officers, and employees; or

(3) Acquires with others for the purpose of providing data processing facilities or other support services for the bank or trust company or any subsidiary solely or in cooperation with others,

subject to the limitation that the investment of the bank or trust company in all such real property, in all furniture, fixtures, and equipment acquired in connection with any real property owned or leased by the bank or trust company, in all alterations of buildings on real property owned or leased by the bank or trust company, in all shares of corporations organized for the purpose of holding real estate in the categories described above where the bank or trust company or a subsidiary of the bank or trust company owns 25 percent or more of such shares outstanding, in obligations of or for the benefit of such corporations or loans upon the security of the shares of such corporations or, to the extent of the bank's or trust company's pro rata interest, the security of the real estate itself, and in all real estate, furniture, fixtures, or equipment held beyond the limits specified in Code Section 7-1-263 shall not exceed 60 percent of the statutory capital base of the bank or trust company, or such larger amount as may be approved by the department.

(b) All acquisitions of real property for purposes authorized above must be accorded prior written approval by the department in advance of the acquisition except to the extent authorized by regulation.

History.
Ga. L. 1898, p. 78, § 3; Civil Code 1910, § 2817; Ga. L. 1917, p. 56, § 1; Ga. L. 1919, p. 135, art. 19, § 24; Ga. L. 1920, p. 76, § 1; Code 1933, §§ 13-2024, 109-201; Ga. L. 1963, p. 512, § 1; Ga. L. 1972, p. 1242, § 1; Code 1933, § 41A-1203, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 16; Ga. L. 1989, p. 1249, § 3.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 600 et seq.

C.J.S.
9 C.J.S., Banks and Banking, § 239.

7-1-263. Property held to avoid loss.

A bank or trust company may acquire and hold property for the purpose of avoiding loss as specified in paragraph (8) of Code Section 7-1-261, subject to:

(1) A determination by a majority vote of its directors at least once each year as to the advisability of retaining any such property, provided that no such property may be held for more than five years without the prior written approval of the department; and

(2) Disposition within a period of six months after the date of acquisition or such longer period as the department may approve in writing of shares of its own stock so acquired and of shares of stock of any bank, bank holding company, or trust company held after such acquisition.

History.
Ga. L. 1898, p. 78, § 3; Civil Code 1910, § 2817; Ga. L. 1917, p. 56, § 1; Ga. L. 1919, p. 135, art. 19, §§ 22-24; Ga. L. 1920, p. 76, § 1; Ga. L. 1924, p. 76, § 1; Ga. L. 1927, p. 195, § 10; Code 1933, §§ 13-2022, 13-2023, 13-2024, 109-201; Ga. L. 1946, p. 65, § 1; Ga. L. 1947, p. 501, § 1; Ga. L. 1950, p. 18, § 1; Ga. L. 1951, p. 284, § 1; Ga. L. 1957, p. 275, § 1; Ga. L. 1958, p. 133, § 1; Ga. L. 1959, p. 238, § 1; Ga. L. 1962, p. 95, § 1; Ga. L. 1963, p. 512, § 1; Ga. L. 1965, p. 523, § 1; Ga. L. 1966, p. 590, § 8; Ga. L. 1968, p. 1162, § 1; Ga. L. 1969, p. 976, § 1; Ga. L. 1972, p. 1242, § 1; Code 1933, § 41A-1204, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 6.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 600 et seq.
C.J.S.
9 C.J.S., Banks and Banking, § 239.

ALR.
Liability of bank for loss of liberty bonds and war savings stamps, 40 A.L.R. 899.

Part 3

Powers of Banks

RESEARCH REFERENCES

ALR.
Powers of bank president or vice president, 1 A.L.R. 693; 67 A.L.R. 970.
Duty of bank when several checks which, in the aggregate, exceed the depositor's balance, are presented at the same time, 26 A.L.R. 1486.
Power of banking corporation to loan money for others, 33 A.L.R. 597.
Rights of owners of securities deposited in bank, upon its insolvency, 51 A.L.R. 914; 84 A.L.R. 1534; 126 A.L.R. 625.
Right of savings bank to liquidate voluntarily and close business, 69 A.L.R. 1255.
Statute regulating banks and trust companies as special or class legislation, or as denying the equal protection of the laws, 111 A.L.R. 140.
Power of bank officer respecting security or collateral held by bank, 11 A.L.R.2d 1305.

7-1-280. Major banking powers.

Subject to restrictions contained in this chapter or in its articles, a bank shall have the power:

(1) To receive money or commercial paper for deposit and to provide by its rules or by agreement for the terms of withdrawal and interest thereon;

(2) To act as an agent to collect checks, drafts, and other items of commercial paper and in exercising this power to become a member of a clearing-house and grant security interests in its assets for its qualification therein;

(3) To lend money and discount or purchase evidence of indebtedness and agreements for the payment of money and to take security

title or security interests in real or personal property to secure obligations owing thereunder;

(4) To service loans made by it or by others whether or not held by the bank;

(5) To issue, advise, and confirm letters of credit authorizing the beneficiaries thereof to draw upon the bank or its correspondents;

(6) To receive money for transmission;

(7) To buy and sell exchange, coin, and bullion; and

(8) To provide third-party payments services.

History.

Ga. L. 1919, p. 135, art. 17, § 1; Code 1933, § 13-1801; Code 1933, § 41A-1301, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1985, p. 258, § 4; Ga. L. 1986, p. 458, § 5.

Cross references.

Definition of "clearing-house" for purposes of the Uniform Commercial Code, § 11-4-104.

Definition of "collecting bank" for purposes of the Uniform Commercial Code, § 11-4-105.

For provisions of T. 11, the Uniform Commercial Code, pertaining to letters of credit generally, § 11-5-101 et seq.

Effect of laws relating to regulation of practice of law on power of banks to give advice to customers in matters incidental to banks or banking, § 15-19-52.

JUDICIAL DECISIONS

Operation of general insurance agency does not qualify as "incidental power" as it is not convenient or useful in connection with one of the bank's activities established pursuant to the exercise of the bank's express powers. The business of a general insurance agency encompasses selling various types of insurance to the general public. In operating such an agency, a bank would be engaged in an independent, profit-seeking venture unrelated to the bank's express powers. Independent Ins. Agents of Ga., Inc. v. Department of Banking & Fin., 248 Ga. 787, 285 S.E.2d 535, 1982 Ga. LEXIS 647 (1982).

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 595 et seq.

Am. Jur. Proof of Facts.

Damages for Brach of Contract to Lend Money, 41 POF2d 337.

C.J.S.

9 C.J.S., Banks and Banking, §§ 222, 223.

ALR.

Liability of bank on letter of credit as affected by quality or condition of goods for purchase price of which it is issued, 39 A.L.R. 755.

Liability of collecting bank which accepts something other than cash, 61 A.L.R. 739; 89 A.L.R. 1336.

Misappropriation by agent or employee of bank of proceeds of loan made through him to third person as chargeable to bank or to borrower, 69 A.L.R. 804.

What amounts to a deposit within statute in relation to civil or criminal liability for accepting deposit when bank is unsafe or insolvent, 76 A.L.R. 1320.

Financial statement by borrower as basis of loan or extension of credit, 104 A.L.R. 921.

Dealings between bank or trust company and itself acting as executor, administrator, or trustee, 112 A.L.R. 780.

Power of bank to agree to repurchase real estate mortgage or other securities sold by it, 120 A.L.R. 485.

Noncompliance by bank with statutory provisions relating to loans or discounts as defense to recovery of loan or enforcement of its security, 125 A.L.R. 1512.

Power and capacity of bank to take devise or bequest, 8 A.L.R.2d 454.

Power of savings bank or similar institution to provide checking facilities or negotiable orders of withdrawal (NOW) to customers, 64 A.L.R.3d 1314.

Measure of damages for breach of contract to lend money, 4 A.L.R.4th 682.

Recovery by bank of money paid out to customer by mistake, 10 A.L.R.4th 524.

Bank's liability to real property purchaser for misrepresentation respecting purchaser's obtaining government guaranteed or subsidized loan, 37 A.L.R.4th 773.

7-1-281. Participation in federal programs.

Any bank may:

(1) Become a member of the Federal Reserve System and conform to the rules and regulations of that system and the federal reserve bank of which it is a member;

(2) Become an insured bank pursuant to the Federal Deposit Insurance Act and take all action necessary to the maintenance of insured status thereunder;

(3) Apply for and obtain insurance on loans pursuant to national housing legislation.

History.

Ga. L. 1919, p. 135, art. 19, § 38; Code 1933, § 13-2038; Code 1933, § 41A-1302, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 17; Ga. L. 1984, p. 22, § 7.

U.S. Code.

The Federal Deposit Insurance Act, referred to in paragraph (2) of this Code section, is codified as 12 U.S.C. §§ 1728, 1811 et seq.

7-1-282. Direct leasing of personal and real property.

Notwithstanding any other provision of law to the contrary and subject to such regulations as the department may prescribe, a bank may:

(1) Become the owner and lessor of personal property acquired upon the specific request and for the use of a customer and may incur such additional obligations as may be incident to becoming an owner and lessor of such property. At the end of any lease, the bank shall, within six months, enter into a new lease with respect to the property or dispose of it. The leasing shall constitute an indebtedness under Code Section 7-1-285 and shall be subject to the lending limitations of such Code section;

(2) Become the owner and lessor of certain public real property and facilities. A bank may purchase or construct a municipal building, school building, or other similar state, local, or other governmen-

tal authority facility if, as holder of legal title, such purchase is for the purpose of leasing the facility to a municipality or other public or governmental authority which has the authority to enter into such lease, is authorized to levy taxes or is backed by the taxing authority of another political subdivision, and has the resources sufficient to make lease payments as they come due. The lease agreement must provide that the lessee will become the owner of the building or facility upon the expiration of the lease; and

(3) Become the owner and lessor of real property acquired upon the specific request and for the use of a customer or an affiliate thereof and may incur such additional obligations as may be incidental to becoming an owner and lessor of such property. The lessee, or an affiliate thereof, shall be responsible for any and all construction of buildings or other improvements related to such real property. Any lease with respect to such real property shall provide that the lessee thereof shall be responsible for maintaining the property, insuring the property, and paying real estate taxes related to the property. At the end of any lease, the bank shall, within six months, enter into a new lease with respect to the property or dispose of it. The leasing shall be subject to credit approval by the bank in a manner substantially similar to a loan and shall constitute an indebtedness under Code Section 7-1-285 and shall be subject to the lending limitations of such Code section. The assignment of any purchase contract, or the right to purchase real property thereunder, by the lessee or an affiliate thereof to the bank shall not affect the entitlement of any real estate broker to any real estate brokerage commissions owing upon the sale of such real property.

History.
Ga. L. 1919, p. 135, art. 19, § 22; Code 1933, § 13-2022; Ga. L. 1966, p. 590, § 8; Code 1933, § 41A-1303, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1999, p. 674, § 4; Ga. L. 2000, p. 174, § 5; Ga. L. 2001, p. 4, § 7; Ga. L. 2004, p. 458, § 3.

7-1-283. Participations.

(a) A bank may purchase and may sell participations in:

(1) One or more evidences of indebtedness or agreements for the payment of money, subject to regulations by the department; or

(2) Pools of evidences of indebtedness or agreements for the payment of money, subject to regulations by the department.

(b) The department may prohibit the sale of any type of participation to the public or otherwise not in the usual course of banking business, except as permitted by other provisions of this chapter.

History.
Code 1933, § 41A-1304, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

ALR.
Power of bank or trust company to create trust out of its securities and sell participation certificates therein, 97 A.L.R. 1182.

7-1-284. Acceptances.

(a) A bank may accept drafts upon it having not more than nine months' sight to run arising out of transactions involving:

(1) The import or export of goods;

(2) The domestic shipment of goods, if secured by documents of title covering such goods; or

(3) The storage of readily marketable staples, if secured by documents of title covering such staples.

(b) The aggregate amount of acceptances under subsection (a) of this Code section shall not at any time exceed, for all such acceptances on behalf of one customer, 15 percent of the statutory capital base of the bank, exclusive of any acceptance secured by documents of title or other security growing out of the same transaction as the acceptance.

(c) In addition, a bank may, with the prior approval of the department, accept drafts having not more than three months' sight to run drawn upon it by banking institutions or bankers in foreign countries or in dependencies or insular possessions of the United States for the purpose of creating dollar exchange as required in an aggregate amount which shall not at any time exceed:

(1) For all such acceptances on behalf of a single banking institution or banker, 10 percent of the statutory capital base;

(2) For all such acceptances, 50 percent of the statutory capital base, provided that the department may, by regulation, impose additional restrictions on the acceptance of drafts under this subsection.

History.
Ga. L. 1919, p. 135, art. 19, § 20; Code 1933, § 13-2020; Code 1933, § 41A-1305, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1976, p. 275, § 1; Ga. L. 1981, p. 1366, § 7; Ga. L. 1983, p. 602, § 5.

Cross references.
Effect of proffered acceptance of draft by drawee which varies draft as presented, § 11-3-412.

Warehouse receipts, bills of lading, and other documents of title, § 11-7-101 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Bills and Notes, § 379 et seq.

C.J.S.
9 C.J.S., Banks and Banking, §§ 240, 241.

7-1-285. Limits on obligations of one person or corporation.

(a) As used in this Code section, the term:

(1) "Credit exposure as a counterparty in derivative transactions" means an amount that the bank reasonably determines, pursuant to a methodology acceptable to the department under the terms of the derivative or otherwise, would be its loss if a counterparty were to default on the date of determination, taking into account any netting and collateral arrangements and any guarantees or other credit enhancements; provided, however, that the bank may elect to determine credit exposure on the basis of such other method of determining credit exposure as may be permitted by the department and the bank's primary federal regulator.

(2) "Derivative transaction" includes any transaction that is an agreement, contract, note, option, swap, or warrant that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(3) "Person or corporation" includes, but is not limited to, an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, or unincorporated organization. The term "person or corporation" shall not include the affiliates of a bank or a clearing organization registered or exempt from registration with the Commodity Futures Trading Commission, the Securities and Exchange Commission, any other federal agency, or any successor agencies.

(a.1) A bank shall not at any time:

(1) Make loans to any one person or corporation;

(2) Have obligations owing to it from any one person or corporation as a result of purchasing or discounting evidences of indebtedness or agreements for the payment of money; or

(3) Have credit exposure as a counterparty in derivative transactions with any one person or corporation,

where the aggregate of such loans, obligations, and credit exposure together exceeds 15 percent of the statutory capital base of the bank at the time of issuance of a binding commitment unless each loan,

discount, purchase, or derivative transaction in excess of such 15 percent limit is approved in advance by the board of directors or a committee authorized to act for it subject to the provisions set forth in subsections (b) and (c) of this Code section. Approval by the board of directors or authorized committee shall be recorded in the formal minutes of the actions of the board or its committee by name of borrower, amount of loan, maturity of loan, general type of collateral, and such other information as required pursuant to the rules and regulations of the department. Any action required by this subsection may be taken pursuant to Code Section 7-1-483, provided that the minutes of the proceedings of the board or of the committee reflect such action and each director taking such action signs the minutes reflecting such action by no later than the next regular meeting of the board or committee attended by such director.

(b) Except as provided in subsection (c) of this Code section, a bank shall not directly or indirectly make loans, have obligations, or have credit exposure as a counterparty in derivative transactions to any one person or corporation which in aggregate exceed 15 percent of the statutory capital base of the bank at the time of issuance of a binding commitment unless the entire amount of such loans, obligations, and credit exposure in derivative transactions is secured by good collateral or other ample security and does not exceed 25 percent of the statutory capital base at the time of issuance of a binding commitment. Except as otherwise indicated in subsection (c) of this Code section, the purchase or discount of agreements for the payment of money or evidences of indebtedness shall be regarded as indirect loans to the person or corporation receiving the proceeds of such transactions. In estimating the legal lending limit for any one person or corporation, loans to related corporations, partnerships, and other entities shall be combined subject to regulations established by the department.

(c) The limitations of subsection (b) of this Code section shall not apply to:

(1) Obligations of and obligations guaranteed by:

(A) The United States;

(B) The State of Georgia or a public body thereof authorized to levy taxes;

(C) Any state of the United States or any public body thereof if the obligations or guarantees are general obligations; or

(D) Any agency of this state as defined in subparagraph (a)(1)(A) of Code Section 50-14-1;

(2) Obligations to the extent secured by:

(A) Obligations specified in paragraph (3) of this subsection;

(B) Obligations which the bank would be authorized to acquire without limit as investment securities pursuant to Code Section 7-1-287;

(C) Obligations fully guaranteed by the United States;

(D) Guaranties or commitments or agreements to take over or purchase made by any public body of the United States or any corporation owned directly or indirectly by the United States; or

(E) Loan agreements between a local public agency or a public housing agency and an instrumentality of the United States pursuant to national housing legislation under which funds will be provided for payment of the obligations secured by such loan agreements;

(3) Obligations in the form of investment securities acquired pursuant to Code Section 7-1-287 and related regulations;

(4) Obligations with respect to the sale of federal or correspondent funds to financial institutions having their deposits insured to the same extent as that required of similar institutions chartered in this state; and

(5) A renewal or restructuring of a loan as a new loan or extension of credit following the exercise by the bank of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limits of this Code section, unless:

(A) New funds are advanced by the bank to the borrower, except as permitted under this Code section;

(B) A new borrower replaces the original borrower; or

(C) The department determines that a renewal or restructuring was undertaken as a means to evade the bank's lending limit.

(d) In lieu of following the limitations contained in subsections (a) through (c) of this Code section and the related regulations of the department, a bank may petition the department for approval to utilize all of the limitations applicable to national banks regarding obligations of a single person or corporation.

(e) The department may, by regulation not inconsistent with this Code section, prescribe definitions of and requirements for transactions included in or excluded from the indebtedness to which this Code section applies. The department may also by regulation prescribe less restrictive limitations than those listed in subsections (a) through (c) of this Code section for banks meeting certain financial and management criteria. In addition, the department may, by regulation or otherwise, specify that the liabilities of a group of one or more persons or

corporations or both shall be considered as owed by one person or corporation for the purposes of this Code section because the borrowers within the group are related through common control or the group meets other criteria established by the department for the combination of indebtedness for legal lending limitation purposes.

History.

Ga. L. 1919, p. 135, art. 19, § 13; Ga. L. 1922, p. 63, § 1; Ga. L. 1927, p. 195, § 9; Code 1933, § 13-2013; Ga. L. 1943, p. 254, § 1; Ga. L. 1951, p. 201, § 1; Ga. L. 1955, p. 414, § 1; Ga. L. 1966, p. 590, § 7; Ga. L. 1969, p. 603, § 1; Ga. L. 1973, p. 526, § 4; Code 1933, § 41A-1306, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 8; Ga. L. 1982, p. 3, § 7; Ga. L. 1983, p. 602, § 6; Ga. L. 1992, p. 6, § 7; Ga. L. 2000, p. 174, § 6; Ga. L. 2009, p. 86, § 5/HB 141; Ga. L. 2010, p. 1, § 1/HB 926; Ga. L. 2012, p. 349, § 1/HB 886; Ga. L. 2017, p. 193, § 6/HB 143; Ga. L. 2018, p. 214, § 5/HB 780.

Editor's notes.

Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

Administrative rules and regulations.

Loans and Discounts, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Banks, Rule 80-1-5-.01 et seq.

Law reviews.

For annual survey on business corporations, see 64 Mercer L. Rev. 61 (2012).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Civil Code 1910, § 2280(m) have been included in the annotations for this Code section.

Reasonable control and supervision as to loans of less than certain percentage. — As to loans of less than ten percent (now 15 percent), directors are not justified in absolutely relinquishing to any officer or agent unlimited discretion; but they must retain and exercise reasonable control and supervision over such officers, amounting to exercise on their part of ordinary care and diligence. Mobley v. Faulk, 42 Ga. App. 314, 156 S.E. 40, 1930 Ga. App. LEXIS 381 (1930) (decided under former Civil Code 1910, § 2280(m)).

OPINIONS OF THE ATTORNEY GENERAL

Loans not rendered illegal by reduction of lending limit. — No loans in excess of a bank's lending limit can be made, but loans which were legal when made are not rendered illegal by reduction of bank's lending limit. 1977 Op. Att'y Gen. No. 77-58.

Purpose of ten percent (now fifteen percent) lending limit imposed is to protect depositors, other creditors, and shareholders from loss in the event that one or two large loans become uncollectible; relaxation of 10 percent (now 15 percent) ceiling is tied to factors such as collateral security and government guarantees, which reduce the risk of uncollectibility. 1977 Op. Att'y Gen. No. 77-58.

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, § 998.

7-1-286. Real estate loans; acquisition by bank or trust company of ownership interest.

(a) A bank shall make loans secured by improved or unimproved real estate (including a leasehold) subject to the provisions of Part 365 of the Federal Deposit Insurance Corporation's rules and regulations, including 12 C.F.R. 365.1 and 365.2 and the Interagency Guidelines for Real Estate Lending Policies in Appendix A and 12 C.F.R. 208.51 and the guidelines contained in 12 C.F.R. Part 208 in the case of Federal Reserve member banks. Such loans shall also be subject to the additional provisions and exceptions as set forth in the rules of the department.

(b) The limitations of subsection (a) of this Code section shall not apply to:

(1) An investment security acquired pursuant to Code Section 7-1-287;

(2) A loan in connection with which the bank takes a real estate lien as security in the exercise of banking prudence but as to which it is relying for repayment on:

(A) The general credit of the obligor or of an installment buyer or of a lessee of the real estate;

(B) Collateral other than the real estate lien;

(C) A guaranty or an agreement to take over or purchase the loan, in the event of default, by a financially responsible person other than a person engaged in the business of guaranteeing real estate loans; or

(D) An agreement by a financially responsible person to take over or purchase the loan, or to provide funds for payment thereof, within a period of two years from the date of the loan;

and there is documentation in the file setting forth the applicable facts to support reliance on this paragraph.

(c) For the purpose of this Code section, a "leasehold" shall mean the interest, which is security for a loan, of a lessee of real estate under a lease which on the date of the loan has an unexpired term extending at least ten years beyond the maturity of the loan or contains a right of renewal, which may be exercised by the bank, extending at least ten years beyond the maturity of the loan.

(d) Notwithstanding any other provisions of this chapter and otherwise subject to regulations of the department, a bank or trust company may acquire, directly or indirectly, an ownership interest in real estate incidental to the financing of the purchase, development, or improvement of such real estate, provided that:

(1) The amount of such ownership interest shall not exceed 25 percent of the appraised value of the real estate;

(2) The amount of such ownership interest when aggregated with the amount financed shall not exceed the limitations prescribed by this Code section and Code Section 7-1-285;

(3) The ownership interest shall be terminated upon substantial repayment of the financing in the manner prescribed in Code Section 7-1-263, relating to the divestiture of real estate interest; and

(4) Any time real estate owned by a bank or trust company pursuant to this subsection is held or disposed of pursuant to the provisions of Code Section 7-1-263, said action to hold or dispose shall be reported in writing annually to the stockholders. Said report shall include disclosure of any real estate acquired by foreclosure or the taking by a deed in lieu of foreclosure and the name or names of the corporation or individuals from whom title was taken.

History.

Ga. L. 1919, p. 135, art. 19, § 15; Code 1933, § 13-2015; Ga. L. 1937, p. 423, § 1; Ga. L. 1945, p. 208, § 1; Ga. L. 1959, p. 250, § 1; Ga. L. 1965, p. 281, § 1; Ga. L. 1972, p. 556, § 1; Code 1933, § 41A-1307, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 18; Ga. L. 1989, p. 1249, § 4; Ga. L. 1992, p. 6, § 7; Ga. L. 1998, p. 795, § 14; Ga. L. 2000, p. 174, § 7; Ga. L. 2001, p. 970, § 2; Ga. L. 2007, p. 502, § 2/SB 70; Ga. L. 2020, p. 493, § 7/SB 429.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1989, "Any time" was substituted for "Anytime" at the beginning of paragraph (e)(4) (now (d)(4)).

Administrative rules and regulations.

Real Estate Loans, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Banks, Rule 80-1-5.02 et seq.

Law reviews.

For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001).

For note, "Opportunity Costs: Nonjudicial Foreclosure and the Subprime Mortgage Crisis in Georgia," see 25 Ga. St. U.L. Rev. 1205 (2009).

JUDICIAL DECISIONS

When bank letter confirming loan did not specify the financing terms the seller could not be sure that the buyer had obtained a commitment in accordance with the contract by terms which the buyer would be bound. Brown v. Morris Real Estate Consultants, Inc., 256 Ga. 269, 347 S.E.2d 563, 1986 Ga. LEXIS 812 (1986).

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 602.
C.J.S.
9 C.J.S., Banks and Banking, § 477.
ALR.
Bank's liability to real property purchaser for misrepresentation respecting purchaser's obtaining government guaranteed or subsidized loan, 37 A.L.R.4th 773.

Financing agency's liability to purchaser of new home or structure for consequences of construction defects, 20 A.L.R.5th 499.

7-1-287. Dealings in securities; conflicts of interest; divestiture and fines.

Notwithstanding the limitations of Code Section 7-1-288, a bank may purchase, sell, underwrite, and hold securities which are obligations in the form of bonds, notes, or debentures or mutual funds, investment trusts, or pools primarily consisting of such bonds, notes, or debentures, and may purchase, sell, and hold corporate debt obligations, to the extent authorized by regulations of the department. The department may issue regulations which prescribe operating restrictions and standards of conduct dealing with potential conflicts of interest and shall prescribe rules for divestiture of securities held in violation of such regulations and fines for violations not to exceed $10,000.00 per day during which each violation remains uncorrected. A bank may hold without limit securities which are obligations of the United States or obligations which are guaranteed fully as to principal and interest by the United States or general obligations of any state.

History.
Ga. L. 1919, p. 135, art. 19, § 23; Ga. L. 1924, p. 76, § 1; Ga. L. 1927, p. 195, § 10; Code 1933, § 13-2023; Ga. L. 1946, p. 65, § 1; Ga. L. 1947, p. 501, § 1; Ga. L. 1950, p. 18, § 1; Ga. L. 1951, p. 284, § 1; Ga. L. 1957, p. 275, § 1; Ga. L. 1958, p. 133, § 1; Ga. L. 1959, p. 238, § 1; Ga. L. 1962, p. 95, § 1; Ga. L. 1965, p. 523, § 1; Ga. L. 1968, p. 1162, § 1; Ga. L. 1969, p. 976, § 1; Code 1933, § 41A-1308, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1249, § 5; Ga. L. 1999, p. 674, § 5.
Administrative rules and regulations.
Investment Securities, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Banks, Rule 80-1-4-.01 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 501, 515, 613, 636.
C.J.S.
9 C.J.S., Banks and Banking, § 238.
ALR.
Rights of owners of securities deposited in bank upon its insolvency, 51 A.L.R. 914; 84 A.L.R. 1534; 126 A.L.R. 625.

7-1-288. Corporate stock and securities.

(a) A bank may engage in any transaction with respect to shares of

stock or other capital securities of any corporation in accordance with this Code section and in other instances as provided in state or federal law.

(b) A bank may:

(1) Engage in transactions with respect to issuance and transfer of shares of its own stock and capital securities and in other transactions with respect to such stock and capital securities authorized by this chapter;

(2) Purchase and sell shares of stock, bonds, capital securities, and other investment products upon the order of and for the account of a customer without recourse against it;

(3) Receive a pledge or other security interest in stock or capital securities in order to secure loans made in good faith, except that it may not receive such interests in its own stock or capital securities nor lend in one or more transactions, involving one or more borrowers, more than 30 percent of its statutory capital base on the stock or capital securities of any corporation (including therein loans made directly to the corporation without ample security but excluding obligations representing the sale of federal or correspondent funds to another financial institution). The department may, by regulation or otherwise, specify that two or more corporations are so interrelated that their stock shall be regarded as the stock of one corporation for the purposes of this subsection.

(c) Notwithstanding any other provisions of law to the contrary, a bank may acquire and hold for its own account:

(1) Shares of stock of a federal reserve bank without limitation of amount;

(2) Shares of stock or interests in:

(A) Any state or federal government sponsored instrumentality for the guarantee, underwriting, or marketing of residential housing or financing of residential housing;

(B) A business development corporation or small minority business development corporation authorized under Article 6 of this chapter;

(C) An agricultural credit corporation duly organized under the laws of this state having authority to make loans to farmers of this state for agricultural purposes under programs administered by the federal farm credit system;

(D) A bank service corporation created to provide support services for one or more financial institutions;

(E)(i) A bank principally engaged in foreign or international banking or banking in a dependency or insular possession of the United States, either directly or through the agency, ownership, or control of local institutions in foreign countries or in such dependencies or insular possessions, including the stock of one or more corporations existing pursuant to Section 25(a) of the Federal Reserve Act, provided that, before a bank may purchase a majority interest in any such banking institution, it shall enter into an agreement with the department to restrict its operations in such manner as the department may prescribe; and provided, further, that, if the department determines that said restrictions have not been complied with, it may order the disposition of said stock upon reasonable notice.

(ii) A bank engaged in providing banking or other financial services to depository financial institutions, which bank's ownership consists primarily of such depository financial institutions;

(F) A corporation or limited liability company engaged in functions or activities that the bank or trust company is authorized to carry on, including, but not limited to: conducting a safe-deposit business; holding real estate; acting as a financial planner or investment adviser; offering of a full range of investment products; promoting and facilitating international trade and commerce; and exercising powers incidental to financial activities as provided in paragraph (11) of Code Section 7-1-261; in addition to functions or activities which include exercising powers granted by department regulations or exercising powers determined by the commissioner to be financial in nature or incidental to the provision of financial services, so long as these activities do not pose undue risk to the safety and soundness of the financial institution and are consistent with the objectives of this chapter as stated in Code Section 7-1-3; provided, however, that, unless the bank is exempt, nothing contained in this subparagraph shall relieve any such corporation or limited liability company from undertaking registration, licensing, or other qualification to engage in such functions or activities as may otherwise be required by law; and

(G) Other corporations created pursuant to act of Congress or pursuant to Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," for the purpose of meeting the agricultural, housing, health, transit, educational, environmental, or similar needs where the department determines that investment therein by banks is in the public interest;

(3) Shares of stock of small business investment companies organized under acts of Congress and doing business in this state,

provided that the aggregate investment by the bank in such shares shall not exceed 5 percent of its statutory capital base; and

(4) Shares of stock or partnership interests in a corporation or partnership the primary business of which, as determined by the department, is to promote the public welfare or community development by engaging in the development of low and moderate-income housing, job training and job placement programs, credit counseling, public education regarding financial matters, small business development, and other similar purposes. The ability to invest in such stock or partnership interests shall also be subject to such limitations and approval procedures as the department deems necessary in order to assure that such investments are not a safety and soundness concern.

(d) A bank acquiring stock or an interest in an entity listed in paragraph (2) of subsection (c) of this Code section shall be subject to the following limitations:

(1) Where the entity carries on only such activities as the bank could legally perform itself, there is no limitation on investment;

(2) Where the activities of the entity go beyond those that the bank could legally perform, the bank's investment may not exceed 10 percent of its statutory capital base; and

(3) Where the investment is in stock of the Federal Home Loan Bank, there is no limitation on the bank's investment, provided that such investment is for the purpose of utilizing the services of the Federal Home Loan Bank.

(e) Prior approval by the department is required for acquisitions listed in subparagraphs (c)(2)(D) through (c)(2)(G) of this Code section. The department, by regulation, may permit expedited or notice only procedures and may provide for applicable administrative fees.

(f) The department may by rule or regulation prescribe less restrictive investment limitations than those contained in this Code section for banks meeting certain financial and management criteria.

History.

Ga. L. 1919, p. 135, art. 19, §§ 20, 23; Ga. L. 1924, p. 76, § 1; Ga. L. 1927, p. 195, § 10; Code 1933, §§ 13-2017, 13-2023; Ga. L. 1946, p. 65, § 1; Ga. L. 1947, p. 501, § 1; Ga. L. 1950, p. 18, § 1; Ga. L. 1951, p. 284, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 328, § 1; Ga. L. 1957, p. 275, § 1; Ga. L. 1958, p. 133, § 1; Ga. L. 1959, p. 238, § 1; Ga. L. 1959, p. 328, § 1; Ga. L. 1962, p. 95, § 1; Ga. L. 1965, p. 523, § 1; Code 1933, § 13-2023.1, enacted by Ga. L. 1968, p. 1042, § 1; Ga. L. 1968, p. 1162, § 1; Ga. L. 1969, p. 976, § 1; Ga. L. 1972, p. 798, § 6; Code 1933, § 41A-1309, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 19; Ga. L. 1977, p. 730, § 3; Ga. L. 1979, p. 953, § 1; Ga. L. 1983, p. 602, § 7; Ga. L. 1984, p. 22, § 7; Ga. L. 1987, p. 1586, § 4; Ga. L. 1989, p. 1249, § 6; Ga. L. 1995, p. 673, § 13; Ga. L. 1996, p. 6, § 7; Ga. L. 1997, p. 143, § 7; Ga. L. 1997, p. 485, § 12; Ga. L. 1999, p. 674, § 6; Ga. L. 2000, p. 174, § 8; Ga. L. 2001, p. 970, § 3; Ga. L.

2002, p. 1220, § 5; Ga. L. 2005, p. 826, § 7/SB 82; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2024, p. 1052, § 1(a)(14)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (c)(2)(F) and deleted "known as" following "Title 14," in subparagraph (c)(2)(G).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2001, "subparagraphs (c)(2)(D) through (c)(2)(G)" was substituted for "subparagraphs (D) through (G)" in subsection (e).

Pursuant to Code Section 28-9-5, in 2024, "that" was inserted in subparagraph (c)(2)(F).

U.S. Code.

Section 25(a) of the Federal Reserve Act, referred to in subsection (c)(2)(E)(i) of this Code section, is codified as 12 U.S.C. § 611 et seq.

Administrative rules and regulations.

Investment Securities, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Banks, Rule 80-1-4-.01 et seq.

Law reviews.

For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001).

OPINIONS OF THE ATTORNEY GENERAL

Discussion of former Code 1933, § 13-2022 (see now O.C.G.A. §§ 7-1-288 and 7-1-370) and deposits by banks in mutual savings and loan association. — See 1978 Op. Att'y Gen. No. 78-66.

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, §§ 613, 616.

C.J.S.

9 C.J.S., Banks and Banking, §§ 234 et seq., 477, 499.

ALR.

Rights of owners of securities deposited in bank, upon its insolvency, 51 A.L.R. 914; 84 A.L.R. 1534; 126 A.L.R. 625.

Power of bank or trust company to create trust out of its securities and sell participation certificates therein, 97 A.L.R. 1182.

7-1-289. Security for deposits.

(a) A bank may pledge or otherwise grant security interests in its assets to secure deposits of:

(1) Public funds;

(2) Funds of a pension fund for employees of a public body of the state;

(3) Funds for which a public body of the state or an officer or employee thereof or any court of law is the custodian or trustee pursuant to statute;

(4) Funds held by the department as receiver;

(5) Funds which are required to be secured by law or by an order of a court;

(6) Its own fiduciary funds or the fiduciary funds of an affiliate. In

either case, the funds shall be deposited with the pledging institution and held in its commercial department; and

(7) Public funds deposited in another bank.

(b) Except for the deposits listed in subsection (a) of this Code section, a bank may not pledge or otherwise grant security interests in its assets as security for deposits unless otherwise specifically approved in writing by the department.

History.
Code 1933, § 13-2068, enacted by Ga. L. 1973, p. 526, § 8; Code 1933, § 41A-1310, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1993, p. 929, § 1; Ga. L. 1995, p. 673, § 14; Ga. L. 2016, p. 390, § 7-6/HB 811.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 610, 611.
C.J.S.
9 C.J.S., Banks and Banking, §§ 222, 223.
ALR.
Power of bank to pledge assets to secure general depositors, 65 A.L.R. 1412; 87 A.L.R. 1456; 101 A.L.R. 515; 112 A.L.R. 483.

7-1-290. Powers as surety or guarantor.

(a) Except as authorized in subsection (b) of this Code section, in paragraph (10) of Code Section 7-1-260, and in paragraph (4) of Code Section 7-1-261, a bank shall not lend its credit, bind itself as a surety to indemnify another, or otherwise become a guarantor.

(b) A bank may act as a surety or guarantor if it has a substantial interest in the performance of the transaction involved or has a segregated deposit sufficient in amount to cover the institution's potential liability.

(c) Nothing in this Code section shall be construed to prohibit banks from:

(1) Giving warranties or guaranties in connection with the handling of items for collection; the transfer, exchange, or collection of securities; or the sale or disposition of its assets;

(2) Issuing letters of credit; and

(3) Pledging or otherwise granting security interests in their assets to secure public funds deposited in the bank or another bank, including, but not limited to, deposits made pursuant to a pledging pool.

(d) Notwithstanding other provisions of law to the contrary, irrevocable letters of credit issued by banks domiciled in this state may, in the discretion of the party in whose favor such irrevocable letter of credit is

issued, be accepted in lieu of any bond, surety, or pledge of assets required by the laws of this state or regulations promulgated pursuant to such laws.

History.
Code 1933, § 41A-1311, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1983, p. 602, § 8; Ga. L. 1989, p. 1211, § 5; Ga. L. 1993, p. 929, § 2; Ga. L. 2016, p. 390, § 2-3/HB 811.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 610.
C.J.S.
9 C.J.S., Banks and Banking, § 229.
ALR.
Liability of bank on letter of credit as affected by quality or condition of goods for purchase price of which it is issued, 39 A.L.R. 755.
Liability of guarantor of or surety for bank deposit as affected by reorganization, merger, or consolidation of bank, 78 A.L.R. 381.

7-1-291. Borrowings; liabilities not subject to restrictions; restrictions; borrowing for emergencies.

(a) Subject to the restrictions of subsection (c) of this Code section, a bank may borrow money and issue notes, debentures, or other obligations to evidence such borrowings.

(b) The following outstanding liabilities are not subject to the restrictions in this Code section:

(1) Liabilities to a federal reserve bank on account of money borrowed or rediscounts;

(2) Liabilities on account of the acquisition of reserve balances at a federal reserve bank or other reserve agent from a member or a nonmember bank;

(3) Liabilities on account of agreements to repurchase securities sold by the bank (commonly known as "repurchase agreements");

(4) Liabilities in the form of subordinated securities under Code Section 7-1-419; and

(5) Liabilities which do not constitute or result from the borrowing of money under definitions prescribed by regulation of the department.

(c) A bank that wishes to borrow from sources other than those listed in subsection (b) of this Code section may borrow an aggregate amount which exceeds the sum of twice its unimpaired capital stock plus 100 percent of its unimpaired paid-in capital and retained earnings, provided that the bank's board of directors has approved a comprehensive written funding plan that addresses the following safety and soundness concerns:

(1) The plan must contain a detailed evaluation of the bank's management expertise and information systems to support the plan; and

(2) The plan must contain adequate asset and liability, liquidity, and funds management policies and procedures to specifically address the use of borrowings as an alternate funding source.

(d) The department may, notwithstanding the other provisions of this Code section, temporarily waive the requirements of this Code section to permit an individual bank to borrow for emergency purposes. The department shall review the funding plan of each bank as a part of its normal supervisory program. The department may prohibit or place additional restrictions upon borrowings of any bank which would, in the judgment of the department, constitute an unsafe or unsound practice in view of the condition and circumstances of the bank.

History.
Ga. L. 1919, p. 135, art. 19, § 25; Code 1933, § 13-2025; Ga. L. 1966, p. 590, § 9; Ga. L. 1973, p. 526, § 5; Code 1933, § 41A-1312, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 20; Ga. L. 1996, p. 848, § 5; Ga. L. 2019, p. 828, § 5/HB 185; Ga. L. 2020, p. 493, § 7/SB 429.

Administrative rules and regulations.
Borrowed Money, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Banks, Rule 80-1-9-.01 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 483, 484, 608 et seq.

C.J.S.
9 C.J.S., Banks and Banking, §§ 227, 228.

7-1-292. Interest and fees.

Any bank may take, receive, reserve, and charge interest and fees on any loan, advance of money, or forbearance to enforce the collection of money at rates not exceeding the limits set by the laws of this state. Whenever such laws authorize a special interest or fee rate with respect to a designated type of loan, then a bank may charge that special interest or fee on loans of that type made by it. Whenever such laws authorize a person or a corporation other than a bank to charge a special interest or fee rate with respect to a designated type of loan, then a bank may charge such rate or fee on loans made by it which would qualify as the designated type of loan if made by the person or corporation so authorized without any requirement for the bank to obtain any license, qualification, or permit.

History.
Ga. L. 1919, p. 135, art. 19, § 19; Code 1933, § 13-2019; Code 1933, § 41A-1313, enacted by Ga. L. 1974, p. 705, § 1.

Cross references.

Regulation of rates of interest generally, § 7-4-1 et seq.

Law reviews.

For article surveying Georgia cases dealing with commercial law from June 1977 through May 1978, see 30 Mercer L. Rev. 15 (1978).

For article discussing methods of computation of finance charges in Georgia consumer credit contracts, see 30 Mercer L. Rev. 281 (1978).

For survey article on commercial law, see 34 Mercer L. Rev. 31 (1982).

OPINIONS OF THE ATTORNEY GENERAL

Bank will not be authorized to charge rates permitted by former Code 1933, § 41A-3109 (see now O.C.G.A. § 7-1-658). 1975 Op. Att'y Gen. No. 75-2.

RESEARCH REFERENCES

Am. Jur. 2d.

11 Am. Jur. 2d, Banks and Financial Institutions, § 993.

C.J.S.

9 C.J.S., Banks and Banking, § 502 et seq.

ALR.

Enforceability of provision in loan commitment agreement authorizing lender to charge standby fee, commitment fee, or similar deposit, 93 A.L.R.3d 1156.

7-1-293. Savings banks and state savings and loan associations.

(a) A bank desiring to be accorded treatment under this chapter as a savings bank or state savings and loan association shall so state in its articles.

(b) A savings bank or a state savings and loan association may apply to the department for permission to relinquish its status as a savings bank or state savings and loan association and become a commercial bank by filing an appropriate amendment to its articles. The department may exercise its discretion in determining whether to approve such a change and shall consider in connection therewith the same criteria considered in approving the original articles of incorporation.

(c) A savings bank shall provide its depositors with deposit insurance coverage pursuant to those deposit insurance provisions of this chapter applicable to commercial banks. A state savings and loan association shall provide its depositors, but not its shareholders, with deposit insurance coverage.

(d) Reserved.

(e) The conversion, merger, or consolidation of a federal savings and loan association or federal savings bank, including a federal mutual savings and loan association or federal mutual savings bank, shall be accomplished pursuant to the same procedures as are prescribed in this chapter for a conversion, merger, or consolidation involving a national bank, provided that the approval of such conversion by the members of

such association or bank shall be by such vote as is required in the articles of association and bylaws of such association or bank. A federal mutual savings and loan association or federal mutual savings bank shall upon conversion be and be known as a mutual savings bank. In considering any plan for the conversion, merger, or consolidation of a federal savings and loan association or federal savings bank, the department shall not approve the plan unless it is satisfied that such plan is fair and equitable to all borrowers, depositors, and shareholders.

(f)(1) The conversion, merger, or consolidation of a federal mutual savings and loan association holding company or federal mutual savings bank holding company shall be accomplished pursuant to the same procedures as are prescribed in this chapter for a conversion, merger, or consolidation involving a national bank, provided that the approval of such conversion shall be by such vote of the members of such holding company as is required in the articles of association and bylaws of such holding company but shall be further conditioned upon the conversion of the federal savings and loan association or federal savings bank subsidiary of such holding company to a savings bank contemporaneously with the holding company's conversion.

(2) A state mutual savings bank holding company shall be subject to all of the rules and regulations of the department as if it were a commercial bank organized under this chapter, provided that it shall be authorized to own the stock of a savings bank subsidiary.

(g) With respect to the corporate governance of a mutual savings bank or mutual savings bank holding company, the members of the savings bank or holding company as defined in the articles of association, subject to the approval of the department, shall be the equivalent of the shareholders of a commercial bank or bank holding company having such rights, preferences, and powers and subject to such limitations as may be contained in the rules and regulations of the department and in the articles of association and bylaws of the savings bank or holding company approved by the department.

(h) Except as provided therein, Article 1 of this chapter and all other parts of this article shall apply to all mutual savings banks, savings banks, and state savings and loan associations and unless specifically exempt therein, all rules and regulations promulgated by the department applicable to banks shall be applicable to mutual savings banks, savings banks, and state savings and loan associations.

(i) Unless otherwise provided, the provisions of Part 18 of this article applicable to bank holding companies shall be applicable to mutual savings bank holding companies and unless specifically exempt therein, all rules and regulations promulgated by the department applicable to bank holding companies shall be applicable to mutual savings bank holding companies.

(j) In the event that a federal mutual savings and loan association or federal mutual savings bank upon conversion to a savings bank would own or hold assets or engage in any business that would not be allowable for a commercial bank, then the plan of conversion presented to the department shall include a plan for disposal of such assets or the termination of such nonconforming business within a reasonable time but in no event longer than four years from the date of the conversion.

History.
Code 1933, § 41A-1314, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1566, § 2; Ga. L. 1982, p. 3, § 7; Ga. L. 1982, p. 1781, § 1; Ga. L. 1983, p. 602, § 9; Ga. L. 1987, p. 1586, § 5; Ga. L. 1988, p. 13, § 7; Ga. L. 1992, p. 6, § 7; Ga. L. 1997, p. 485, § 13; Ga. L. 2016, p. 390, § 7-7/HB 811; Ga. L. 2021, p. 323, § 4/HB 111.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 14, 598.
C.J.S.
9 C.J.S., Banks and Banking, §§ 631, 632.
ALR.
Construction of savings bank by-law expressly assented to by depositor, relieving bank from liability for payment to unauthorized person, 52 A.L.R. 760.
Liability of savings bank to depositor for amounts withdrawn by depositor's agent without presentation of passbook, 139 A.L.R. 835.

7-1-294. Transaction of business on holidays and outside of banking hours.

(a) Notwithstanding any existing provisions of law relative to the time of maturity or presentment of negotiable instruments, any financial institution doing business in this state may, at its option, outside of regular banking hours on any day, or at any time on a day which is in whole or in part a holiday, pay, certify, or accept negotiable or nonnegotiable instruments including a demand instrument dated on the holiday on which it is presented for payment, certification, or acceptance and transact any other business which would be valid if done on a business day during regular banking hours.

(b) Nothing in this Code section shall require any financial institution which remains open for business on all or a part of any holiday to do or perform any act on that day in its capacity as a collection agent which would not be required of it if it were closed on such holiday or part holiday.

History.
Code 1933, § 14-1809.2, enacted by Ga. L. 1949, p. 352, § 1; Ga. L. 2017, p. 193, § 7/HB 143.

Cross references.
Public, legal and religious holidays, §§ 1-4-1, 1-4-2.
Definition of "banking day" for purposes

of the Uniform Commercial Code, § 11-4-104.

RESEARCH REFERENCES

ALR.

Power of municipal corporation to legislate as to Sunday observance, 37 A.L.R. 575.

Power to extend Sunday observance laws beyond Sunday hours, 50 A.L.R. 628.

Legal aspects and consequences of declaration of "bank holiday", 95 A.L.R. 934.

Validity, construction, and effect of "Sunday closing" or "blue" laws — modern status, 10 A.L.R.4th 246.

7-1-295. Transaction fees charged by operators of automated teller machines.

An operator of an automated teller machine in this state may charge a transaction fee to the customer using the machine. An agreement to share automated teller machines may not prohibit, limit, or restrict the right to charge such transaction fees and no such agreement may prohibit, limit, or restrict the right of one or more financial institutions to enter into an agreement not to charge such transaction fees to their common customers.

History.

Code 1981, § 7-1-295, enacted by Ga. L. 1993, p. 917, § 3; Ga. L. 1997, p. 575, § 1.

7-1-296. Exercise of federal powers.

(a) For purposes of this Code section, the term "federal power" means any banking or corporate power, right, benefit, privilege, or immunity of a national bank, the deposits of which are federally insured, that may be exercised by a national bank doing business in this state pursuant to the National Bank Act, 12 U.S.C. Section 1, et seq.; any other federal statute; or any regulation, ruling, circular, bulletin, order, or interpretation issued by the Office of the Comptroller of the Currency. Such term shall include only the provisions set forth above which were effective on January 1, 2018.

(b) Notwithstanding any other provisions of law, a bank may exercise any federal power while a national bank may also exercise such power subject to the same limitations and restrictions as are applicable to national banks, provided that the requirements of subsection (d) of this Code section have been satisfied. Nothing in this subsection shall be construed as authorizing a bank chartered by this state to exercise a federal power prior to compliance with subsection (d) of this Code section.

(c) Notwithstanding any other provisions of law, to the extent the National Bank Act, 12 U.S.C. Section 1, et seq., or any other federal law

or regulation in effect on January 1, 2018, precludes or preempts or has been determined to preclude or preempt the application of any provision of law, rule, or regulation of this state, as to any national bank doing business in this state, a bank may also exercise such power authorized by the preclusion or preemption subject to the same limitations and restrictions as are applicable to a national bank, provided that the requirements of subsection (d) of this Code section have been satisfied. Nothing in this subsection shall be construed as authorizing a bank chartered by this state to exercise a federal power prior to compliance with subsection (d) of this Code section.

(d) In furtherance of the commissioner's statutory duties to regulate, supervise, and examine, a bank shall notify the commissioner in writing by certified or registered mail that, pursuant to subsection (b) or (c) of this Code section, it intends to exercise a federal power or to avail itself of any federal preclusion or preemption of any provision of law, rule, or regulation of this state. Such notice shall include the specific federal authorization of the activity to be utilized, the proposed action to be undertaken by the bank, documentation indicating that the bank satisfies the prescribed federal standards, if any, to engage in the activity, and such other information as may be required by the department. Upon receipt of such notice, the commissioner shall determine whether the exercise of any federal power or the availing of any federal preclusion or preemption, or any part thereof, by the bank is inconsistent with the purposes of this chapter or presents undue risk to the safety and soundness of the banking system. In making such a determination, the commissioner shall consider the financial condition of the bank, the regulatory safety and soundness ratings of the bank, the ability of bank management to administer and supervise the activity, and the overall impact on the safety and soundness to all other state chartered banks. Based on such a determination, the commissioner may object to the exercise of the federal power, in whole or in part, or to the federal preclusion or preemption of the law, rule, or regulation of this state, in whole or in part, including objecting to a level or quantity above which a bank may be seeking to exercise a federal power or availing itself of any federal preclusion or preemption of law, rule, or regulation of this state. If the commissioner so objects, the commissioner shall deliver such objection in writing by certified or registered mail to the bank within 45 days of receipt of the notice; provided, however, that the commissioner may extend such period of review for an additional 45 days by providing the bank with written notice of such extension prior to the expiration of the initial notice period. If the commissioner sends such an objection, the federal power, preclusion, or preemption, or the part thereof, objected to by the commissioner shall not be exercised by the bank pursuant to subsections (b) and (c) of this Code section. The objection by the commissioner

of a bank's intent to exercise a federal power or avail itself of any federal preclusion or preemption shall not preclude such bank from providing notice to the department of its intent to exercise the same federal power or to avail itself of the same federal preclusion or preemption at a later date; provided, however, that the requirements of this subsection shall be applicable for any such additional notice. Further, in the event a bank determines, after satisfying the notice provisions of this subsection, that it no longer wishes to exercise a federal power or avail itself of any federal preclusion or preemption, then such bank shall provide written notice of such fact to the commissioner by certified or registered mail.

(e) Notwithstanding the provisions of Code Section 7-1-70, the department shall publish information stating the federal powers that are being exercised or federal preemptions or preclusions that are being utilized by each bank. All other information related to the notices or objections provided under subsection (d) of this Code section are governed by Code Section 7-1-70.

(f) Notwithstanding any other provisions of law, a bank may exercise any power that was granted through an order or ruling declared by the commissioner on or before January 1, 2018, pursuant to the current or former provisions of Code Section 7-1-61, 7-1-61.1, or 7-6A-12 and which has not been rescinded or withdrawn.

(g) Any federal power or activity authorized and exercised or conducted pursuant to this Code section shall be independent from, and in addition to, any other powers granted to banks under applicable laws of this state or rules or regulations promulgated thereunder. The express and incidental powers granted to banks under the Official Code of Georgia Annotated are not limited or otherwise restricted by this Code section.

(h) Nothing in this Code section shall be construed as limiting the commissioner's authority conferred by this chapter, including the powers granted under Code Sections 7-1-61 and 7-1-61.1.

(i) Nothing in this Code section shall be construed as authorizing the imposition of interest rates by a bank in excess of those authorized by Chapter 4 of this title nor shall any provision of this Code section be construed as permitting a bank to make loans in violation of Chapter 17 of Title 16.

History.

Code 1981, § 7-1-296, enacted by Ga. L. 2018, p. 214, § 6/HB 780.

Editor's notes.

Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

Administrative rules and regulations.

Notification of Intent to Utilize a Federal Power, Official Compilation of the Rules and Regulations of the State of

Georgia, Rules of Department of Banking and Finance, Banks, Application, Registrations and Notifications, Rule 80-1-1-.12 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur.2d, Banks and Financial Institutions, §§ 475 et seq., 529 et seq.

C.J.S.
9 C.J.S., Banks and Banking, § 512 et seq.

PART 4

POWERS OF TRUST COMPANIES

RESEARCH REFERENCES

ALR.
Statute regulating banks and trust companies as special or class legislation, or as denying the equal protection of the laws, 111 A.L.R. 140.

C.J.S.
9 C.J.S., Banks and Banking, § 650.

7-1-310. Powers to act as fiduciary and in other representative capacities; authority to exercise trust powers.

(a) A trust company may act, alone or with others, as:

(1) Fiduciary;

(2) Investment advisor;

(3) Custodian of property;

(4) Agent or attorney in fact;

(5) Registrar or transfer agent of securities;

(6) Fiscal agent of the United States, a state or a public body thereof, a corporation, or a person; and

(7) Treasurer of a public body or of a nonprofit corporation.

(b) A trust company shall have, in respect to any capacity in which it may act pursuant to a power under subsection (a) of this Code section, all the rights and duties which a person has in such capacity under applicable laws and under the terms upon which the trust company is designated to act in such capacity.

(c) Every bank and credit union operating pursuant to this chapter shall possess all of the rights, privileges, powers, and responsibilities herein conferred upon trust companies; provided, however, that no such bank or credit union shall exercise such powers and privileges without the prior written approval of the department after a careful consideration of the factors enumerated in Code Section 7-1-394, relating to the

chartering of trust companies. Any bank exercising or partially exercising trust powers prior to February 27, 1976, authorized by its articles may continue to exercise or partially to exercise those powers to the extent approved by the department without the necessity of obtaining a new approval.

(d) Notwithstanding any other provisions of this chapter to the contrary, any bank, credit union, or trust company which does not exercise trust powers as provided in this chapter, whether or not such powers have been incorporated into its articles, may, with the consent of the department, contract with any bank, credit union, or trust company exercising trust powers to provide for the latter bank, credit union, or trust company to offer trust services through the branches and offices of the former bank, credit union, or trust company.

History.

Ga. L. 1898, p. 78, § 3; Civil Code 1910, § 2817; Ga. L. 1917, p. 56, § 1; Ga. L. 1919, p. 135, art. 2, § 2; Ga. L. 1920, p. 76, § 1; Code 1933, § 109-201; Code 1933, § 41A-1401, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1976, p. 274, § 1; Ga. L. 1981, p. 1366, § 9; Ga. L. 1982, p. 3, § 7; Ga. L. 1989, p. 1257, § 4; Ga. L. 2016, p. 390, § 7-4/HB 811; Ga. L. 2023, p. 651, § 5/HB 55, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, added subsection (d).

7-1-311. Operations as a fiduciary.

Except as otherwise permitted by Code Section 7-1-315, a trust company in its capacity as fiduciary shall:

(1) Segregate all property (other than items in the course of collection) held as a fiduciary from its nonfiduciary assets and keep separate records of all such fiduciary property for each account for which such property is held;

(2) Hold property held as fiduciary in a form complying with applicable law;

(3) Keep fiduciary funds awaiting investment or distribution in deposits in an authorized financial institution (including, in the case of a trust company which is also a bank, its own commercial department or the commercial department of an affiliate as provided in Code Section 7-1-289) which is insured or, to the extent of any deficiencies in insurance coverage, fully secured by a pledge or assignment of bonds or obligations of the United States, this state, or a public body of either or other obligations guaranteed as to principal and interest by the United States, this state, or a public body of either or real estate loans secured by a first lien or security title to improved realty and insured pursuant to any title of the National Housing Act. The beneficial owners of such uninvested funds shall have a first and prior lien on such security;

(4) Not be required to execute a bond or give any security required

by the law of fiduciaries but may give its own bond and pledge or otherwise grant security interests in its assets as security for the faithful performance of its duties as fiduciary or as surety for such faithful performance by any cofiduciary where such is requested or otherwise required; and

(5) Provide any oath or affirmation or any affidavit required of the trust company through an officer thereof acting on behalf of the trust company.

History.
Ga. L. 1935, p. 484, §§ 1, 2; Ga. L. 1953, Jan.-Feb. Sess., p. 108, §§ 1-3; Ga. L. 1965, p. 244, §§ 1, 2; Ga. L. 1966, p. 468, § 1; Code 1933, § 41A-1402, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1988, p. 1494, § 1; Ga. L. 1995, p. 673, § 15.
Cross references.
Substitution of parties to contract generally, § 13-4-20.
Impossibility as excuse for non-performance, § 13-4-21.
U.S. Code.
The National Housing Act, referred to in paragraph (3) of this Code section, is codified generally as 12 U.S.C. § 1701 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 622.
C.J.S.
9 C.J.S., Banks and Banking, § 656.
ALR.
Trust company's agreement to repay in cash principal of trust fund investment as ultra vires, 96 A.L.R. 453.
Dealings between bank or trust company and itself acting as executor, administrator, or trustee, 112 A.L.R. 780.

7-1-312. Nonfiduciary investments.

A trust company which is not a bank may, apart from its fiduciary activities, invest in stock and investment securities, except that it may not acquire or hold its own stock otherwise than pursuant to paragraphs (8) and (9) of Code Section 7-1-261.

History.
Code 1933, § 41A-1403, enacted by Ga. L. 1974, p. 705, § 1.

7-1-313. Collective investment funds.

(a) As used in this Code section, the term "collective investment fund" shall include a common trust fund and any other type of collective investment fund.

(b) A trust company may establish and maintain collective investment funds for the investment or reinvestment of property which:

(1) Is contributed by the trust company in a capacity in which it is authorized to act pursuant to Code Section 7-1-310; and

(2) Is eligible for contribution to a collective investment fund under this Code section.

(c) Property shall be eligible for contribution whenever the instrument, judgment, decree, or order under which the trust company holds the property does not prohibit investment in the type of collective investment fund involved, provided that, if the trust company holds the property under circumstances limiting it to investing the property in legal investments for fiduciaries, then it may invest the property only in a collective investment fund limited to assets authorized as legal investments for a fiduciary.

(d) The department shall regulate the establishment, operation, and maintenance of collective investment funds. Such regulations of the department shall comply with the general standards for exercise of the regulatory power of the department under this chapter and, in addition, shall be designed to assure:

(1) Ratably equal treatment of the participants in a fund by imposing minimum requirements for the method and frequency of valuation of participations in the fund, for the time and method of admission or withdrawals of participations in the fund, and for the determination of interests of participants in the assets and income of the fund; and

(2) The competitive equality between trust companies and national banks exercising fiduciary powers with respect to the authority to establish and maintain collective investment funds to the extent compatible with the general purposes of this chapter.

(e) No mistake made in good faith and in the exercise of due care in connection with the administration of a collective investment fund shall be deemed a violation of this Code section or of any other duty of the trust company if, promptly after discovery of the mistake, the trust company takes whatever action may be practicable in the circumstances to remedy the mistake.

(f) Any other trust company or national bank with trust powers which is a member of an affiliated group (as defined in Section 1504 of the Internal Revenue Code) with a trust company maintaining collective investment funds may participate in one or more such funds as though they were maintained by the participating trust company. Such participation may be made pursuant to agreement providing for reasonable compensation for the trust company maintaining the fund or funds.

(g) A trust company, in any capacity in which it may act under Code Section 7-1-310, may invest property collectively in accordance with the

specific terms upon which it receives such property, without regard to the restrictions of this Code section.

History.

Ga. L. 1943, p. 442, §§ 2, 3, 6, 8, 13, 14; Ga. L. 1972, p. 816, §§ 2, 3; Code 1933, § 41A-1404, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1987, p. 191, § 9.

Editor's notes.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, provided that this Act is applicable to taxable years ending on or after March 11, 1987, and that a taxpayer with a taxable year ending on or after January 1, 1987, and before March 11, 1987, may elect to have the provisions of that Act apply.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by that Act.

Ga. L. 1987, p. 191, § 10, not codified by the General Assembly, also provided that provisions of the federal Tax Reform Act of 1986 and of the Internal Revenue Code of 1986 which as of January 1, 1987, which were not yet effective become effective for purposes of Georgia taxation on the same dates as they become effective for federal purposes.

U.S. Code.

Section 1504 of the Internal Revenue Code, referred to in subsection (f) of this Code section, is codified as 26 U.S.C. § 1504.

7-1-314. Purchase in fiduciary capacity of securities underwritten by syndicate including institution.

A trust company or a financial institution with fiduciary powers may, in its fiduciary capacity, purchase securities underwritten by a syndicate which includes the financial institution or an affiliate of the financial institution, provided such purchase is otherwise prudent, not prohibited by the instrument governing the fiduciary relationship, and not otherwise inconsistent with regulations issued by the department.

History.

Code 1981, § 7-1-314, enacted by Ga. L. 1983, p. 602, § 10; Ga. L. 1989, p. 1249, § 7.

7-1-315. Satisfaction of fiduciary obligations respecting investment of funds awaiting investment or distribution and charging of fees.

(a) A trust company complying with this Code section will be deemed to have satisfied its fiduciary obligations and duties with respect to:

(1) The investment of fiduciary funds awaiting investment or distribution;

(2) The charging of fees in connection therewith; and

(3) The disclosure of policies, procedures, and fees in connection therewith.

(b) A trust company may invest fiduciary funds awaiting investment or distribution in short-term, trust-quality investment vehicles, through the medium of a collective investment fund or otherwise. A

trust company may also place fiduciary funds awaiting investment or distribution in deposits of the commercial department of such trust company, in the case of a trust company which is also a bank, or in deposits of an affiliate bank; provided, however, that the rate of interest paid on such deposits shall be at least equal to the rate paid by such department or affiliate bank on deposits of similar terms and amounts. A fiduciary shall have complied with this Code section if cash awaiting investment or distribution in excess of $1,000.00 is invested or deposited within 30 days of receipt or accumulation thereof. The provisions of this subsection shall apply notwithstanding any other law or rule restricting or limiting the investments of fiduciaries.

(c) In addition to any other compensation to which it may be entitled, a trust company may, without necessity of obtaining the approval of any person or court, charge a reasonable fee for the temporary investment of fiduciary funds awaiting investment or distribution, which fee may be calculated upon the amount of such funds actually invested and upon the income produced thereby.

(d) A trust company shall have complied with its duty to disclose fees and practices in connection with the investment of fiduciary funds awaiting investment or distribution if the trust company's periodic statements set forth the trust company's practice and method of computing fees.

(e) This Code section shall be construed as a codification of existing law concerning the fiduciary duties of trust companies and not as a change in such law.

History.
Code 1981, § 7-1-315, enacted by Ga. L. 1988, p. 1494, § 2.

7-1-316. Irrevocable letter of credit or pledge of securities for receivership contingency.

(a)(1) A trust company shall provide an irrevocable letter of credit or pledge securities acceptable to the department to defray the costs of a liquidation of the trust company in the event it should be placed into receivership.

(2) The amount of the securities or the letter of credit required in this Code section shall be determined by the department as appropriate to defray the costs associated with receivership, provided that such amount shall be no less than $500,000.00.

(3) Any letter of credit shall be:

(A) Made payable to the department and issued by a Federal Home Loan Bank or a federally insured financial institution,

approved by the department and authorized to do business in this state;

(B) In a form and with terms acceptable by the department; and

(C) Obtained from an entity in which the trust company has no financial interest.

(4) Any pledged securities shall be held at a bank authorized to do business in this state, and any fees associated with holding such securities shall be the responsibility of the trust company.

(b) If a trust company is placed in receivership, the department may, without regard to any priorities, preferences, or adverse claims, reduce the pledged securities or the letter of credit provided by a trust company to cash and, as soon as practicable, utilize the cash to defray the costs associated with receivership.

History.
Code 1981, § 7-1-316, enacted by Ga. L. 2017, p. 193, § 8/HB 143.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur.2d, Banks and Financial Institutions, §§ 259, 1092 et seq.

C.J.S.
10 C.J.S., Bills and Notes; Letters of Credit, § 370 et seq.

7-1-317. Minimum amount of capital.

(a) The department may require, based on safety and soundness, that a trust company maintain a minimum amount of capital, provided that such amount shall in no event be less than $3 million. The department may alter the amount of capital required to be maintained by a trust company from time to time as may be necessary for the safe and sound operation of such trust company.

(b) The department may consider the following in establishing the minimum amount of capital:

(1) The nature and type of business to be conducted;

(2) The nature and liquidity of assets to be held;

(3) The amount of fiduciary assets to be under management of the trust company;

(4) The type of fiduciary assets to be held and the depository for such assets;

(5) The complexity of fiduciary duties and degree of discretion to be undertaken;

(6) The competence and experience of management;

(7) The extent and adequacy of internal controls;

(8) The presence or absence of annual unqualified audits by an independent certified public accountant;

(9) The reasonableness of business plans for retaining or acquiring additional equity capital;

(10) The existence and adequacy of insurance to protect the clients, beneficiaries, and grantors of the trust company;

(11) Any history of operating losses;

(12) Any history of loss in relation to fiduciary or custodial accounts; and

(13) The amount of support from the trust company's parent or affiliate.

History.
Code 1981, § 7-1-317, enacted by Ga. L. 2017, p. 193, § 8/HB 143.

Administrative rules and regulations.
Minimum Capital Requirements for Trust Companies, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Trust Companies, Rule 80-13-1-.02 et seq.

7-1-318. Prohibition on pledging or creating a lien by trust companies; void actions.

(a) No trust company shall pledge or create a lien on any of its assets except to secure:

(1) The repayment of money borrowed; or

(2) Trust accounts administered by the trust company.

(b) An act, deed, conveyance, pledge, or contract in violation of this Code section shall be considered void.

History.
Code 1981, § 7-1-318, enacted by Ga. L. 2017, p. 193, § 8/HB 143.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 23.

PART 4A

AFFILIATE TRANSFERS

7-1-320. Definitions.

As used in this part, the term:

(1) "Affiliate transfer" means a transfer by which a bank or trust company delegates, assigns, or transfers to an affiliated trust company or to an affiliated bank which has received the required approvals from the appropriate regulatory authorities to exercise trust powers all of its rights, powers, privileges, accounts, and designations with respect to one or more of its various capacities as fiduciary.

(2) "Affiliated trust company" means a trust company which is affiliated with a bank. A trust company shall be considered an affiliate with a bank in accordance with the definition of such term set forth in paragraph (1) of Code Section 7-1-4. Such term shall also include an affiliated bank which has received the required approvals from the appropriate regulatory authorities to exercise trust powers.

(3) "Bank" means a corporation as defined in either paragraph (7) or (23) of Code Section 7-1-4 and having its principal place of business in Georgia.

(4) "Fiduciary" means a bank or trust company acting in such capacity as set forth in paragraph (20) of Code Section 7-1-4 or as further defined by regulations of the department.

(5) "Trust company" means a corporation as defined in paragraph (40) of Code Section 7-1-4 or a national bank having:

(A) Authority to conduct business only to the extent of its trust powers as provided in 12 U.S.C. Section 92a; and

(B) A principal place of business in Georgia.

History.

Code 1981, § 7-1-320, enacted by Ga. L. 1986, p. 1244, § 1; Ga. L. 1993, p. 915, § 1; Ga. L. 2024, p. 1052, § 1(a)(15)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "Such term" for "For the purposes of this part, the term affiliated trust company" at the beginning of the third sentence in paragraph (2).

Law reviews.

For note on 1993 amendment of this Code section, see 10 Ga. St. U.L. Rev. 9 (1993).

7-1-321. Affiliate transfers authorized; powers and duties of affiliated trust company transferees.

(a) Any bank authorized by law to engage in the business of acting as a fiduciary is authorized and empowered to make an affiliate transfer whether or not each governing instrument expressly provides for or contemplates an affiliate transfer or whether or not the fiduciary capacity was created by will, indenture, trust, court order, agreement, or other means. No affiliate transfer shall constitute:

(1) A resignation or disqualification of the bank as fiduciary; or

(2) A relinquishment of trust powers by the bank making the affiliate transfer.

Upon execution of an instrument effecting an affiliate transfer by a bank, the affiliated trust company shall, as of the date specified in the instrument, have all of the rights, powers, privileges, appointments, accounts, and designations of the bank regarding each fiduciary capacity so transferred and shall have title to all property, real, personal, and mixed, and all debts due on whatever account, and all other choses in action, and each and every other interest of or belonging to or due to the bank as fiduciary shall be taken and deemed to be transferred to and vested in the affiliated trust company as fiduciary without further act or deed. The affiliated trust company shall file a certificate of transfer with the department setting forth its name, a copy of its governing instrument, a list of the banks with which it is affiliated, a statement of the facts which establish the affiliate relationship, and such other information as may be appropriate.

(b) Upon an affiliate transfer by a bank, the affiliated trust company, in each fiduciary capacity transferred, shall thenceforth be responsible for the performance of all of the duties, responsibilities, and obligations of the bank in such fiduciary capacity, and any claim existing or action or proceeding pending by or against the fiduciary may be prosecuted as if the affiliate transfer had not taken place and the affiliated trust company, as fiduciary, may be substituted in place of the bank, as fiduciary. Neither the rights of creditors to nor any liens upon the property held in any fiduciary capacity shall be impaired by any affiliate transfer.

History. Code 1981, § 7-1-321, enacted by Ga. L. 1986, p. 1244, § 1; Ga. L. 1994, p. 1780, § 1.

7-1-322. Effect of affiliate transfer on bank; abandonment of transfer; substituted fiduciary.

(a) Notwithstanding the provisions of Code Section 7-1-321, no affiliate transfer shall relieve the bank of any liability with respect to

any of its acts and doings as fiduciary, and the bank shall remain liable and responsible to all affiliate transfer beneficiaries and other parties at interest with respect to all actions of the affiliated trust company as if performed by the bank itself.

(b) The bank shall be relieved of any claims, liabilities, or actions arising after the affiliate transfer where such affiliate transfer is expressly authorized by the terms of the instrument governing the fiduciary capacity.

(c) Upon application by an interested party, the bank shall within 30 days either abandon the affiliate transfer subject to such application or proceed to have a successor fiduciary appointed as provided by law.

(d) Nothing in this Code section shall be construed to impair any right of the grantor or beneficiaries of any fiduciary relationship under applicable instruments or otherwise to secure or provide for the appointment of a substituted fiduciary.

History.
Code 1981, § 7-1-322, enacted by Ga. L. 1986, p. 1244, § 1.

7-1-323. Appointment of affiliated trust company as agent for bank; liability of bank for actions of agent.

In addition to and not in limitation of the other powers provided in this part, any bank shall be entitled and empowered to designate an affiliated trust company as its agent for the performance of all acts, obligations, and responsibilities of the bank with respect to any fiduciary capacity. In such event, the bank shall remain fully responsible and liable with respect to all actions of the affiliated trust company as if performed by the bank itself. No such agency relationship shall:

(1) Be deemed an impermissible delegation of responsibility or duty by the bank; or

(2) Constitute a resignation or disqualification of the bank as fiduciary or a relinquishment of trust powers by the bank.

History.
Code 1981, § 7-1-323, enacted by Ga. L. 1986, p. 1244, § 1; Ga. L. 1992, p. 6, § 7.

7-1-324. Designation of affiliate trust company as successor fiduciary.

Upon any affiliate transfer, the affiliate trust company may be designated in any deed, trust, agreement, filing, instrument, notice, certificate, pleading, or other document as successor fiduciary pursuant to this part.

History.
Code 1981, § 7-1-324, enacted by Ga. L. 1986, p. 1244, § 1.

7-1-325. Other banking laws unaffected by part.

Except as expressly provided, nothing in this part shall be construed to amend or modify in any way the laws of the State of Georgia with respect to the establishment of banks, trust companies, branch banks, or bank holding companies or the conduct of the banking business or any part thereof.

History.
Code 1981, § 7-1-325, enacted by Ga. L. 1986, p. 1244, § 1.

Part 5

Fiduciary Investment Companies

7-1-330. Definitions.

As used in this part, the term:

(1) "Fiduciary investment company" means a corporation which is an investment company as defined by the act of Congress entitled "Investment Company Act of 1940" and is incorporated in accordance with Chapter 2 of Title 14 so as to constitute a medium for the investment of funds held by trust institutions and foreign trust institutions in a fiduciary capacity, either alone or with one or more cofiduciaries.

(2) "Foreign trust institution" means any state banking institution or trust company organized under the laws of any state other than Georgia or any national banking association incorporated under the laws of the United States and having its principal office in some state other than Georgia which has trust powers and is authorized to act in a fiduciary capacity under the laws under which it was incorporated.

(3) "Investment adviser" of a fiduciary investment company means:

(A) Any trust institution which, pursuant to contract with a fiduciary investment company possessing the qualifications provided by this part, regularly furnishes advice to such investment company with respect to the desirability of investing in, purchasing, or selling securities or other property or is empowered to determine what securities or other property shall be purchased or sold by such investment company; and

(B) Any person or corporation other than a trust institution,

who, pursuant to contract with such trust institution, regularly performs substantially all of such duties undertaken by such trust institution.

(4) "Trust institution" means any trust company or any national bank with its principal office located in this state, authorized to act as a fiduciary.

History.
Ga. L. 1970, p. 515, § 1; Ga. L. 1971, p. 639, §§ 1, 2; Ga. L. 1973, p. 549, § 1; Code 1933, § 41A-1501, enacted by Ga. L. 1974, p. 705, § 1.

U.S. Code.
The Investment Company Act of 1940, referred to in paragraph (1) of this Code section, is codified as 15 U.S.C. § 80a-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
45 Am. Jur. 2d, Investment Companies and Advisers, §§ 20 et seq., 51.

7-1-331. Organization; approval by department.

Any one or more trust institutions may cause a fiduciary investment company or companies to be organized and incorporated, but no trust institution or foreign trust institution may own an interest in more than seven fiduciary investment companies. A fiduciary investment company shall not begin business, except to select an investment adviser, until it is approved by the department.

History.
Ga. L. 1970, p. 515, § 2; Ga. L. 1971, p. 639, § 3; Code 1933, § 41A-1502, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 23.

C.J.S.
9 C.J.S., Banks and Banking, § 652.

7-1-332. Incorporation.

Any such fiduciary investment company shall be incorporated under and subject to Chapter 2 of Title 14. The incorporators shall be persons who are officers or directors of the trust institution or institutions causing such fiduciary investment company to be incorporated; and the articles of incorporation shall set forth the name of each trust institution participating in such incorporation and the amount of stock originally subscribed for by each, together with such other facts as are required by Chapter 2 of Title 14.

History.
Ga. L. 1970, p. 515, § 3; Code 1933, § 41A-1503, enacted by Ga. L. 1974, p. 705, § 1.

7-1-333. Limitations on investments.

Trust institutions and foreign trust institutions, as defined by this part, acting in a fiduciary capacity and for fiduciary purposes, if exercising due care as a prudent investor, and with the consent of any cofiduciary, may invest and reinvest funds held in such fiduciary capacity in the shares of stock of one or more fiduciary investment companies, except where the will, trust indenture, or other instrument under which such trust institution or foreign trust institution acts prohibits such investment, provided that the fiduciary investment company, by its articles of incorporation issued and granted in conformity with Chapter 2 of Title 14, shall have and possess the corporate powers required by this part and be subject to the limitations set forth by this part; provided, further, that no such trust institution or foreign trust institution shall invest in the stock of a fiduciary investment company on behalf of any estate, trust, or fund administered by such trust institution or foreign trust institution a sum or amount which would result in such estate, trust, or fund having a total investment in such stock in excess of the maximum amount or percentage that might be invested by such estate, trust, or fund, under the regulations of the department in effect at the time of such investment, in any common trust fund having total assets equal to the total assets of the fiduciary investment company as increased by the proposed investment; and no trust institution or foreign trust institution shall invest in the stock of a fiduciary investment company if, immediately after such investment and as a consequence thereof, it would own more than 25 percent of the voting securities of such fiduciary investment company which would then be outstanding.

History.
Ga. L. 1970, p. 515, § 4; Ga. L. 1971, p. 639, § 4; Ga. L. 1973, p. 549, § 2; Code 1933, § 41A-1504, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 23.

C.J.S.
9 C.J.S., Banks and Banking, § 652.

7-1-334. Corporate powers; limitations and restrictions.

Every fiduciary investment company in which a trust institution or foreign trust institution is authorized by this part to own and hold corporate stock or shares, in order to qualify for such investments, shall have such corporate powers as may be granted by Chapter 2 of Title 14 by virtue of its incorporation under those chapters and shall, in addition, have the following corporate powers under its articles of incorporation and, by its articles of incorporation or its bylaws, be subject to the limitations and restrictions set forth in this Code section:

(1) The stock of any such fiduciary investment company shall be owned and held only by trust institutions and foreign trust institutions acting as fiduciaries or cofiduciaries but may be registered in the name of the nominee or nominees of any such trust institution or foreign trust institution. Such stock shall not be subject to transfer or assignment except to the trust institution or foreign trust institution on whose behalf the stock is held by any such nominee or nominees or to a fiduciary or cofiduciary which becomes successor to the shareholder and which is also a trust institution or foreign trust institution qualified to hold such stock.

(2) A fiduciary investment company shall have no less than five directors, who need not be shareholders but shall be officers or directors of trust institutions or foreign trust institutions holding stock in such fiduciary investment company; provided, however, that no more than two directors shall be officers or directors of any one trust institution or foreign trust institution if the fiduciary investment company has been organized and incorporated by three or more trust institutions.

(3) In acquiring, investing, reinvesting, exchanging, selling, and managing its assets, every fiduciary investment company shall exercise the judgment and care under the circumstances then existing which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the safety of their capital. Within the foregoing limitations, a fiduciary investment company may acquire and retain every kind of investment, specifically including (but not by way of limitation) bonds, debentures, and other corporate obligations and corporate stocks, preferred or common, which men of prudence, discretion, and intelligence acquire or retain for their own account, provided that a fiduciary investment company shall not at any time:

(A) Invest in real estate, commodities, or commodity contracts;

(B) Participate on a joint or joint and several basis in any securities trading account;

(C) Invest in companies for the purpose of exercising control or management;

(D) Make loans to any person or persons, except that the purchase of a portion of an issue of debt securities, convertible debt securities, debt securities with warrants, rights, or options attached, or other similar securities when originally issued or thereafter, of a character commonly distributed publicly, shall not be considered the making of a loan;

(E) Purchase or retain the securities of any issuer if immedi-

ately after such acquisition and as a result thereof the following requirements would not be met: at least 75 percent of the total assets in the fiduciary investment company taken at market value are represented by cash and cash items, securities issued or guaranteed by the United States or an instrumentality thereof, and other securities which, as to any one issuer, do not represent more than 10 percent of the value of the total assets of the fiduciary investment company;

(F) Purchase or otherwise acquire the securities of any other investment company as that term is defined in the act of Congress entitled "Investment Company Act of 1940";

(G) Act as underwriter of the securities of other issuers;

(H) Borrow money; or

(I) Engage in margin transactions or short sales or write put or call options for the purchase or sale of securities.

(4) A fiduciary investment company may acquire, purchase, or redeem its own stock and may, by means of contract or by its bylaws, bind itself to acquire, purchase, or redeem its own stock; but it shall not vote shares of its own stock theretofore redeemed.

(5) A fiduciary investment company shall not be responsible for ascertaining the investment powers of any fiduciary who may purchase its stock, shall not be liable for accepting funds from a fiduciary in violation of restrictions of the will, trust indenture, or other instrument under which such fiduciary is acting in absence of actual knowledge of such violation, and shall be accountable only to the department and the fiduciaries who are the owners of its stock.

(6) Every fiduciary investment company subject to the supervision and regulation of the comptroller of the currency of the United States shall comply with all applicable rules and regulations of that agency to the extent that such rules and regulations are in addition to or in conflict with rules and regulations promulgated by the department.

History.

Ga. L. 1970, p. 515, § 5; Ga. L. 1971, p. 639, § 5; Ga. L. 1973, p. 549, §§ 3, 4; Ga. L. 1974, p. 598, §§ 1, 2; Code 1933, § 41A-1505, enacted by Ga. L. 1974, p. 705, § 1.

U.S. Code.

The Investment Company Act of 1940, referred to in subparagraph (3)(F) of this Code section, is codified as 15 U.S.C. § 80a-1 et seq.

RESEARCH REFERENCES

C.J.S.

9 C.J.S., Banks and Banking, § 660 et seq.

ALR.

Statute regulating banks and trust companies as special or class legislation,

as denying the equal protection of the laws, 111 A.L.R. 140.

7-1-335. Rules and regulations; examinations.

Without limitation on the authority conferred by Article 1 of this chapter, the department shall have authority to adopt and issue reasonable and uniform rules and regulations to govern the conduct and management of all fiduciary investment companies. The department shall not examine fiduciary investment companies subject to regular examination by the comptroller of the currency of the United States or the Board of Governors of the Federal Reserve System but shall otherwise have full power to examine fiduciary investment companies and enforce laws concerning them as though they were financial institutions.

History.
Ga. L. 1970, p. 515, § 6; Ga. L. 1973, p. 549, § 5; Code 1933, § 41A-1506, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 23. 45 Am. Jur. 2d, Investment Companies and Advisers, § 12 et seq..

7-1-336. Advertisement of participation; financial reports.

Except as may be specifically authorized by rule or regulation of the department, no trust institution or foreign trust institution holding stock in a fiduciary investment company may advertise or publicize its participation in such fiduciary investment company, provided that any trust institution or foreign trust institution holding stock in a fiduciary investment company shall furnish the annual or periodic financial reports of such fiduciary investment company, on request, to any person having a beneficial interest therein and the fact of the availability of such material may be given publicity in connection with the promotion of the fiduciary services of such trust institution or foreign trust institution.

History.
Ga. L. 1970, p. 515, § 7; Ga. L. 1971, p. 639, § 6; Code 1933, § 41A-1507, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
45 Am. Jur. 2d, Investment Companies and Advisers, § 12 et seq..

7-1-337. Investment advisers.

No person shall serve or act as investment adviser of a fiduciary investment company except pursuant to a written contract which has been approved by the vote of a majority of the outstanding voting securities of such fiduciary investment company and which:

(1) Precisely describes all compensation to be paid thereunder;

(2) Shall continue in effect for a period more than two years from the date of its execution only so long as such continuance is specifically approved at least annually by the board of directors or by vote of a majority of the outstanding voting securities of such company;

(3) Provides, in substance, that it may be terminated at any time, without the payment of any penalty, by the board of directors of such company or by vote of a majority of the outstanding voting securities of such company on not more than 60 days' written notice to the investment adviser; and

(4) Provides, in substance, for its automatic termination in the event of its assignment by the investment adviser.

History.
Ga. L. 1970, p. 515, § 8; Code 1933, § 41A-1508, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
45 Am. Jur. 2d, Investment Companies and Advisers, § 14 et seq.

7-1-338. Prohibition on refusing participation.

No fiduciary investment company shall refuse participation to any trust institution or foreign trust institution, as defined in this part, which is otherwise qualified to engage in a fiduciary investment program.

History.
Ga. L. 1970, p. 515, § 9; Ga. L. 1971, p. 639, § 7; Code 1933, § 41A-1509, enacted by Ga. L. 1974, p. 705, § 1.

Part 6

Deposits, Safe-Deposit Agreements, and Money Received for Transmission

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms.
4A Am. Jur. Pleading and Practice Forms, Banks, § 36 et seq.

ALR.
Duty of bank to one primarily liable to apply his deposit to an indebtedness owing from him to the bank, 9 A.L.R. 181.

Liability of bank for loss of Liberty bonds, 17 A.L.R. 1217; 31 A.L.R. 703; 40 A.L.R. 899.

Levy upon or garnishment of contents of safety deposit box, 19 A.L.R. 863; 39 A.L.R. 1215.

Right in absence of statute to preference in respect of deposit of public funds in insolvent bank, 51 A.L.R. 1336; 65 A.L.R. 690; 90 A.L.R. 184; 103 A.L.R. 621; 167 A.L.R. 640.

Right of one indebted to insolvent bank to setoff deposits which he has made as trustee, 55 A.L.R. 822.

Funds accepted by bank "for safe-keeping" as a special deposit, 59 A.L.R. 448.

Examination of account, passbook, or canceled checks by bank depositor, 67 A.L.R. 1121; 103 A.L.R. 1147.

Trust in proceeds of collections made by charging debtor's account in collecting bank, 77 A.L.R. 473.

Right to set off deposit in insolvent bank against indebtedness to bank, 82 A.L.R. 665; 97 A.L.R. 588.

Constitutionality, construction, and effect of legislation for protection of bank depositors or relief of banks or building and loan associations in need of cash or cash resources, 82 A.L.R. 1025.

Personal liability of directors, officers, or employees of bank interfering with payment of checks or otherwise preventing or discouraging withdrawal of deposit, 97 A.L.R. 315.

Negligence in failing to discover insolvency of bank as equivalent of knowledge, or substitute therefor, as regards criminal responsibility of bank officer or employee for receiving deposit after insolvency, 98 A.L.R. 615.

Presumption and burden of proof, in action or proceeding against bank or its liquidator, as to reasons or justification for failure to return subject of special deposit on demand, 119 A.L.R. 831.

Liability for loss of contents of safe-deposit box, 133 A.L.R. 279.

Credit by bank or loan association to borrower as an incident of loan transaction as a "deposit" within statute specifically taxing deposits, 135 A.L.R. 1480.

Deposit of fund belonging to depositor in bank account in name of himself and another, 149 A.L.R. 879.

Parol evidence rule as applied to deposit of funds in name of depositor and another, 33 A.L.R.2d 569.

Presumption of payment as applicable to bank deposit, 69 A.L.R.3d 1311.

Liability of bank to joint depositor of savings account for amounts withdrawn by other joint depositor without presentation of passbook, 35 A.L.R.4th 1094.

Liability of bank or safe-deposit company for its employee's theft or misappropriation of contents of safe-deposit box, 39 A.L.R.4th 543.

Bank's liability to customer for imposing allegedly excessive service charges, 73 A.L.R.4th 1028.

7-1-350. Notice of rules governing deposits.

A bank which has adopted rules governing deposits or withdrawal of deposits shall give notice of the rules and all changes therein to each customer whose deposits are affected by such rules, either by delivery of a copy to such customer or by posting them in a conspicuous area in the main office and in all branch offices of the bank. If such rules are stated on a signature card or other contract signed by the customer, the bank shall be deemed to have given notice of the rules for purposes of this provision even if such signature card or contract is returned to the bank.

History.

Ga. L. 1919, p. 135, art. 19, § 47; Code 1933, § 13-2047; Code 1933, § 41A-1601, enacted by Ga. L. 1974, p. 705, § 1.

JUDICIAL DECISIONS

Failure to give notice not constructive fraud. — Even though a bank had a duty to notify the bank's customer of a change in the bank's signature verification procedures, since there was no evidence that the bank refrained from informing the bank's customers in order to induce the customers to take or refrain from taking any certain action, there was no showing of constructive fraud. Eason Publications, Inc. v. Nationsbank, 217 Ga. App. 726, 458 S.E.2d 899, 1995 Ga. App. LEXIS 587 (1995).

RESEARCH REFERENCES

C.J.S.

9 C.J.S., Banks and Banking, §§ 224, 635.

ALR.

Status of "Christmas club" deposits, 21 A.L.R. 1128.

Crediting amount to depositor's account as precluding recovery back of money paid to bank by mistake, 25 A.L.R. 129.

Liability of correspondent bank to depositor in forwarding bank for breach of duty as to collection of paper, 58 A.L.R. 764.

What amounts to a deposit within statute in relation to civil or criminal liability for accepting deposit when bank is unsafe or insolvent, 76 A.L.R. 1320.

Trust in proceeds of collections made by charging debtor's account in collecting bank, 77 A.L.R. 473.

Right of depositor to rescind or claim a trust in respect of a deposit because of insolvency of bank when it is made, 81 A.L.R. 1078.

Validity, construction, application, and effect of agreement for, or condition of, indemnity to bank in event of payment to savings bank depositor who cannot produce passbook, 81 A.L.R. 1150.

Agreement by depositors to prevent closing, or to assist in opening, of bank as affecting their rights or priorities in respect of their deposits, 88 A.L.R. 1009.

Sufficiency of notice to bank of assignment of deposit, 115 A.L.R. 328.

Effect on bank depositor's rights and those of bank, of printed rules in passbook not expressly accepted, 60 A.L.R.2d 708.

7-1-351. Minors' deposits and safe-deposit agreements.

(a) A bank may receive deposits from:

(1) A minor who is at least 16 years of age; or

(2) One or more minors jointly with one or more adults, as party to and with the same effect as a multiple-party account under Article 8 of this chapter.

(b) A bank may use electronic means, including, but not limited to, wire and mobile application software, to provide access to and facilitate the movement of money in such deposit account.

(c) A bank or trust company may rent a safe-deposit box or other receptacle for safe deposit of property to, and receive property for safe deposit from:

(1) A minor who is at least 16 years of age; or

(2) One or more minors jointly with one or more adults.

(d) A bank or trust company may deal with a minor who is at least 16 years of age with respect to a deposit account or safe-deposit agreement covered by paragraph (1) of subsection (a) or paragraph (1) of subsection (c) of this Code section without the consent of a parent or guardian and with the same effect as though the minor were an adult. A parent or guardian shall not have any right in that capacity to interfere with any such transaction. Any action of the minor with respect to such deposit account or safe-deposit agreement shall be binding on the minor with the same effect as though the minor were an adult.

(e) Nothing in this Code section shall be deemed to require a bank or trust company to provide deposit accounts or safe-deposit agreements authorized by this Code section.

History.
Ga. L. 1919, p. 135, art. 19, § 41; Code 1933, § 13-2041; Code 1933, § 41A-1602, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1977, p. 730, § 4; Ga. L. 2017, p. 193, § 9/HB 143.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 650, 841.

ALR.
Insurance of bank or trust company against loss by burglary or robbery as covering contents of safety deposit boxes rented to customers, 30 A.L.R. 623.

Liability for loss of contents of safe deposit box, 42 A.L.R. 1304; 133 A.L.R. 279.

Presumption as to ownership of property in safe deposit box, 101 A.L.R. 832.

7-1-352. Deposit by agent, trustee, or other fiduciary.

(a) Whenever any agent, administrator, executor, guardian, trustee, either express or implied, or other fiduciary, whether bona fide or mala fide, shall deposit any money in any bank to his credit as an individual, or as such agent, trustee, or other fiduciary, whether the name of the person or corporation for whom he is acting or purporting to act be given or not, such bank shall be authorized to pay the amount of such deposit, or any part thereof, upon the order of such agent, administrator, executor, guardian, trustee, or other fiduciary, signed with the name in which such deposit was entered, without being accountable in any way to the principal, cestui que trust, or other person or corporation who may be entitled to or interested in the amount so deposited.

(b) Nothing contained in this Code section shall prevent the person or corporation claiming the beneficial interest in or to any deposit in any bank from resorting to the courts to claim such deposit, provided that such action is brought and served before such deposit is paid out and in accordance with the requirements of Code Section 7-1-353.

History.

Ga. L. 1919, p. 135, art. 19, § 42; Code 1933, § 13-2042; Code 1933, § 41A-1605, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2024, p. 1052, § 1(a)(16)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "provided that such" for "provided such" in subsection (b).

JUDICIAL DECISIONS

Section protects bank against breaches by corporate agent. — Once account was properly set up by a corporation, former Code 1933, § 13-2042 (see now O.C.G.A. § 7-1-352) protects bank from liability if the bank was without knowledge of the breach of duty of the agent withdrawing funds. Trust Co. v. Nationwide Moving & Storage Co., 235 Ga. 229, 219 S.E.2d 162, 1975 Ga. LEXIS 839 (1975).

Purpose of O.C.G.A. § 7-1-352 is to protect a bank from liability in the event that an agent or fiduciary misappropriates funds of an owner in breach of the agency or trust without the bank's knowledge, and the statute protects a bank from liability for embezzlement by a signatory on a corporate bank account if the person setting up the account had the authority to do so and if the bank was without knowledge of the embezzlement. Atlanta Sand & Supply Co. v. Citizens Bank, 276 Ga. App. 149, 622 S.E.2d 484, 2005 Ga. App. LEXIS 1188 (2005).

Former Code 1933, § 13-2042 (see now O.C.G.A. § 7-1-352) can be read to include an agent with authority or implied agency to make deposits. Trust Co. v. Nationwide Moving & Storage Co., 235 Ga. 229, 219 S.E.2d 162, 1975 Ga. LEXIS 839 (1975).

Corporate officer's authority. — Because a company's corporate resolution authorized one of the corporation's officers to make deposits to and withdrawals from an account maintained at a bank, and the officer, in the process of making deposits to the account, illegally took cash back from the deposits for the officer's personal use, the bank was shielded from liability for conversion by O.C.G.A. § 7-1-352 because the corporate resolution, as well as a signature card bearing the officer's signature, gave the officer authority to deal with the account. Atlanta Sand & Supply Co. v. Citizens Bank, 276 Ga. App. 149, 622 S.E.2d 484, 2005 Ga. App. LEXIS 1188 (2005).

Account in a fictitious name is recognized in Georgia. National Factor & Inv. Corp. v. State Bank, 224 Ga. 535, 163 S.E.2d 817, 1968 Ga. LEXIS 846 (1968).

Account can be opened in any name and bank may pay checks signed in accounts when the bank has no knowledge of a fraudulent purpose for the account. National Factor & Inv. Corp. v. State Bank, 224 Ga. 535, 163 S.E.2d 817, 1968 Ga. LEXIS 846 (1968).

Banks not required to scrutinize every check written by a fiduciary or agent. — Former Code 1933, § 13-2042 is designed to protect the bank from liability when the agent or fiduciary misappropriates funds of the owner in breach of agency or trust without bank's knowledge. The bank is not required to scrutinize every check written by a fiduciary or agent to see if the check is written in compliance with the agent's authority. Trust Co. v. Nationwide Moving & Storage Co., 235 Ga. 229, 219 S.E.2d 162, 1975 Ga. LEXIS 839 (1975).

Former Code 1933, § 13-2042 was designed to protect the bank from liability when an agent or fiduciary misappropriates funds of the owner in breach of agency or trust without bank's knowledge. The bank is not required to scrutinize every check written by a fiduciary or agent to see if the check is written in compliance with the agent's authority. Flo-Control, Inc. v. Northeast Bank, 150 Ga. App. 880, 258 S.E.2d 695, 1979 Ga. App. LEXIS 2407 (1979); National Bank v. Weiner, 180 Ga. App. 61, 348 S.E.2d 492, 1986 Ga. App. LEXIS 2060 (1986).

If agent has authority to open account and issue checks, bank is protected. — If agent was proven to have had either authority or inherent agency

power to open an account, then the bank can rely on the protection of former Code 1933 § 13-2042 if the agent also had authority to issue checks. Trust Co. v. Nationwide Moving & Storage Co., 235 Ga. 229, 219 S.E.2d 162, 1975 Ga. LEXIS 839 (1975).

Bank was protected from liability for conversion of checks deposited into a corporate account since the agent who made the deposits and later withdrew the deposits had presented documents to the bank, including a certificate bearing the corporate seal and naming the agent as an officer of the corporation, which appeared to give the agent very broad authorization. Service Lines v. Trust Co. Bank, 189 Ga. App. 891, 377 S.E.2d 872, 1989 Ga. App. LEXIS 50 (1989).

General manager may have authority or inherent agency to arrange for handling of corporate funds. Trust Co. v. Nationwide Moving & Storage Co., 235 Ga. 229, 219 S.E.2d 162, 1975 Ga. LEXIS 839 (1975).

Trust company cannot rely solely on general manager's position. — Trust company does not have the right to rely solely on the general manager's position as general manager for power to set up a corporate bank account and to withdraw corporate funds without a proper corporate resolution. Trust Co. v. Nationwide Moving & Storage Co., 235 Ga. 229, 219 S.E.2d 162, 1975 Ga. LEXIS 839 (1975).

Corporate resolution is not exclusive method for conferring authority. — While a bank could easily protect the bank's interests by requiring a proper corporate resolution showing an agent's authority to act for the corporation, that method is not the exclusive one for establishing the existence either of authority or of inherent agency power to open a bank account for the corporation. Trust Co. v. Nationwide Moving & Storage Co., 235 Ga. 229, 219 S.E.2d 162, 1975 Ga. LEXIS 839 (1975).

Chief executive officer's authority. — When evidence showed that a chief executive officer had the inherent agency power to open accounts and withdraw deposited funds, the bank was not liable for alleged conversions of funds by the officer on the basis that the bank did not require a corporate resolution or certificate of authority to open the accounts. Family Partners Worldwide, Inc. v. Suntrust Bank, 242 Ga. App. 618, 530 S.E.2d 742, 2000 Ga. App. LEXIS 289 (2000).

This section does not violate U.S. Const., amend. 14, Sec. 1, or Ga. Const. 1983, Art. I, Sec. I, Para. II. — Former Code 1933, § 13-2042 (see now O.C.G.A. § 7-1-352(a)) was not unconstitutional under U.S. Const., Art. XIV, Sec. I, and Ga. Const. 1976, Art. I, Sec. II, Para. III (see now Ga. Const. 1983, Art. I, Sec. I, Para. II) as violating equal protection and impartial protection of property, nor did the statute violate Ga. Const. 1976, Art. I, Sec. I, Para. VII (see now Ga. Const. 1983, Art. I, Sec. I, Para. X) prohibitions against grants of special privileges or immunities. National Factor & Inv. Corp. v. State Bank, 224 Ga. 535, 163 S.E.2d 817, 1968 Ga. LEXIS 846 (1968).

Former Code 1933, § 13-2042 was not unconstitutional as a special law enacted in derogation of a general law. National Factor & Inv. Corp. v. State Bank, 224 Ga. 535, 163 S.E.2d 817, 1968 Ga. LEXIS 846 (1968).

Circumstances required to charge bank with notice of misappropriation. — See National Factor & Inv. Corp. v. State Bank, 224 Ga. 535, 163 S.E.2d 817, 1968 Ga. LEXIS 846 (1968).

Mere fact that a fiduciary deposits in bank to the fiduciary's individual account a check drawn by the fiduciary in a fiduciary capacity, or transfers funds by check from an account in the bank in the fiduciary's own name as a fiduciary to a personal account in the bank, will not of itself charge the bank with knowledge or notice that the fiduciary is misappropriating or will misappropriate such funds. Citizens Bank v. Middlebrooks, 209 Ga. 330, 72 S.E.2d 298, 1952 Ga. LEXIS 480 (1952).

Trust funds. — Under O.C.G.A. § 7-1-352, a bank incurs no liability for the uses to which trust funds are applied after the funds are withdrawn. On the other hand, the statute contains no

language protecting the bank against liability for honoring forged or otherwise improper checks or endorsements. Trust Co. Bank v. Henderson, 258 Ga. 703, 373 S.E.2d 738, 1988 Ga. LEXIS 493 (1988).

O.C.G.A. § 7-1-352 did not apply when the claim against the bank was based on the bank's acceptance for deposit into an employee's personal checking account of checks made payable to the employer, and the employee knowingly signed and presented the checks so as to give the appearance of authority from the employer. Trust Co. Bank v. Henderson, 185 Ga. App. 367, 364 S.E.2d 289, 1987 Ga. App. LEXIS 2508 (1987), aff'd, 258 Ga. 703, 373 S.E.2d 738, 1988 Ga. LEXIS 493 (1988).

While O.C.G.A. § 7-1-352 protects banks from liability when allowing withdrawals and paying accounts ordered to be paid by the persons who have previously deposited such money, it is not applicable when the amount ordered to be transferred was not initially deposited by a temporary administratrix but instead was deposited by the deceased. Kelly v. Citizens & S. Nat'l Bank, 160 Ga. App. 405, 287 S.E.2d 343, 1981 Ga. App. LEXIS 3131 (1981).

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am Jur. 2d, Banks, § 504.

ALR.

Deposit to individual account of checks or notes drawn or endorsed by agent or fiduciary, as charging bank with notice of misappropriation, 64 A.L.R. 1404; 106 A.L.R. 836; 115 A.L.R. 648.

Trust or preference in assets of insolvent bank in respect of money deposited or left on deposit pursuant to agreement of bank to purchase bonds or make other investments for depositor, 82 A.L.R. 1292; 105 A.L.R. 516.

Liability of guardian for loss of funds deposited in bank in form which discloses trust or fiduciary character, 90 A.L.R. 641.

Payee's and drawer's right of recovery, in conversion under pre-1990 UCC § 3-419, or post-1990 UCC § 3-420, for money paid on unauthorized endorsement, 91 A.L.R.5th 89.

7-1-353. Adverse claims to deposits and property held in safe deposit.

(a) Except as provided in subsections (b) and (c) of this Code section, a bank or trust company shall not be required to deny control over or access to a deposit account or property held in safe deposit (whether by the bank or trust company or in a safe-deposit box or other receptacle leased to a customer) to:

(1) The customer in whose name the account or property is held by the bank or trust company (including one of two depositors or lessees entitled to such control or access by virtue of their contract with the bank or trust company); or

(2) A person or group of persons who is authorized to draw on or control the account or property pursuant to a certified corporate resolution or other written arrangement with the customer currently on file with the bank or trust company.

(b) A bank shall be entitled to act and rely upon:

(1) A court order, distraint, levy, garnishment, or other effective legal process;

(2) An agreement of the parties concerning an adverse claim; or

(3) A claim of the type described in subsection (a) of this Code section accompanied by a bond or other indemnity adequate to protect the bank or trust company from loss as a consequence of recognizing an adverse claim.

(c) Nothing in this Code section shall impair the effect of a discharge which a bank or trust company would be entitled to under Code Section 11-3-602.

History.
Code 1933, § 41A-1606, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1984, p. 22, § 7; Ga. L. 1997, p. 143, § 7; Ga. L. 2016, p. 390, § 7-8/HB 811.

Cross references.
Disposition of property held in safe deposit box or held for safekeeping by financial institution for which department acts as receiver, § 7-1-172.

JUDICIAL DECISIONS

IRS levy. — Bank did not violate O.C.G.A. § 7-1-353 by denying a depositor control over the depositor's bank account when the bank surrendered money in the depositor's account pursuant to an IRS levy. Dean v. Nationsbank, 226 Ga. App. 370, 486 S.E.2d 647, 1997 Ga. App. LEXIS 609 (1997).

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1005 et seq., 1012.
C.J.S.
93 C.J.S. (Rev), Warehousemen and Safe Depositaries, § 126.
ALR.
Levy upon or garnishment of contents of safety deposit box, 11 A.L.R. 225; 19 A.L.R. 863; 39 A.L.R. 1215.
Crediting amount to depositor's account as precluding recovery back of money paid to bank by mistake, 25 A.L.R. 129.
Insurance of bank or trust company against loss by burglary or robbery as covering contents of safety deposit boxes rented to customers, 30 A.L.R. 623.
Liability for loss of contents of safe-deposit box, 42 A.L.R. 1304; 133 A.L.R. 279.
Duty of bank to sureties or endorsers as to application of general deposit by principal, 70 A.L.R. 339.
Right of bank to charge depositor's indebtedness against deposit account without first exhausting collateral, 96 A.L.R. 1240.
Presumption as to ownership of property in safe deposit box, 101 A.L.R. 832.
Garnishment of bank deposit as affected by bank's right, or waiver of right, to set off depositor's indebtedness to it against deposit or apply deposit to such indebtedness, 106 A.L.R. 62; 110 A.L.R. 1268.
Conflict of laws as to disposition of and relative rights to bank deposits in the names of more than one person, 25 A.L.R.2d 1240.

7-1-354. Money received for transmission.

(a) A bank or trust company which receives money for transmission shall give the customer a receipt setting forth:

(1) The date of receipt of the money;

(2) The amount of the money in dollars and cents; and

(3) If the money is to be transmitted to a foreign country in the currency of such country, the amount of the money in such currency.

(b) In an action by a customer against a bank or trust company for recovery of money delivered for transmission, the burden of proof of delivery of the money in accordance with the instructions of the customer shall be on the bank or trust company; but an affidavit by an agent or correspondent of the bank or trust company that the money was delivered in accordance with the customer's instructions shall be prima-facie evidence of the delivery of the money in accordance with the customer's instructions.

History.
Code 1933, § 41A-1607, enacted by Ga. L. 1974, p. 705, § 1.

Cross references.
Persons, corporations, and others engaging in business of receiving cash from patrons as payment of obligations owed by such patrons to third parties, § 10-6-100 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 782, 792.

C.J.S.
9 C.J.S., Banks and Banking, §§ 474 et seq., 515.

ALR.
Liability of correspondent bank to depositor in forwarding bank for breach of duty as to collection of paper, 58 A.L.R. 764.

Trust or preference in respect of money used to purchase exchange or to be transmitted, 84 A.L.R. 1470; 93 A.L.R. 938; 101 A.L.R. 631.

Agreement by bank to transmit excess of deposit over specified amount as giving rise to a trust or preference in event of insolvency of bank, 89 A.L.R. 1287.

Bank depositor's act in seeking restitution from third person to whom, or for benefit of whom, the bank has paid out the deposit, as election of remedy precluding action against bank, 144 A.L.R. 1440.

7-1-355. Agreements concerning safe deposits.

A bank, trust company, or savings and loan association may receive property for safe deposit and rent out receptacles and safe-deposit boxes on the terms and conditions prescribed by it; but such terms and conditions shall not bind any customer to whom the bank, trust company, or savings and loan association does not give notice thereof either by delivery of a copy or by posting in its offices where such receptacles or safe-deposit boxes are located, or who does not otherwise agree to such terms and conditions.

History.
Code 1933, § 41A-1608, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1978, p. 1717, § 4; Ga. L. 2016, p. 390, § 7-4/HB 811; Ga. L. 2017, p. 774, § 7/HB 323.

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1002, 1007, 1008.
C.J.S.
93 C.J.S. (Rev), Warehousemen and Safe Depositaries, §§ 128, 130.
ALR.
Insurance of bank or trust company against loss by burglary or robbery as covering contents of safety deposit boxes rented to customers, 30 A.L.R. 623.
Liability for loss of contents of safe-deposit box, 42 A.L.R. 1304; 133 A.L.R. 279.
Presumption as to ownership of property in safe deposit box, 101 A.L.R. 832.

7-1-356. Procedures on death or incompetence of safe depositor.

(a) Any financial institution contracting with a person for the use of a safe-deposit box or receiving property from a person for safekeeping, upon presentation of satisfactory proof of the death or legal incompetence of such person, shall permit any person named in an order granted by the probate court having jurisdiction of such person's estate to open and examine the contents of any safe-deposit box leased by the decedent or legally incompetent person or to examine the property left by such person for safekeeping, in the presence of an officer of the financial institution. The financial institution, if so requested by such person, shall deliver:

(1) Any writing purporting to be a will of the decedent to the probate court having jurisdiction of the decedent's estate;

(2) Any writing purporting to be a deed to a burial plot or to give burial instructions to the person named in such order;

(3) Any document purporting to be an insurance policy on the life of the decedent to the beneficiary named therein;

but no other contents shall be removed pursuant to this Code section.

(b) Within five banking days after the order of the court is presented to the financial institution, the financial institution shall permit the person named in such order to inventory the contents of any safe-deposit box leased or rented to the decedent or legally incompetent person or the property left by such person for safekeeping. The inventory shall be conducted in the presence of an officer or employee of the financial institution by the person named in such order. The inventory shall be signed by such persons, and a copy thereof shall be retained by the financial institution and may be filed with the probate court.

(c) The financial institution shall be free from all liability with respect to any action, claim, or demand of whatever nature asserted by any heir, legatee, distributee, creditor, administrator, executor, guardian, trustee, or other fiduciary or by any person whomsoever when acting pursuant to such letters of authority.

(d) Upon presentation of a certified copy of his letters of authority, the financial institution shall grant the personal representative access to any safe-deposit box or property in safekeeping in the sole name of a decedent or legally incompetent person to permit him to remove from such box or place of safekeeping any part or all of the property therein without liability.

History.
Ga. L. 1972, p. 437, §§ 1-4; Code 1933, § 41A-1609, enacted by Ga. L. 1974, p. 705, § 1.

Cross references.
Opening of safe deposit box on authorization of fiduciary, § 53-7-5.

RESEARCH REFERENCES

Am. Jur. 2d.
11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1003, 1006, 1012.

C.J.S.
93 C.J.S. (Rev), Warehousemen and Safe Depositaries, §§ 126, 129.

ALR.
Insurance of bank or trust company against loss by burglary or robbery as covering contents of safety deposit boxes rented to customers, 30 A.L.R. 623.

Liability for loss of contents of safe deposit box, 42 A.L.R. 1304; 133 A.L.R. 279.

Presumption as to ownership of property in safe deposit box, 101 A.L.R. 832.

7-1-357. [Reserved] Payment of deposit of deceased depositor; deposit by nursing home of moneys left in its possession upon death of resident.

History.
Ga. L. 1919, p. 135, art. 19, § 48; Ga. L. 1927, p. 195, § 11; Code 1933, § 13-2048; Ga. L. 1943, p. 253, § 1; Ga. L. 1952, p. 189, § 1; Ga. L. 1955, p. 202, § 1; Code 1933, § 41A-1610, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 21; Ga. L. 1976, p. 1388, § 3; Ga. L. 1981, p. 848, § 1; repealed by Ga. L. 1983, p. 661, § 2, effective July 1, 1983.

Editor's notes.
For present provisions as to payment of large deposits of deceased intestate depositors, see Code Section 7-1-239.

7-1-358. Dormant accounts.

In accordance with and subject to the limitation of such regulations as the department may prescribe, a bank may, from time to time, charge a dormant account a reasonable service charge.

History.
Code 1933, § 13-2067, enacted by Ga. L. 1966, p. 590, § 10; Code 1933, § 41A-1611, enacted by Ga. L. 1974, p. 705, § 1.

JUDICIAL DECISIONS

Dormant checks, money orders, and drafts deemed "dormant accounts." — O.C.G.A. § 7-1-358 and a related regulation do not allow assessment of service charges only against dormant deposit accounts; thus, charges against dormant checks, money orders, and drafts qualified as "lawful charges" and were properly withheld from the Department of Revenue when funds were remitted under the Unclaimed Property Act, O.C.G.A. § 44-12-190 et

seq. First Union Nat'l Bank v. Collins, 221 Ga. App. 442, 471 S.E.2d 892, 1996 Ga. App. LEXIS 389 (1996), cert. denied, No. S96C1460, 1996 Ga. LEXIS 958 (Ga. Sept. 5, 1996).

OPINIONS OF THE ATTORNEY GENERAL

Repeals contrary provision in Disposition of Unclaimed Property Act. — Ga. L. 1974, p. 705, § 1 (see now O.C.G.A. § 7-1-358) repealed by implication the prohibition against the imposition of a service charge on dormant bank accounts contained in the Disposition of Unclaimed Property Act (see now O.C.G.A. § 44-12-190 et seq.). 1975 Op. Att'y Gen. No. 75-128.

7-1-359. Fee prohibited for conducting search of dormant, abandoned, or unclaimed deposit accounts; commission or finder's fee allowed.

No person shall charge a fee or solicit any other form of compensation for the purpose of conducting a search for dormant, abandoned, or unclaimed deposit accounts or other abandoned properties whether held by a financial institution or escheated to any governmental agency. Notwithstanding the foregoing, a commission or finder's fee not to exceed 10 percent of actual sums recovered by the owner of such accounts may be agreed to by the parties. All moneys and properties located by a person to be compensated by the payment of such a commission or finder's fee shall be paid directly to the owner and may not be paid over to the person to receive the commission or finder's fee whether pursuant to a duly executed power of attorney or otherwise.

History.
Code 1981, § 7-1-359, enacted by Ga. L. 1989, p. 1211, § 6.

7-1-360. Third-party claims; notification of disclosure by third party to depositor; motion to quash disclosure.

(a) No financial institution shall be required to recognize the claim of any third party to any deposit, or withhold payment of any deposit to the depositor or to his order, unless and until the financial institution is served with citation, order, or other appropriate process issuing out of a court of competent jurisdiction in connection with a suit instituted by such third party for the purpose of recovering or establishing an interest in such deposit. Neither shall any financial institution be required to disclose or produce to third parties, or permit third parties to examine any records pertaining to a deposit account, loan account, or other banking relationship except:

(1) Where the financial institution itself is a proper or necessary party to a proceeding in a court of competent jurisdiction;

(2) Where the records of accounts or other customer records are

requested through subpoena or other administrative process issued by a state, federal, or local administrative agency having competent jurisdiction over the depositor or other customer or where such records are requested pursuant to Georgia or federal law governing civil practice or procedure in conjunction with an ongoing civil action in a Georgia state or federal court of competent jurisdiction;

(3) Where the records of accounts or other customer records are requested in conjunction with an ongoing criminal or tax investigation of the depositor or other customer by a state or federal grand jury, taxing authority, or law enforcement agency; or

(4) Where the records of accounts or other customer records are requested by any state or federal regulatory agency having jurisdiction over the financial institution.

(b) Unless directed otherwise by a court of competent jurisdiction, before disclosure, production, or examination of records produced under paragraph (1) or (2) of subsection (a) of this Code section, the agency or other party seeking the disclosure or production of the records shall provide notification to the depositor or other customer of such request. Notification of the depositor or other customer under circumstances set forth in paragraphs (3) and (4) of subsection (a) of this Code section shall not be made without the consent of the requesting authority. For purposes of ascertaining whether or not proper notice has been given or whether or not the depositor or other customer may be notified, the financial institution may rely upon appropriate certification or written assurances from the requesting party and in doing so shall be relieved of any liability which might be asserted in connection with such disclosures.

(c) Each customer or depositor to whom notice of an order, subpoena, or request for disclosure, examination, or production of records was lawfully given may, prior to the date specified therein for disclosure, examination, or production, file in the court issuing an order or subpoena for the records or in the Georgia or federal court where the civil matter is being heard or, in the absence of such a court, in the superior court of the county in which the financial institution is located a motion to quash the order, subpoena, or request or for a protective order and shall serve such motion on the party requesting disclosure and the financial institution as may be otherwise provided by law for similar motions. Failure to file and serve such motion to quash or for protection shall constitute consent for all purposes to disclosure, production, or examination made pursuant to this Code section.

History. Code 1981, § 7-1-360, enacted by Ga. L. 1989, p. 1211, § 6; Ga. L. 2005, p. 826, § 8/SB 82.

JUDICIAL DECISIONS

Section not intended to hinder discovery as to fair market value. — O.C.G.A. § 7-1-360 is intended to protect confidential banking records. It is not intended to hinder proper discovery in a lawsuit concerning the fair market value of taxable property, especially when the documents sought may contain evidence, including admissions by the taxpayer, as to the value of the property. Clayton County Bd. of Tax Assessors v. Lake Spivey Golf Club, Inc., 207 Ga. App. 693, 428 S.E.2d 687, 1993 Ga. App. LEXIS 277 (1993), overruled in part, General Motors, LLC v. Buchanan, 313 Ga. 811, 874 S.E.2d 52, 2022 Ga. LEXIS 163 (2022).

Relevance of financial condition. — Trial court did not err in admitting banking records for accounts belonging to the defendant, as evidence of the defendant's financial condition was admissible regarding the defendant's reason for stabbing the victim, a fellow soldier, and grabbing for the victim's money; accordingly, the defendant's argument that the admission of defendant's bank records was improper pursuant to O.C.G.A. § 7-1-360 had to be rejected since that statute merely discussed the right of financial institutions to provide certain financial information to third parties when the records were requested by certain individuals or entities for certain purposes. Stogisavlijevic v. State, 259 Ga. App. 306, 577 S.E.2d 18, 2003 Ga. App. LEXIS 507 (2003).

Discovery compelled by court of competent jurisdiction. — Compliance with Fed. R. Bankr. P. 2004(c) satisfies the requirement of O.C.G.A. § 7-1-360 that discovery of records of a financial institution be compelled by a court of competent jurisdiction. In re Bennett, No. 07-77463, 2008 Bankr. LEXIS 1742 (Bankr. N.D. Ga. Apr. 15, 2008).

Chapter 7 trustee's motion for a Fed. R. Bankr. P. 2004 examination of a law firm as to documents relating to the real estate closing to which the debtors were parties was granted with the requirement that the trustee subpoena the firm because the trustee was not required to serve the motion, which could be granted ex parte, on the debtors under Fed. R. Bankr. P. 9013 and compliance with Fed. R. Bankr. P. 2004(c) satisfied the requirement of O.C.G.A. § 7-1-360 that discovery of records of a financial institution be compelled by a court of competent jurisdiction. In re Bennett, No. 07-77463, 2008 Bankr. LEXIS 1742 (Bankr. N.D. Ga. Apr. 15, 2008).

Judgment creditor may review bank records of debtor's spouse. — Judgment creditor was authorized to seek bank records of the debtor's spouse in post-judgment discovery because the creditor was entitled to seek information that would lead to any property or other sources of income of the debtor; further, the spouse had begun paying the debtor's country club dues from the spouse's bank accounts after the judgment was entered. Hickey v. RREF BB SBL Acquisitions, LLC, 336 Ga. App. 411, 785 S.E.2d 72, 2016 Ga. App. LEXIS 193 (2016).

RESEARCH REFERENCES

ALR.

Bank's liability, under state law, for disclosing financial information concerning depositor or customer, 81 A.L.R.4th 377.

PART 7

BANKING DEPOSITORIES, RESERVES, AND REMISSIONS

7-1-370. Deposits by financial institutions.

(a) Subject to the restrictions of subsection (b) of this Code section

and of Code Section 7-1-371 in regard to reserve funds, a financial institution may deposit its funds in any depository which is:

(1) Selected by, or in any manner authorized by, its directors;

(2) Authorized by law to receive deposits; and

(3) In the case of a depository located in the United States, one which has deposit insurance issued by a federal public body to depositories of the type involved.

(b) If a director of the financial institution has a relationship to a depository as either:

(1) An officer or director; or

(2) An owner of 5 percent or more of the shares of the depository,

the depository shall be approved by a majority of the directors other than the director who has such relationship.

History.
Code 1933, § 41A-1701, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 10; Ga. L. 1997, p. 485, § 14; Ga. L. 2016, p. 390, § 2-4/HB 811.

OPINIONS OF THE ATTORNEY GENERAL

This section is broad enough to cover a savings and loan account as a deposit. — Former Code 1933, § 41A-1309 (see now O.C.G.A. § 7-1-288) was directed at a bank's long-term investment in capital stocks and securities in the bank's own name, while former Code 1933, § 41A-1701 (see now O.C.G.A. § 7-1-370) was directed at a bank's short-term deposits in other financial institutions. The language of former Code 1933, § 41A-1701 was broad enough to cover a savings and loan account as a deposit, therefore, former Code 1933, § 41A-1309 was inapplicable to deposits in mutual savings and loan associations and former Code 1933, § 41A-1701 permitted banks to deposit the bank's funds in these associations. Since the Georgia Supreme Court has not ruled on the question of whether such a deposit was equivalent to the purchase of shares in a corporation, federal law will not permit a state bank member of the federal reserve to make deposits in a Georgia building and loan association; however, there was no reason why a state bank which is not a member of the federal reserve cannot deposit the bank's funds in a state association. 1978 Op. Att'y Gen. No. 78-66.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 45, 53, 54.
11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1086, 1087.

7-1-371. Legal reserve requirements; notice of deficiency; penalty; effect of deficiency.

(a) For the purposes of the reserve requirement imposed by subsec-

tion (c) of this Code section and the composition of the required reserve fund under subsection (d) of this Code section, the term:

(1) "Demand deposits" means the aggregate of deposits which can be required to be paid on demand or within less than 30 days after demand;

(2) "Reserve agent" means a depository of a financial institution selected as provided in Code Section 7-1-370 for the deposit of funds included in the required reserve fund.

(b) A financial institution which is governed by 12 C.F.R. 204 shall maintain, at all times, a reserve fund in accordance with the applicable federal requirements.

(c) A financial institution which is not governed by 12 C.F.R. 204 shall maintain, at all times, a reserve fund in an amount fixed by regulation of the department, but in no case shall such reserve be required in excess of the aggregate of 15 percent of demand deposits and 5 percent of other deposits. The amount of the required reserve for each day shall be computed on the basis of average daily deposits covering such biweekly or shorter periods as shall be fixed by regulation of the department.

(d) In the case of a financial institution which is not governed by 12 C.F.R. 204, such portion of the reserve fund against deposits as shall be fixed by regulation of the department shall consist of United States coin and currency on hand or on deposit, subject to call without notice, in a reserve agent. The balance of such reserve fund shall be kept in obligations of:

(1) General obligations of the United States or of a subsidiary corporation of the United States government fully guaranteed by such government, or to obligations issued by the Federal Land Bank, Federal Home Loan Banks, Federal Intermediate Credit Bank, Bank for Cooperatives, Federal Farm Credit Banks regulated by the Farm Credit Administration, Federal Home Loan Mortgage Corporation, or Federal National Mortgage Association;

(2) Obligations of the State of Georgia or any instrumentality of this state; or

(3) Other issuers whose obligations are marketable and approved by regulation of the department for the purpose of this Code section.

(e) All assets which are part of the reserve fund required by this Code section shall be owned absolutely by the financial institution and shall not be pledged, assigned, or hypothecated in any manner or subject to setoff. The value of all securities which constitute a part of a financial institution's reserve fund shall be computed at the current market value thereof.

(f) A financial institution shall give written notice to the department, in the manner prescribed by the department for such notice, of any deficiency in the amount or form of the reserve fund required by this Code section within three business days after the close of any scheduled averaging period during which such deficiency occurs.

(g) Immediately following the closing of any scheduled averaging period during which a deficiency in the required reserve occurs, the financial institution will take immediate action to restore the deficiency; and, until such deficiency is restored, the financial institution shall not make any new loans or discounts other than by discounting or purchasing bills of exchange at sight; nor shall any dividend be declared out of the profits of such financial institution. Any financial institution failing to restore its reserve to the required amount within 30 days after the closing of the averaging period in which the deficiency occurs may have its business and assets taken over by the department as provided in Part 7 of Article 1 of this chapter.

History.
Ga. L. 1919, p. 135, art. 19, §§ 27, 28; Ga. L. 1920, p. 102, § 1; Code 1933, §§ 13-2027, 13-2028; Ga. L. 1939, p. 360, §§ 1, 2; Ga. L. 1966, p. 692, § 50; Ga. L. 1967, p. 798, §§ 1, 2; Ga. L. 1969, p. 126, § 1; Ga. L. 1973, p. 526, §§ 6, 7; Code 1933, § 41A-1702, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 22; Ga. L. 2016, p. 390, § 2-5/HB 811.

Administrative rules and regulations.
Legal Reserves, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Banks, Rule 80-1-7-.01 et seq.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, § 24.

ALR.
Rights and preference in respect of assets of insolvent bank or trust company as affected by its division into departments, 89 A.L.R. 1218; 114 A.L.R. 680.

7-1-372. Collection charge; service charge.

A commercial bank may deduct a reasonable collection charge covering its actual expenses from the remittance for any check forwarded to it for collection and remittance as a special collection item and may impose a service charge as authorized by Code Section 44-12-196, relating to when an instrument on which a banking or financial organization is directly liable is presumed abandoned.

History.
Ga. L. 1919, p. 135, art. 19, §§ 27, 28; Ga. L. 1920, p. 102, § 1; Code 1933, §§ 13-2027, 13-2028; Ga. L. 1939, p. 360, §§ 1, 2; Ga. L. 1966, p. 692, § 50; Ga. L. 1967, p. 798, §§ 1, 2; Ga. L. 1969, p. 126, § 1; Ga. L. 1973, p. 526, §§ 6, 7; Code 1933, § 41A-1703, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1995, p. 1368, § 2; Ga. L. 2016, p. 390, § 2-6/HB 811.

Cross references.
Bank deposits and collections generally, § 11-4-101 et seq.

JUDICIAL DECISIONS

Preempted by federal law. — Since the court found that O.C.G.A. §§ 7-1-239.5 and 7-1-372 were in direct conflict with 12 U.S.C. § 24 and 12 C.F.R. § 7.4002(a) under the National Bank Act, 12 U.S.C. § 21 et seq., the state statutes were preempted, and the court granted the bank's Fed. R. Civ. P. 56 motion. Bank of Am., N.A. v. Sorrell, 248 F. Supp. 2d 1196, 2002 U.S. Dist. LEXIS 26371 (N.D. Ga. 2002).

"Lawful charges" against dormant checks, money order, and drafts. — O.C.G.A. § 7-1-358 and a related regulation do not allow assessment of service charges only against dormant deposit accounts; thus, charges against dormant checks, money orders, and drafts qualified as "lawful charges" and were properly withheld from the Department of Revenue when funds were remitted under the Unclaimed Property Act, O.C.G.A. § 44-12-190 et seq. First Union Nat'l Bank v. Collins, 221 Ga. App. 442, 471 S.E.2d 892, 1996 Ga. App. LEXIS 389 (1996), cert. denied, No. S96C1460, 1996 Ga. LEXIS 958 (Ga. Sept. 5, 1996).

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This title does not restrict how banks treat items for collection. — Neither former Code 1933, Title 41A nor Title 109A (see now O.C.G.A. Title 7 nor Title 11) restricted in any way a bank's freedom to decide how the bank will treat any particular collection item, whether it be a check or a credit union share draft. 1977 Op. Att'y Gen. No. 77-2.

Banks not required to process credit union share drafts as cash items, rather than as drafts for collection. 1977 Op. Att'y Gen. No. 77-2.

RESEARCH REFERENCES

ALR.

Priority as between checks simultaneously presented to drawee bank for payment, 61 A.L.R. 960.

Liability of bank which diverts checks or drafts drawn to its order to a use other than that of the drawer, 82 A.L.R. 1372.

Discharge of drawer or endorser of check by holder's acceptance therefor of something other than money, 87 A.L.R. 442.

Duty and liability of bank in respect of a depositor's check drawn upon and payable to the bank, 138 A.L.R. 853.

Constitutionality, construction, and application of statutes requiring clearance of checks at par, 174 A.L.R. 869.

PART 8

INCORPORATION OF BANKS AND TRUST COMPANIES

Cross references.

Incorporation of Secretary of State corporations generally, § 14-4-21 et seq.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions,

decisions under former Ga. L. 1919, p. 135 are included in the annotations for this part.

Trust company not a chartered bank within penal laws. — Trust company incorporated under provisions of Ga. L. 1919, p. 135 is not a chartered bank, within the meaning of the penal laws of this state relating only to such banks. Dunn v. State, 13 Ga. App. 314, 79 S.E. 170, 1913 Ga. App. LEXIS 138 (1913), (decided under former Ga. L. 1919, p. 135).

7-1-390. Incorporators.

One or more natural persons 18 years of age or over may act as incorporators of a bank or trust company.

History.
Ga. L. 1898, p. 78, § 1; Civil Code 1910, § 2815; Ga. L. 1919, p. 135, art. 8, § 1; Ga. L. 1920, p. 102, § 1; Ga. L. 1927, p. 195, § 7; Ga. L. 1931, p. 156, § 1; Code 1933, §§ 13-901, 109-101; Ga. L. 1935, p. 101, § 1; Ga. L. 1941, p. 312, § 1; Ga. L. 1943, p. 249, § 1; Ga. L. 1965, p. 501, § 1; Ga. L. 1966, p. 463, § 1; Ga. L. 1966, p. 692, § 7; Ga. L. 1972, p. 384, § 1; Ga. L. 1972, p. 727, § 1; Code 1933, § 41A-1801, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
18A Am. Jur. 2d, Corporations, §§ 183, 184.

C.J.S.
9 C.J.S., Banks and Banking, §§ 19, 735.

7-1-390.1. Organization as limited liability company; rules and regulations; applicable law.

(a) Subject to the requirements and restrictions of this chapter including, but not limited to, deposit insurance requirements where applicable, a bank or trust company may organize as a limited liability company pursuant to Chapter 11 of Title 14.

(b) The department shall have the authority to promulgate rules and regulations in accordance with Code Section 7-1-3 specifying the conditions under which a bank or trust company may organize as a limited liability company.

(c) To the extent the provisions of Chapter 11 of Title 14 are consistent with and not in conflict with the provisions of this chapter and the rules and regulations of the department, such provisions shall apply to a bank or trust company that has organized as a limited liability company.

History.
Code 1981, § 7-1-390.1, enacted by Ga. L. 2003, p. 843, § 4.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 109 et seq.

7-1-391. Prohibition of promoters' fees.

(a) A bank or trust company shall not pay any fee, compensation, or commission for promotion in connection with its organization or apply any money received on account of shares or subscriptions, selling shares, or other services in connection with its organization, except legal fees, commissions or fees to disinterested third parties for sale of bank stock to others, and other usual and ordinary expenses necessary for its organization.

(b) In the event of a violation of this Code section the department may disapprove the articles on account of such violation.

History.
Code 1933, § 41A-1802, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1999, p. 674, § 7; Ga. L. 2024, p. 354, § 1-2/HB 876, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, deleted former subsection (b), which read: "A majority of incorporators shall file with the department at the time of filing of the articles an affidavit:

"(1) Setting forth all expenses incurred or to be incurred in connection with the organization of the bank or trust company, subscription for its shares, and sale of its shares; and

"(2) Stating that no fee, compensation, or commission prohibited by subsection (a) of this Code section has been paid or incurred." and redesignated former subsection (c) as present subsection (b).

RESEARCH REFERENCES

Am. Jur. 2d.
18 Am. Jur. 2d, Corporations, §§ 98, 99.

C.J.S.
18 C.J.S., Corporations, § 112.

7-1-392. Articles of incorporation; advertisement of articles or notice of application; naming registered agent.

(a) The articles of incorporation shall be signed by each of the incorporators and shall set forth in the English language:

(1) The name of the bank or trust company;

(2) The street address and county where the main office will be located;

(3) For institutions chartered after July 1, 1998, the name of the initial registered agent;

(4) The street address where its initial registered office will be located;

(5) A brief statement of the purpose or purposes for which it is incorporated, that it is incorporated under this chapter, and whether it shall be solely a bank, solely a trust company, or both a bank and trust company;

(6) The term for which it is to exist, which shall be perpetual unless otherwise limited;

(7) The aggregate number of shares which the bank or trust company shall have authority to issue, and:

(A) If the shares are to consist of one class only, the par value of each of the shares; or

(B) If the shares are to be divided into classes, the number of shares of each class, the par value of each share of each class, a description of each class, and a statement of the preferences, redemption provisions, qualifications, limitations, restrictions, and the special or relative rights granted to or imposed upon the shares of each class;

(8) The name and county of residence of each incorporator;

(9) The name, occupation, citizenship, and county of residence of each of the first directors, which number shall not be less than five; and

(10) Any provision not inconsistent with law which the incorporators may choose to insert for the regulation of the internal affairs and business of the bank or trust company.

(b) It shall not be necessary to set forth in the articles any of the corporate or operational powers set forth in this chapter.

(c) The incorporators shall file with the department the articles, together with the fee required by Code Section 7-1-862. Such filing shall constitute an application for a certificate of incorporation. Immediately upon the filing of the articles, the department shall certify a copy thereof and return it to the applicants, who shall, in conformity with Code Section 7-1-7 and on the next business day following the filing of the articles, transmit for publication a copy of the articles or, in lieu thereof, a statement in substantially the following form:

"An application for a certificate of incorporation of a (bank, trust company, or bank and trust company) to be known as the _____ and to be located at _____ in _____ County, Georgia, will be made to the Secretary of State of Georgia by (names and addresses of incorporators) in accordance with Chapter 1 of Title 7 of the Official Code of Georgia Annotated, the 'Financial Institutions Code of Georgia.' A copy of the articles of incorporation of such proposed (bank, trust company, or bank and trust company) and the applica-

tion have been filed with the Department of Banking and Finance. The following persons have been proposed as the initial directors: (names and addresses of proposed directors)."

to the newspaper which is the official organ of the county where the main office will be located. The articles or statement must be published once a week for two consecutive weeks with the first publication occurring within ten days of receipt by the newspaper of the articles or statement.

(d) A registered agent shall be named for each financial institution that is a corporation, and each financial institution shall inform the department and the Secretary of State of its current registered agent.

History.

Ga. L. 1898, p. 78, §§ 1, 2; Civil Code 1910, §§ 2815, 2816; Ga. L. 1919, p. 135, art. 8, §§ 1-3; Ga. L. 1920, p. 102, § 1; Ga. L. 1927, p. 195, § 7; Ga. L. 1931, p. 156, § 1; Code 1933, §§ 13-901, 13-902, 13-903, 109-101, 109-102; Ga. L. 1935, p. 101, § 1; Ga. L. 1941, p. 312, § 1; Ga. L. 1943, p. 249, § 1; Ga. L. 1952, p. 193, § 1; Ga. L. 1965, p. 501, § 1; Ga. L. 1966, p. 463, § 1; Ga. L. 1966, p. 692, §§ 7-9; Ga. L. 1972, p. 384, § 1; Ga. L. 1972, p. 727, § 1; Code 1933, § 41A-1803, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 5; Ga. L. 1998, p. 795, § 15; Ga. L. 2015, p. 344, § 9/HB 184; Ga. L. 2024, p. 354, § 1-3/HB 876, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, in paragraph (a)(8), substituted "and county of residence" for ", place of residence, and post office address" and, in paragraph (a)(9), substituted "and county of residence" for "place of residence, and post office address".

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1989, "have been filed" was substituted for "has been filed" in the next to last sentence of the form in subsection (c).

Pursuant to Code Section 28-9-5, in 1998, a colon was added at the end of paragraph (a)(7).

JUDICIAL DECISIONS

Writ of mandamus may lie to compel issuance of certificate of incorporation upon compliance with statutory requirements. Manley v. McLendon, 158 Ga. 659, 124 S.E. 138, 1924 Ga. LEXIS 322 (1924).

Corporation did not have power to act as trustee. — Probate court did not err by appointing a successor trustee pursuant to O.C.G.A. §§ 15-9-127 and 53-12-170 as even if a corporation had not rejected the trust property, the corporation did not have the power to act as a trustee in Georgia as the corporation had not received approval from the Georgia Department of Banking and Finance to act as a trust company; a county board of commissioners was properly appointed as the successor trustee in spite of the corporation's speculation over a possible future event that might result in a conflict of interest. Chattowah Open Land Trust, Inc. v. Jones, 281 Ga. 97, 636 S.E.2d 523, 2006 Ga. LEXIS 839 (2006).

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 176 et seq.

C.J.S.

18 C.J.S., Corporations, §§ 48, 56 et seq.

7-1-393. Additional filings with department; fees.

The incorporators shall also file with the department:

(1) Information desired by the department in order to evaluate the proposed institution which shall be made available in the form specified by the department;

(2) Reserved;

(3) A certificate of the Secretary of State showing that the proposed name of the bank or trust company has been reserved pursuant to Code Section 7-1-131; and

(4) Applicable fees established by regulation of the department to defray the expense of the investigation required by Code Section 7-1-394.

History.
Ga. L. 1919, p. 135, art. 8, § 4; Code 1933, § 13-904; Ga. L. 1955, p. 201, § 1; Ga. L. 1964, p. 689, § 1; Ga. L. 1966, p. 692, § 10; Ga. L. 1972, p. 727, § 2; Code 1933, § 41A-1804, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2024, p. 354, § 1-4/HB 876, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, in paragraph (2), substituted "Reserved" for "The affidavit required by Code Section 7-1-391".

7-1-394. Investigation; approval or disapproval by department; abbreviated procedures.

(a) Upon receipt of the articles and the filings and fees from the incorporators as required by Code Section 7-1-393, the department shall conduct such investigation as it may deem necessary to ascertain whether it should approve the proposed bank or trust company. The department shall approve the bank or trust company if and only if it determines in its discretion that:

(1) The articles and supporting items satisfy the requirements of this chapter;

(2) The convenience and needs of the public will be served by the proposed bank or trust company;

(3) There is a reasonable promise of adequate support for the bank or trust company in the light of:

(A) The competition offered by existing banks and trust companies and other financial institutions;

(B) The previous financial history of the community as to banks, trust companies, and other financial institutions;

(C) As to banks, the opportunities for profitable employment of

bank funds as indicated by the average demand for credit, the number of potential depositors, the volume of bank transactions, and the businesses and industries of the community with particular regard to their stability, diversification, and size; and

(D) As to trust companies, the opportunities for profitable employment of fiduciary or other representative services;

(4) The character and fitness of the incorporators, of the directors, and of the proposed officers are such as to command the confidence of the community and to warrant the belief that the business of the proposed bank or trust company will be honestly and efficiently conducted;

(5) There has not been any material violation of Code Section 7-1-391, so that approving the articles would, in the opinion of the department, impair the policy manifested by that provision;

(6) The capital structure of the proposed bank or trust company is adequate in relation to the amount and character of the anticipated business of the bank or trust company and the safety of prospective depositors;

(7) In the case of trust companies, the proposed company will have sufficient personnel with adequate knowledge and experience to administer fiduciary accounts;

(8) In the case of trust companies, the incorporators, directors, and proposed officers have satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation. The department shall be authorized to obtain conviction data with respect to any person who is an incorporator, director, or proposed officer of the proposed trust company. Each incorporator, director, or proposed officer of a trust company shall provide express written consent to the department to conduct the criminal background check and to use all information necessary to run such check, including, but not limited to, a classifiable set of fingerprints. The proposed trust company shall be responsible for all fees associated with the performance of such criminal background check; and

(9) In the case of trust companies, the incorporators, directors, and proposed officers have demonstrated financial responsibility, character, and general fitness. The department shall be authorized to obtain personal history and work experience and other information, including, but not limited to, independent credit reports obtained from a consumer reporting agency described in the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681a(f), with respect to any person who is an incorporator, director, or proposed officer of the proposed trust company.

(b) Within 90 days after receipt of the articles and the filings and fees from the incorporators as required by Code Section 7-1-393, the department shall approve or disapprove the proposed bank or trust company; provided, however, that, if the approval of a federal public body is also required with respect to the bank or trust company, then the department may elect to not act on the application until after such approval is given. In giving approval, the department may impose conditions to be satisfied prior to the issuance of a permit to do business under Code Section 7-1-396. If the department, in its discretion, shall approve the proposed bank or trust company with or without conditions, it shall deliver its written approval of the articles to the Secretary of State and notify the incorporators of its action. If the department, in its discretion, shall disapprove the proposed bank or trust company, it shall notify the incorporators of its disapproval and state generally the unfavorable factors influencing its decision. The decision of the department shall be conclusive, except that it may be subject to judicial review as provided in Code Section 7-1-90.

(b.1) The procedure and criteria used in the review of a request to establish an additional banking location pursuant to Code Sections 7-1-601 and 7-1-602 may be streamlined and abbreviated as provided by departmental rule, regulation, or written policy.

(c) Nothing contained in this Code section, Code Section 7-1-608, or Code Section 7-1-622 shall limit the authority of the department to approve the organization of a special purpose bank or trust company which does not do a general banking business with the public but is organized for the purpose of conducting a limited banking business which facilitates the economic, commercial, or export-import trade growth of this state. The department may establish, by rule or by condition to its approval of articles of incorporation of any special bank or of any credit card bank incorporated under the provisions of Chapter 5 of this title, such special provisions concerning distribution of ownership, composition of the board of directors, bylaws, or the conduct of corporate affairs for any such special purpose bank or credit card bank incorporated under the provisions of Chapter 5 of this title as it determines to be consistent with the special nature of such charters and their efficient operation and safe and sound banking practice; provided, however, that in no event shall fewer than a majority of the directors of such special purpose bank or credit card bank be residents of this state.

(d) The department may utilize in its investigation process such reports from other bank supervisory agencies as are pertinent to the requirements of state law.

History.

Ga. L. 1925, p. 119, § 1; Code 1933, § 13-905; Ga. L. 1949, p. 308, § 1; Ga. L. 1951, p. 287, § 1; Ga. L. 1966, p. 692, § 11; Code 1933, § 41A-1805, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1983, p.

602, § 11; Ga. L. 1989, p. 1211, § 7; Ga. L. 1989, p. 1257, § 6; Ga. L. 1990, p. 8, § 7; Ga. L. 1993, p. 511, § 1; Ga. L. 1996, p. 848, § 6; Ga. L. 1998, p. 795, § 16; Ga. L. 2017, p. 193, § 10/HB 143; Ga. L. 2019, p. 828, § 6/HB 185; Ga. L. 2019, p. 1056, § 7/SB 52; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2024, p. 354, § 1-5/HB 876, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, in subsection (b), added the proviso at the end of the first sentence and deleted the proviso from the end of the third sentence, which read: ", provided that if the approval of a federal public body is also required with respect to the bank or trust company, then the department may, at its option, withhold its written approval from the Secretary of State until such approval is given and may, at its option, withdraw its approval if the federal public body refuses to grant its approval to the bank or trust company".

Cross references.

Unlawful acquisitions by bank holding companies, § 7-1-608.

Provisions applicable to interstate acquisitions or mergers by bank holding companies, § 7-1-622.

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 179.

7-1-395. Issuance of certificate of incorporation.

If the Secretary of State shall receive, with respect to the proposed bank or trust company:

(1) The written approval of the department with a copy of the articles of incorporation attached;

(2) An affidavit executed by the duly authorized agent or publisher of the newspaper in which publication of the articles or a summary statement relating thereto is required by Code Sections 7-1-7 and 7-1-392 stating that the articles or the summary statement have been published as required by those Code sections;

(3) All fees and charges required by law and if, in addition, the name of the proposed bank or trust company continues to be reserved or is available,

the Secretary of State shall immediately issue to the incorporators a certificate of incorporation. The Secretary of State shall retain on file in his office a copy of the certificate, the articles, the department's approval, and the publisher's certificate.

History.

Ga. L. 1898, p. 78, § 2; Civil Code 1910, § 2816; Ga. L. 1919, p. 135, art. 8, §§ 6, 7; Code 1933, §§ 13-906, 13-907, 109-102; Ga. L. 1952, p. 193, § 1; Ga. L. 1966, p. 692, §§ 12, 13; Code 1933, § 41A-1806, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 7.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 179.

7-1-396. Effect of certificate of incorporation; permit to begin business.

(a) As of the issuance of the certificate of incorporation by the Secretary of State, the corporate existence of the bank or trust company shall begin and those persons who subscribed for shares prior to filing of the articles, or their assignees, shall be shareholders in the bank or trust company; provided, nevertheless, that the department shall have full authority to regulate and supervise the activities of promoters, incorporators, initially named directors, subscribers for shares, and all persons soliciting offers to subscribe for shares in any bank in formation under this chapter even though the corporate existence of the bank may not have officially begun and the bank in formation shall be considered a "bank" for those purposes. Persons named in the articles of incorporation and approved by the department as initial directors of the bank in formation shall not be considered agents or broker-dealers within the meaning of paragraphs (1) and (3) of Code Section 10-5-2.

(b) The certificate of incorporation shall be conclusive evidence of the fact that the bank or trust company has been incorporated; but proceedings may be instituted by the state to dissolve, wind up, and terminate a bank or trust company in accordance with Code Section 7-1-92 and other applicable provisions of this chapter.

(c) Until receipt of a permit to begin business issued by the department, a bank or trust company shall not transact any business except such business as is incident to its organization or to the obtaining of subscriptions and payment for its shares and other securities.

(d) The department shall issue to a bank or trust company a permit to begin business when:

(1) Capital stock of the bank or trust company shall have been fully paid in, in cash, and in no event in an amount less than the minimum capital stock for banks or trust companies under Code Section 7-1-410, and, in addition, there shall have been paid in:

(A) Paid-in capital in an amount not less than 20 percent of the capital stock; and

(B) The proceeds of subordinated securities, if any, which were considered part of the capital structure of the bank or trust company by the department under Code Section 7-1-419 in giving its approval of the proposed institution;

(2) All of the directors have taken the oath or affirmation required by Code Section 7-1-484;

(3) The bylaws of the bank or trust company have been filed with the department;

(4) The bank or trust company has designated its registered agent and registered office pursuant to Code Section 7-1-132;

(5) The bank or trust company has been organized and is ready to begin the business for which it was incorporated;

(6) All conditions imposed by the department in giving its approval of the proposed bank or trust company under Code Section 7-1-394 have been satisfied; and

(7) The department has received an affidavit signed by the president or secretary and by at least a majority of the directors of the bank or trust company to the effect that all of the foregoing requirements of this subsection have been satisfied.

History.
Ga. L. 1919, p. 135, art. 8, §§ 7, 8; Code 1933, §§ 13-908, 13-909; Ga. L. 1963, p. 511, §§ 1, 2; Ga. L. 1966, p. 692, §§ 14, 16; Code 1933, § 41A-1807, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 23; Ga. L. 1977, p. 730, § 5; Ga. L. 1987, p. 1586, § 6; Ga. L. 1991, p. 94, § 7; Ga. L. 1998, p. 795, § 17; Ga. L. 2008, p. 381, § 4/SB 358; Ga. L. 2019, p. 828, § 7/HB 185; Ga. L. 2020, p. 493, § 7/SB 429.

7-1-397. Organizational meetings.

(a) After the issuance of the certificate of incorporation by the Secretary of State, a first meeting of the shareholders may be held within this state at the call of the shareholders who were the incorporators, or a majority of them, for the purpose of adopting bylaws or for such other purposes as shall be stated in the notice of the meeting.

(b) After the issuance of the certificate of incorporation by the Secretary of State, an organizational meeting of the board of directors named in the articles shall be held within this state at the call of a majority of the directors for the purpose of adopting bylaws and of electing officers and for transaction of such other business as may come before the meeting. The directors who call the meeting shall give to each director named in the articles at least three days' written notice of the meeting.

History.
Code 1933, § 41A-1808, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
18A Am. Jur. 2d, Corporations, § 213 et seq.

7-1-398. Liability for premature business.

Incorporators and other persons who organize a bank or trust company which transacts business before its capital stock and paid-in capital have been paid in shall be jointly and severally liable to depositors and other creditors to make good the amounts not paid in by subscribers or otherwise deficient. Such liability shall be deemed as an asset of the bank or trust company and may be enforced by it, its successors or assignees, or by a shareholder suing derivatively, or by a receiver appointed under this chapter.

History.
Ga. L. 1919, p. 135, art. 18, § 6; Code 1933, § 13-1906; Code 1933, § 41A-1809, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2019, p. 828, § 8/HB 185.

RESEARCH REFERENCES

Am. Jur. 2d.
18 Am. Jur. 2d, Corporations, §§ 126, 127.
C.J.S.
18 C.J.S., Corporations, § 89 et seq.
19 C.J.S., Corporations, §§ 640 et seq., 707.
ALR.
False representation by officers or directors of bank or building and loan association that impairment of capital has been made good, as basis of action against them, 144 A.L.R. 1498.
Validity, construction, and effect of statutory provisions concerning capital requisites of state incorporation of bank, 79 A.L.R.3d 1190.

PART 9

FINANCIAL STRUCTURE

Cross references.
Applicability of security-registration requirements to securities issued by or guaranteed by banks or trust companies, § 10-5-8.

OPINIONS OF THE ATTORNEY GENERAL

Charter may not be amended to provide authorized but unissued shares. — Regulated certificated bank is not authorized by law to amend the bank's charter to provide for authorized but unissued shares of common stock. 1974 Op. Att'y Gen. No. 74-149.

7-1-410. Minimum capital stock.

(a) Except as provided in subsections (b) and (c) of this Code section, the minimum capital stock of a de novo bank or trust company shall be

$3 million. An established bank or trust company no longer in de novo status shall maintain a minimum capital stock of $3 million or such greater amount as the department may require based on a proportion of capital to total assets.

(b) A de novo bank or trust company whose main office is located in a county with a population of less than 200,000, according to the last official United States census, shall have a minimum capital stock of $2 million. An established bank or trust company located in such county shall maintain a minimum capital stock of $2 million or such greater amount as the department may require based on a proportion of capital to total assets.

(c) A bank or trust company existing on July 1, 1989, with a capital stock of less than that required by subsections (a) and (b) of this Code section shall not be required to increase its capital stock above the amount outstanding on July 1, 1989, except as otherwise provided by law.

History.
Ga. L. 1898, p. 78, § 1; Civil Code 1910, § 2815; Ga. L. 1919, p. 135, art. 8, § 1; Ga. L. 1920, p. 102, § 1; Ga. L. 1927, p. 195, § 7; Ga. L. 1931, p. 156, § 1; Code 1933, §§ 13-901, 109-101; Ga. L. 1935, p. 101, § 1; Ga. L. 1941, p. 312, § 1; Ga. L. 1943, p. 249, § 1; Ga. L. 1965, p. 501, § 1; Ga. L. 1966, p. 463, § 1; Ga. L. 1966, p. 692, § 7; Ga. L. 1972, p. 384, § 1; Ga. L. 1972, p. 727, § 1; Code 1933, § 41A-1901, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1211, § 8; Ga. L. 1998, p. 795, § 18; Ga. L. 2003, p. 843, § 5.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 285, 287.
C.J.S.
9 C.J.S., Banks and Banking, § 49.
ALR.
Validity, construction, and effect of statutory provisions concerning capital requisites of state incorporation of bank, 79 A.L.R.3d 1190.

7-1-411. [Reserved] Paid-in capital and appropriated retained earnings.

History.
Code 1933, § 41A-1902, enacted by Ga. L. 1974, p. 705, § 1; repealed by Ga. L. 2019, p. 828, § 9/HB 185, effective July 1, 2019.
Editor's notes.
Ga. L. 2019, p. 828, § 9/HB 185 repealed and reserved this Code section, effective July 1, 2019.

7-1-412. [Reserved] Beginning business expense fund.

History.
Code 1933, § 41A-1903, enacted by Ga. L. 1974, p. 705, § 1; repealed by Ga. L. 2019, p. 828, § 10/HB 185, effective July 1, 2019.
Editor's notes.
Ga. L. 2019, p. 828, § 10/HB 185 repealed and reserved this Code section, effective July 1, 2019.

7-1-413. Classes of shares.

A bank or trust company may have one or more classes of common or preferred shares, all of which shall be shares with par value of not less than $1.00 and any or all of which may, subject to the restrictions of this chapter, consist of shares with full, limited, multiple, fractional, or no voting rights and such designations, preferences, qualifications, privileges, limitations, redemption provisions (in the case of preferred shares), options, conversion rights, and other special rights as shall be stated in the articles. Except as otherwise stated in the articles, this chapter, or other applicable laws, each share shall be equal in all respects to every other share.

History.
Ga. L. 1919, p. 135, art. 8, § 1; Ga. L. 1920, p. 102, § 1; Ga. L. 1927, p. 195, § 7; Ga. L. 1931, p. 156, § 1; Code 1933, § 13-901; Ga. L. 1935, p. 101, § 1; Ga. L. 1941, p. 312, § 1; Ga. L. 1943, p. 249, § 1; Ga. L. 1965, p. 501, § 1; Code 1933, § 13-912, enacted by Ga. L. 1966, p. 590, § 3; Ga. L. 1966, p. 692, § 7; Ga. L. 1968, p. 1045, § 1; Ga. L. 1969, p. 958, § 1; Ga. L. 1972, p. 727, § 1; Code 1933, § 41A-1904, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 285, 287.

C.J.S.
18 C.J.S., Corporations, § 214 et seq.

7-1-414. Purchase, redemption, and convertibility of shares and debt securities.

(a) Any preferred shares subject to redemption shall be redeemable only pro rata or by lot or by such other equitable method as is selected by the board of directors, except as otherwise provided in the articles.

(b) With the written approval of the department and the votes of directors and shareholders required to authorize an increase in the capital stock of the institution under Code Section 7-1-511:

(1) Preferred stock may be convertible to common stock; and

(2) Subordinated securities may be convertible to common stock.

(c) With the written approval of the department and a resolution of the board of directors, a bank or trust company may acquire issued shares of its own common stock, which will then be considered treasury shares. The department shall consider whether the acquisition has a legitimate corporate purpose, whether any capital impairment would result, and whether the price of the shares reflects fair market value.

History.
Code 1933, § 13-912, enacted by Ga. L. 1966, p. 590, § 3; Ga. L. 1968, p. 1045, § 1; Ga. L. 1969, p. 958, § 1; Code 1933,

§ 41A-1905, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1999, p. 674, § 8; Ga. L. 2018, p. 214, § 7/HB 780.

Editor's notes.

Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

RESEARCH REFERENCES

Am. Jur. 2d.

18 Am. Jur. 2d, Corporations, §§ 211, 276.

C.J.S.

18 C.J.S., Corporations, § 257 et seq.

7-1-415. Consideration for shares.

(a) Except as provided in subsection (b) of this Code section and in the case of a distribution of shares under subsection (e) of Code Section 7-1-488 or incident to a merger, consolidation, or other corporate reorganization or rehabilitation authorized by this chapter, shares of a bank or trust company may be issued only for cash in an amount which shall be at least the aggregate par value of the share, unless otherwise approved by the department with the demonstration of good cause.

(b) Where a bank or trust company issues shares in exchange for or in order to convert other shares or obligations which have been issued by it, the consideration for such shares shall be:

(1) The cash originally received for the shares or obligations surrendered or converted;

(2) The additional cash received incident to the exchange or conversion;

(3) The other amounts, if any, transferred to capital stock incident to the exchange or conversion.

In any such case the consideration shall be not less than the minimum amount specified in subsection (a) of this Code section. Any amount by which capital stock may be reduced upon an exchange or conversion shall be transferred to paid-in capital.

History.

Ga. L. 1898, p. 78, § 1; Civil Code 1910, § 2815; Ga. L. 1919, p. 135, art. 8, § 7; Code 1933, §§ 13-908, 109-101; Ga. L. 1963, p. 511, § 1; Code 1933, § 13-912, enacted by Ga. L. 1966, p. 590, § 3; Ga. L. 1966, p. 692, § 14; Ga. L. 1968, p. 1045, § 1; Ga. L. 1969, p. 958, § 1; Ga. L. 1972, p. 384, § 1; Code 1933, § 41A-1906, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2012, p. 795, § 1/HB 945; Ga. L. 2019, p. 828, § 11/HB 185.

Law reviews.

For annual survey on business corporations, see 64 Mercer L. Rev. 61 (2012).

RESEARCH REFERENCES

Am. Jur. 2d.
18A Am. Jur. 2d, Corporations, §§ 489, 490.

C.J.S.
9 C.J.S., Banks and Banking, § 56.

7-1-416. Method of issuance.

(a) Unless more restrictive procedures are stated in the articles, the board of directors may, by resolution duly adopted, issue from time to time, in whole or in part, common or preferred shares authorized by the articles.

(b) With the consent of the department, a bank or trust company may withdraw any offer to sell its common or preferred shares, whether issued pursuant to its articles or pursuant to subsection (a) of this Code section; and such shares may be held as authorized shares subject to future issuance in accordance with subsection (a) of this Code section.

(c) A bank or trust company may not, directly or indirectly, extend credit for the purpose of financing the original purchase of capital stock or capital debt issued by it or by a bank holding company to which it is affiliated.

History.
Code 1933, § 13-912, enacted by Ga. L. 1966, p. 590, § 3; Ga. L. 1968, p. 1045, § 1; Ga. L. 1969, p. 958, § 1; Code 1933, § 41A-1907, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 11; Ga. L. 1995, p. 673, § 16.

RESEARCH REFERENCES

Am. Jur. 2d.
18 Am. Jur. 2d, Corporations, § 19. 18A Am. Jur. 2d, Corporations, §§ 480, 481.

C.J.S.
18 C.J.S., Corporations, § 194 et seq.

7-1-417. Share certificates and debt security instruments.

(a) A bank or trust company shall not deliver any share certificate until the share or shares represented thereby are fully paid. Each subscriber, upon payment in full for his shares, shall be entitled to a certificate or certificates certifying the number of shares owned by him in the bank or trust company.

(b) Unless otherwise provided in the articles or the bylaws, the shares of a bank or trust company shall be represented by certificates signed by the president or a vice-president and the secretary or an assistant secretary of the bank or trust company and may be sealed with the seal of the bank or trust company or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a

registrar, other than the bank or trust company itself or any employee of the bank or trust company.

(c) Each certificate representing shares shall set forth upon the face thereof:

(1) The name of the bank or trust company;

(2) That the bank or trust company is organized under the laws of this state;

(3) The name or names of the person or persons to whom issued;

(4) The number and class of shares such certificate represents;

(5) The par value of each share represented by such certificate;

(6) If the shares represented thereby are nonvoting shares, a statement or notation to that effect; and

(7) If the shares represented thereby are subordinate to shares of any other class with respect to dividends or amounts payable on liquidation, a brief statement to that effect.

(d) Each certificate representing shares issued by a bank or trust company which is authorized to issue shares of more than one class shall set forth or fairly summarize upon the face or back of the certificate, or shall state that the bank or trust company will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued.

(e) In the event of a change in the capital structure of a corporation, it shall not be necessary to recall any previously issued share certificate for either the addition or deletion of the statement required by paragraph (7) of subsection (c) of this Code section to be set forth upon the face of such certificate or for revision of the information placed upon the face or back of the certificate pursuant to subsection (d) of this Code section.

(f) The signatures of the officers of a bank or trust company and the seal of the bank or trust company upon any bond, debenture, or other debt security issued by the bank or trust company may be facsimiles if the instrument is authenticated or countersigned by a trustee or transfer agent, or registered by a registrar, other than the bank or trust company itself or any employee of the bank or trust company.

(g) In case any officer who has signed or whose facsimile signature has been placed upon a share certificate or upon a bond, debenture, or other debt security as provided in this Code section shall have ceased for any reason to be such officer before such certificate or instrument is issued, it may be issued by the bank or trust company with the same effect as if he were such officer at the date of its issue.

(h) Nothing in this Code section shall be construed to invalidate any share certificate validly issued and outstanding on April 1, 1975.

History.
Code 1933, § 41A-1908, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1982, p. 3, § 7.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 301.

C.J.S.
9 C.J.S., Banks and Banking, § 57.

7-1-418. Issuance and transfer of fractional shares or scrip.

(a) A bank or trust company may, but shall not be obliged to, issue certificates for fractional shares in order to effect share transfers, share distributions or reclassifications, mergers, consolidations, or reorganizations which shall entitle the holder, in proportion to his fractional holdings, to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the bank or trust company in the event of liquidation.

(b) As an alternative, a bank or trust company may pay in cash the fair value of fractional shares as determined by the board of directors as of a time fixed by the board. In the absence of bad faith, all acts of the board pursuant to this subsection shall be conclusive.

(c) As an alternative, the board of directors may issue scrip in registered or bearer form over the manual or facsimile signature of an officer of the bank or trust company or of its agent, exchangeable as therein provided for full shares; but such scrip shall not entitle the holder to any rights of a shareholder except as therein provided. The board of directors may cause such scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which such scrip is exchangeable may be sold by the bank or trust company and the proceeds thereof distributed to the holders of such scrip, or subject to any other conditions which the board of directors may deem advisable. If a bank or trust company issues scrip, it shall provide reasonable opportunity for persons entitled thereto to sell such scrip or to purchase such additional scrip as may be needed to acquire a full share.

(d) A corporation may provide reasonable opportunity for persons entitled to fractional shares to sell such fractional shares or to purchase such additional fractional shares as may be needed to acquire a full share, or may sell fractional shares or scrip for the account of such persons.

History.
Code 1933, § 41A-1909, enacted by Ga. L. 1974, p. 705, § 1.

7-1-419. Subordinated securities.

(a) A bank or trust company may issue notes, debentures, or other obligations in the form of "subordinated securities," provided that they:

(1) Are subordinated in right of payment, in the event of insolvency or liquidation of the bank or trust company, to the prior payment of all deposits of the bank or trust company and of all claims of other creditors of the bank or trust company except the holders of securities on a parity therewith and the holders of securities expressly subordinated thereto;

(2) Are authorized by the same votes of directors as those required for authorization of an increase in capital stock or any instrument convertible into capital stock of the bank or trust company;

(3) Contain provisions for amortization, serial maturities, transfers to a sinking fund, allocation of reserves, or other provisions sufficient to pay or to have paid at maturity all amounts due thereon;

(4) Furnish disclosures to investors of the risks associated with the subordinated securities prior to investment; and

(5) Include notice that, if the bank or trust company becomes subject to a regulatory action, then the bank or trust company may be prohibited from paying or retiring the subordinated securities.

(b) The aggregate amount of the obligations of a bank or trust company in the form of subordinated securities shall at no time exceed 50 percent of the sum of the unimpaired capital stock and unimpaired paid-in capital of the bank or the trust company.

(c) Subordinated securities shall not be considered in determining the amount of ad valorem taxes payable by the bank or trust company.

History.
Code 1933, § 13-2025.1, enacted by Ga. L. 1965, p. 494, § 1; Ga. L. 1968, p. 1045, §§ 6, 7; Code 1933, § 41A-1910, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2017, p. 193, § 11/HB 143; Ga. L. 2019, p. 828, § 12/HB 185; Ga. L. 2024, p. 354, § 1-6/HB 876, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, deleted former subsection (c), which read: "If at or after the payment or retirement of the subordinated securities of a bank or trust company there is or would be a deficiency in the capital stock of the bank or trust company, such fact shall be reported to the department in advance of the payment or retirement. The department may, upon receipt of such report, order a restoration of capital stock or take other appropriate remedial measures under this chapter." and redesignated former subsection (d) as present subsection (c).

Cross references.
Order of payment of liabilities of finan-

cial institution which is liquidated or dissolved and whose assets are insufficient to pay in full all liabilities, § 7-1-202.

Administrative rules and regulations.

Borrowed Money, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Banks, Rule 80-1-9-.01 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 498.

ALR.

Trust or preference in assets of insolvent bank in respect of funds intended to aid bank in financial difficulty, 88 A.L.R. 996.

Trust or preference in respect of funds deposited by executors, administrators, testamentary trustees, or guardians, 101 A.L.R. 602.

Rights and preferences in respect of assets of insolvent bank as affected by its division into departments, 114 A.L.R. 680.

Part 10

Shareholders

Law reviews.

For comment, "A Snapshot of Dual-Class Share Structures in the Twenty-First Century: A Solution to Reconcile Shareholder Protections with Founder Autonomy," see 68 Emory L.J. 337 (2018).

RESEARCH REFERENCES

ALR.

Duty and liability of bank under agreement to remit money, 69 A.L.R. 673.

Am. Jur. Pleading and Practice Forms.

4A Am. Jur. Pleading and Practice Forms, Banks, § 9 et seq.

7-1-430. Liability of subscribers and shareholders.

(a) Except as otherwise provided in this Code section, a holder of or subscriber to shares of a bank or trust company shall be under no obligation to the bank or trust company or its creditors with respect to such shares or subscription other than the obligation to pay the full consideration remaining due to the company upon such shares or subscription. Such obligation may be enforced by the bank or trust company and its successors or assigns, or by a shareholder suing derivatively, or by a receiver appointed under this chapter.

(b) Every subscriber for shares not fully paid and every original holder of shares not fully paid which were issued contrary to Code Section 7-1-417 and every transferee or assignee of a subscription for shares or of shares with knowledge or notice that the shares are not fully paid and were issued contrary to Code Section 7-1-417 shall

continue personally liable thereon as provided in subsection (a) of this Code section, notwithstanding any transfer or assignment of such shares or subscription for such shares.

(c) Any person becoming a transferee or assignee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable thereon for any unpaid portion of such consideration.

(d) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, receiver, or other fiduciary shall not be personally liable to the bank or trust company or its creditors as a holder of or subscriber for its shares; but the estate and funds in his hands or under his control shall be so liable. Nothing in the foregoing shall relieve any fiduciary from liability for a breach of trust.

(e) No bailee or nominee and no pledgee or other holder of shares as collateral security shall be personally liable as a shareholder, but the bailor or real party in interest or pledgor or other person transferring such shares as collateral shall be considered the holder thereof for purposes of liability under this Code section.

(f) No liability under this Code section shall be asserted against a subscriber or shareholder more than six years after the date on which the shares for which payment is sought were to have been fully paid pursuant to the contract of sale or subscription agreement or, if no such date is provided for in the contract of sale or subscription agreement, more than six years from the date of the contract of sale or subscription agreement, whether or not such contract or agreement is under seal.

(g) The subscription agreement or contract of sale may prescribe other penalties for failure to make payments when due; but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of 20 days after written demand has been made therefor. The delinquent subscriber or his legal representative shall be entitled to be paid the excess of the sale proceeds realized from the sale by the bank or trust company of such subscribed shares over the sum of:

(1) The amount due and unpaid on the subscription; and

(2) The reasonable expenses incurred in selling the shares;

but in no event shall the delinquent subscriber or his legal representative be entitled to be paid an amount greater than the amount paid by said subscriber on his subscription.

(h) The board of directors shall have power to compromise, on such terms and conditions as the board may prescribe, any claim, dispute, or

action arising out of a subscription for shares when in the judgment of the board it is in the best interests of the bank or trust company to do so.

History.

Ga. L. 1919, p. 135, art. 18, §§ 1, 4; Ga. L. 1925, p. 119, § 1; Code 1933, §§ 13-1901, 13-1904; Ga. L. 1935, p. 103, § 1; Ga. L. 1937, p. 429, § 1; Code 1933, § 41A-2001, enacted by Ga. L. 1974, p. 705, § 1.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1919, p. 135, Art. 18, § 2, and former Code 1933, § 13-1902 have been included in the annotations for this Code section.

Trustees are exempt personally from liabilities as stockholders; but the estates and funds in the trustees' hands are made liable in like manner and to the same extent as persons interested in such trust funds would be if the stock stood in their own name. State Banking Co. v. Hinton, 178 Ga. 68, 172 S.E. 42, 1933 Ga. LEXIS 20 (1933) (decided under Ga. L. 1919, p. 135, Art. 18, § 2); Griffin v. Securities Inv. Co., 53 Ga. App. 396, 186 S.E. 232, 1936 Ga. App. LEXIS 133 (1936) (decided under former Code 1933, § 13-1902).

RESEARCH REFERENCES

Am. Jur. 2d.

18A Am. Jur. 2d., Corporations, § 855 et seq.

C.J.S.

9 C.J.S., Banks and Banking, §§ 70, 75, 79, 86 et seq.

ALR.

Payments by stockholders applicable upon double liability, 56 A.L.R. 527; 83 A.L.R. 147; 120 A.L.R. 511.

Statutory added liability of holders of bank stock or other corporate stock the issue of which was ultra vires, invalid, or irregular, 86 A.L.R. 816.

Conclusiveness of assessment of statutory liability of stockholders of national banks, 90 A.L.R. 1063.

Statutory liability of stockholder of bank or other corporation as affected by change in or renewal of corporation's obligation, 97 A.L.R. 630.

Liability on stock held by one as trustee or in other fiduciary capacity, 97 A.L.R. 1250; 117 A.L.R. 655.

Liability on stock held by one as trustee or in other fiduciary capacity, 117 A.L.R. 655.

State laws regarding superadded liability of stockholders in state banks as affected by federal legislation, 169 A.L.R. 942.

7-1-431. Preemptive rights.

(a) Except as provided in subsection (b) of this Code section or in the articles, a bank or trust company shall issue shares, option rights, or securities having conversion or option rights by first offering them to shareholders of the same class in proportion to their holdings of shares of such class.

(b) Except as provided in the articles, there shall be no preemptive right to:

(1) Shares issued as a share dividend;

(2) Fractional shares;

(3) Shares issued pursuant to share plans authorized by subsection (e) of Code Section 7-1-488;

(4) Shares issued pursuant to acquisition of substantially all of the assets of another bank or trust company;

(5) Shares released by waiver from their preemptive right by the affirmative vote or written consent of the holders of two-thirds of the shares of the class to be issued. Any such vote or consent shall be binding on all shareholders and their transferees for the time specified in such vote or consent up to but not exceeding one year from the date thereof and shall protect the bank or trust company, its management, and all persons who may within such time acquire the shares so released;

(6) Shares which have been offered to shareholders to satisfy their preemptive right but not purchased by them within the prescribed time and which are thereafter issued or sold to any other person or persons at a price not less than the price at which they were offered to such shareholders.

(c) Unless otherwise provided in the articles, no holder of shares of any class shall have any preemptive right with respect to shares of any other class which may be issued or sold by the bank or trust company.

(d) Nothing in this Code section shall impair any cause of action or remedy which any shareholder may have for a breach of duty by the board of directors relating to the sale or other disposition by the bank or trust company of shares or securities not subject to the preemptive rights under this Code section or under the articles.

(e) The holders of shares entitled to the preemptive rights shall be given prompt notice setting forth the time within which and the terms and conditions upon which such shareholders may exercise their preemptive rights. Such notice shall be given at least 30 days prior to the expiration of the period during which the rights may be exercised.

History.

Ga. L. 1919, p. 135, art. 9, § 9; Ga. L. 1920, p. 102, § 1; Code 1933, § 13-1009; Ga. L. 1965, p. 496, § 1; Ga. L. 1966, p. 590, § 5; Ga. L. 1968, p. 1045, § 5; Code 1933, § 41A-2002, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
18A Am. Jur. 2d, Corporations, § 520 et seq.
C.J.S.
18 C.J.S., Corporations, § 201 et seq.
ALR.
Character of banks or banking companies within constitutional or statutory provision imposing additional liability on stockholders, 82 A.L.R. 1356.

7-1-432. Meetings of shareholders.

(a)(1) Except as provided in paragraph (3) of this subsection, meetings of the shareholders of a bank or trust company shall be held in person at such place within or without the state as shall be fixed by the bylaws or by the board of directors pursuant to the bylaws or, if not so fixed, at the main office of the bank or trust company.

(2) Shareholders may participate and vote remotely at meetings of the shareholders if the bylaws of the bank or trust company explicitly provide an option for remote participation and voting. If the bylaws so provide, the board of directors shall:

(A) Implement reasonable measures to:

(i) Provide shareholders a reasonable opportunity to remotely participate in such meetings. Such measures may include, but are not limited to, audio webcast or other broadcast of the meeting but, in every instance, shall provide shareholders the ability to communicate substantially concurrently with the proceedings;

(ii) Enable shareholders to vote or grant proxies at such meetings by means of electronic communication. Such measures may include, but are not limited to, telephonic or internet voting; and

(iii) Verify that each person deemed present and permitted to vote remotely is a shareholder of record in order to ensure the integrity of the vote;

(B) Provide the option for remote participation and voting at no cost to shareholders; and

(C) Keep a record of remote attendance by shareholders and any vote or other action taken by a shareholder participating remotely.

(3) In the event of a proclaimed emergency pursuant to Code Section 7-1-111, the board of directors may apply to the department for authorization to conduct a meeting of the shareholders solely through remote participation. If such application is approved by the department, the board of directors shall comply with the requirements in paragraph (2) of this subsection.

(b) There shall be at least one meeting of the shareholders in each calendar year for the election of directors. In addition, any matter relating to the bank or trust company, whether or not stated in the notice of meeting, may be brought up for action, except matters which this chapter requires to be stated in the notice of meeting. The time of such annual meeting shall be fixed by the bylaws or by the board of directors pursuant to the bylaws. If the annual meeting shall not be called and held during any calendar year, the principal court may, after notice to the bank or trust company, order a substitute annual meeting to be held upon the application of any shareholder. The principal court may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of such meeting, the record date for determination of shareholders entitled to vote, and the form of notice of such meeting.

(c) Special meetings of the shareholders or a special meeting in lieu of the annual meeting of the shareholders may be called by the president, the chairman of the board of directors, the board of directors, or such other officers or persons as may be provided in the articles or bylaws or, in the event there are no officers or directors, then by any shareholder. Special meetings of the shareholders or a special meeting in lieu of the annual meeting of the shareholders shall be called by the bank or trust company upon the written request of the holders of not less than 25 percent of the outstanding shares of the bank or trust company entitled to vote in an election of directors.

(d) Notice of annual and special meetings shall be given to shareholders of record pursuant to Code Section 7-1-6. But when a meeting is adjourned to another time or place, it shall not be necessary, unless the bylaws require otherwise, to give any notice of the adjourned meeting if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken; and at the adjourned meeting any business may be transacted that might have been transacted on the original date of the meeting. If, however, after the adjournment the board fixes a new record date for the adjourned meeting, a notice of the adjourned meeting shall be given each shareholder of record on the new record date entitled to vote at such meeting.

(e) Any action required by this chapter to be taken at a meeting of the shareholders of a bank or trust company, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if written consent setting forth the action so taken shall be signed by all the shareholders entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of shareholders and may be stated as such in any articles or document filed with the Secretary of State or the department under this chapter.

History.
Ga. L. 1898, p. 78, § 6; Civil Code 1910, § 2818; Ga. L. 1917, p. 62, § 1; Ga. L. 1919, p. 191, art. 19, § 1; Code 1933, §§ 13-2001, 109-103; Ga. L. 1947, p. 476, § 1; Ga. L. 1947, p. 480, § 1; Ga. L. 1966, p. 590, § 6; Code 1933, § 41A-2003, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1998, p. 795, § 19; Ga. L. 2021, p. 323, § 5/HB 111; Ga. L. 2022, p. 352, § 7/HB 1428.

Amendments.
The 2022 amendment, effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, substituted "Code Section" for "Code section" in paragraph (a)(3).

RESEARCH REFERENCES

Am. Jur. 2d.
18A Am. Jur. 2d, Corporations, § 927 et seq. 18B Am. Jur. 2d, Corporations, § 1408.

C.J.S.
18 C.J.S., Corporations, § 442 et seq.

7-1-433. Closing of transfer books or fixing record date.

(a) For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a bank or trust company may provide that the stock transfer books shall be closed for a stated period not to exceed, in any case, 70 days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting.

(b) In lieu of closing the stock transfer books, the bylaws or, in the absence of an applicable bylaw, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than 70 days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action requiring such determination of shareholders is to be taken.

(c) If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed, or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of stockholders.

(d) When a determination of shareholders entitled to vote at any meeting of shareholders has been made, as provided in this Code section, such determination shall apply to any adjournment thereof, unless the board of directors fixes a new record date under this Code section for the adjourned meeting.

History. Code 1933, § 41A-2004, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2005, p. 826, § 9/SB 82.

RESEARCH REFERENCES

Am. Jur. 2d. 18A Am. Jur. 2d, Corporations, §§ 934, 942.

C.J.S. 18 C.J.S., Corporations, § 350 et seq.

7-1-434. Voting list.

(a) The officer or agent having charge of the stock transfer books for shares of a bank or trust company shall make a complete list of the shareholders entitled to vote at a meeting of shareholders or any adjournment thereof, arranged in alphabetical order, showing the address of each shareholder and the number and class, if any, of shares held by each shareholder. Such list shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof. Such list shall be prima-facie evidence of who is a shareholder of record; but, in the event of challenge, the record of shareholders required by Code Section 7-1-439 shall control.

(b) If the requirements of this Code section have not been substantially complied with, the meeting shall, on the demand of any shareholder in person or by proxy, be adjourned until the requirements are complied with.

(c) If no such demand is made, failure to comply with the requirements of this Code section shall not affect the validity of any action taken at such meeting.

(d) Notwithstanding subsections (a) through (c) of this Code section, it shall not be necessary to prepare or produce a list of shareholders in any case where the record of shareholders is presented and readily shows, in alphabetical order or by alphabetical index and by classes, if any, the names of the shareholders entitled to vote, with the address of and the number of shares held by each.

History. Code 1933, § 41A-2005, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1977, p. 730, § 6.

7-1-435. Quorum of shareholders.

(a) Except as provided in subsection (d) of this Code section or the articles or in bylaws adopted by the shareholders, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders.

(b) If a quorum is present, the affirmative vote of the majority of the

shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number, or voting by classes, is required by this chapter, or the articles, or bylaws.

(c) When a quorum is once present to organize a meeting, the shareholders present may continue to do business at the meeting or at any adjournment thereof, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

(d) If a meeting cannot be organized for lack of a quorum, those present may adjourn the meeting to such time and place as they may determine. In the case of a meeting for the election of directors which is twice adjourned for lack of a quorum, those present at the second of such adjourned meetings, of which notice has been given in writing to shareholders pursuant to Code Section 7-1-6, shall constitute a quorum for the election of directors without regard to the other quorum requirements of this Code section, the articles, or bylaws.

History.
Code 1933, § 41A-2006, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
18A Am. Jur. 2d, Corporations, § 971 et seq.

C.J.S.
18 C.J.S., Corporations, § 453 et seq.

7-1-436. Voting of shares.

(a) Unless otherwise provided in the articles, each outstanding share entitled to vote, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders. A subscriber shall not be entitled to vote the share subscribed for until such shares have been fully paid.

(b) Treasury shares shall not be voted at any meeting nor counted in determining the total number of outstanding shares at any given time.

(c) The chairman of the board, chief executive officer, president, any vice-president, the secretary, or the treasurer of a corporation which is the holder of record of shares of a bank or trust company shall be deemed by the bank or trust company to have authority to vote such shares and to execute proxies and written waivers and consents in relation thereto, whether such shares are held in a fiduciary capacity or otherwise, unless, before a vote is taken or a waiver of consent is acted upon, it is made to appear by a certified copy of the bylaws or resolution of the board of directors or executive committee of the corporation holding such shares that such authority does not exist or is vested in

some other officer or person. In the absence of such certification, a person executing any such proxies, waivers, or consents or presenting himself or herself at a meeting as one of such officers of a corporate shareholder shall, for the purposes of this Code section, be prima facie deemed to be duly elected, qualified, and acting as such officer and to be fully authorized; and, in the case of conflicting representation, the corporate shareholder shall be deemed to be represented by its senior officer in the order first stated in this subsection.

(d) Shares held by an administrator, executor, guardian, or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy; but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name or the name of his nominee. Shares standing in the name of a person as life tenant may be voted by him, either in person or by proxy, unless the record of shareholders shows that he is not entitled to vote such shares.

(e) Shares standing in the name of a receiver may be voted by such receiver; and shares held by or under the control of a receiver may be voted by such receiver without a transfer thereof into his name if authority to do so is contained in an order of the court by which such receiver was appointed.

(f) If a share or shares stand of record in the names of two or more persons, whether fiduciaries, joint tenants, tenants in common, tenants in partnership, or otherwise, or if two or more persons have the same fiduciary relationship respecting the same share or shares, then unless the instrument or order appointing them or creating the tenancy otherwise directs and such instrument or order or a copy thereof is filed with the secretary of the bank or trust company, their acts with respect to voting shall have the following effect:

(1) If only one votes, in person or by proxy, his act binds all;

(2) If more than one votes, in person or by proxy, the act of the majority so voting binds all;

(3) If more than one votes in person or by proxy but the votes are evenly split on any particular matter, each faction is entitled to vote the share or shares in question proportionally;

(4) If the instrument or order so filed shows that any such tenancy is held in unequal interest, a majority or even-split for purposes of this subsection shall be a majority or even-split in interest;

(5) The principles of this subsection shall apply, insofar as possible, to execution of proxies, waivers, consents, or objections and for the purpose of ascertaining the presence of a quorum.

(g) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, or a nominee of the pledgee; and thereafter the pledgee or his nominee shall be entitled to vote the shares so transferred.

(h) Notwithstanding subsections (a) through (g) of this Code section, a corporation shall be protected from liability in relying on and treating the persons in whose names shares stand on the record of shareholders as the owners thereof for all purposes.

(i) When notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been set aside to pay the redemption price to shareholders, such shares shall not be entitled to vote in any manner and shall not be deemed to be outstanding shares.

History.
Code 1933, § 41A-2007, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2016, p. 390, § 7-9/HB 811.

RESEARCH REFERENCES

Am. Jur. 2d.
18B Am. Jur. 2d, Corporations, §§ 996, 997, 1020 et seq., 1015, 1016, 1022, 1038 et seq.

C.J.S.
18 C.J.S., Corporations, § 350 et seq.

ALR.
Voting power of corporation stock as confined to issued and outstanding stock to exclusion of authorized unissued stock or stock which has been reacquired by the corporation, 90 A.L.R. 315.

7-1-437. Proxies.

(a) Unless otherwise unlawful, a person or corporation who is entitled to attend a shareholders' meeting, to vote thereat, or to execute consents, waivers, or releases may be represented at such meeting or vote thereat, and execute consents, waivers, and releases, and exercise any of his or her other rights, by one or more agents, who may be either an individual or individuals or any domestic or foreign corporation, authorized by a written proxy or electronic transmission of proxy executed by such person or by his or her attorney in fact.

(b) No proxy shall be valid after the expiration of 11 months from the date thereof unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the person executing it, except as otherwise provided in this Code section.

(c) Subject to the limitation of subsection (b) of this Code section, any proxy duly executed is not revoked and continues in full force and effect until an instrument revoking it, or a duly executed proxy bearing a later date, is received by the secretary of the bank or trust company. A proxy is not revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of

such death or incapacity is received by the secretary of the bank or trust company. Notwithstanding that a valid proxy is outstanding, the powers of the proxyholder are suspended, except in the case of a valid proxy which is by law irrevocable and which states on its face that it is irrevocable, if the maker is present at the meeting and elects to vote in person.

(d) If a proxy for the same shares confers authority upon two or more persons and does not otherwise provide, a majority of them present at the meeting or, if only one is present, then that one may exercise all the powers conferred by the proxy; but, if the proxyholders present at the meeting are divided as to the right and manner of voting in any particular case and there is no majority, the voting of said shares shall be prorated.

(e) If a proxy expressly provides, any proxyholder may, unless otherwise unlawful, appoint in writing a substitute to act in his or her place.

(f) A shareholder shall not sell his or her vote or issue a proxy to vote to any person for any sum of money or anything of value, except as permitted in this Code section and in Code Section 7-1-438, relating to shareholders' agreements.

(g) To be irrevocable, a proxy must be entitled "IRREVOCABLE PROXY," must state that it is irrevocable, must not otherwise be unlawful, and must be held by any of the following or by a nominee of any of the following:

(1) A pledge or other person holding a security interest in the shares;

(2) A person who has purchased or agreed to purchase the shares;

(3) A creditor or creditors of the bank or trust company who extend or continue credit to the bank or trust company in consideration of the proxy, if the proxy states that it was given in consideration of such extension or continuation of credit, the amounts thereof, and the name of the person extending or continuing credit;

(4) A person who has contracted to perform services as an officer of the bank or trust company, if a proxy is required by the contract of employment and if the proxy states that it was given in consideration of such contract of employment, the name of the employee, and the period of employment contracted for;

(5) A person designated by or under an agreement under Code Section 7-1-438, relating to shareholders' agreements.

(h) Notwithstanding a provision in a proxy stating that it is irrevocable, the proxy becomes revocable after the pledge or security interest

is redeemed, or the debt of the bank or trust company is paid, or the period of employment provided for in the contract of employment has terminated, or the agreement under Code Section 7-1-438, relating to shareholders' agreements, has terminated; and, in a case provided for in paragraph (3) or (4) of subsection (g) of this Code section, a proxy becomes revocable three years after the date of the proxy or at the end of the period, if any, specified therein, whichever period is less, unless the period of irrevocability is renewed from time to time by the execution of a new irrevocable proxy as provided in this Code section. This subsection does not affect the duration of a proxy under subsection (b) of this Code section.

(i) A proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of shares without knowledge of the existence of the provision unless the existence of the proxy and its irrevocability are noted conspicuously on the face or back of the certificate representing such shares.

History.
Code 1933, § 41A-2008, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 24; Ga. L. 2007, p. 502, § 3/SB 70; Ga. L. 2010, p. 878, § 7/HB 1387.

RESEARCH REFERENCES

Am. Jur. 2d.
18B Am. Jur. 2d, Corporations, § 1044 et seq.

C.J.S.
18 C.J.S., Corporations, § 468 et seq.

7-1-438. Shareholders' agreements.

(a) Unless otherwise unlawful, an agreement between two or more shareholders, if in writing and signed by the parties thereto and if a copy thereof is delivered to the department and approved by the department when, in its discretion, such agreement is in the best interest of the bank and the public, may provide that in exercising any voting rights the shares held by them shall be voted as therein provided, or as they may agree, or as determined in accordance with a procedure agreed upon by them. Nothing herein shall impair the right of the bank or trust company to treat the shareholders of record as entitled to vote the shares standing in their names.

(b) The duration of any agreement permitted by subsection (a) of this Code section shall not exceed 20 years. Failure to state a period of duration or stating a period of duration in excess of 20 years shall not invalidate the agreement, but in either such case the period of duration of the agreement shall be 20 years. Any such agreement shall be renewable at any time before the expiration of such 20 year period by agreement of all the shareholders bound thereby at the date of renewal.

(c) A transferee of shares in a bank or trust company whose shareholders have entered into an agreement authorized by subsection (a) of this Code section shall be bound by such agreement or any renewal of such agreement authorized by subsection (b) of this Code section if he takes the shares with notice thereof. A transferee shall be deemed to have notice of any such agreement or any renewal if the existence thereof is noted on the face or back of the certificate or certificates representing such shares.

History.
Code 1933, § 41A-2009, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 25.

RESEARCH REFERENCES

Am. Jur. 2d.
18 Am. Jur. 2d, Corporations, § 24. 18B Am. Jur. 2d, Corporations, § 1085 et seq.

C.J.S.
18 C.J.S., Corporations, § 434.

7-1-439. Books and records.

(a) Each bank and trust company shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders, board of directors, and committees of directors; and each bank and trust company shall keep at its registered office or main office or at the office of its transfer agent or registrar a record of its shareholders, giving the names and addresses of all shareholders and the number, class, and series, if any, of the shares held by each.

(b) The department may, by regulation, prescribe the minimum disclosure of corporate records and reports which must be made by the bank or trust company to its shareholders at each annual meeting. In issuing such regulations, the department shall consider the legitimate rights of a shareholder to sufficient information to evaluate the management and use of his investment and to elect qualified directors for the bank or trust company as well as the rights of customers of the bank or trust company to maintain the confidentiality of their business affairs.

(c) Nothing in this Code section shall impair the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record and irrespective of the number of shares held by him, to compel the production or examination by such shareholder of the books and records of account, minutes, and record of shareholders of a bank or trust company.

History.
Ga. L. 1919, p. 135, art. 19, § 4; Code 1933, § 13-2004; Code 1933, § 41A-2010, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 26; Ga. L. 1998, p. 795, § 20; Ga. L. 2004, p. 631, § 7.

JUDICIAL DECISIONS

"Proper purpose" to compel production of records not shown. — Minority shareholders did not show the requisite "proper purpose" to compel production of corporate books and records since the shareholders, who sought to place one of their number on the board of directors, failed to show that the shareholders could not achieve the shareholders' purported purposes through resort to the records that had been previously furnished to the shareholders. Stewart v. Bank of Lumber City, 193 Ga. App. 188, 387 S.E.2d 366, 1989 Ga. App. LEXIS 1396 (1989).

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 314 et seq., 321.
C.J.S.
18 C.J.S., Corporations, § 153 et seq. 19 C.J.S., Corporations, § 671.

ALR.
Admissibility of computerized private business records, 7 A.L.R.4th 8.

7-1-440. Derivative actions by shareholders; when proper.

A derivative action may be brought by a shareholder in the right of the bank or trust company to procure a judgment in its favor against directors, officers, or other representatives of the bank or trust company, or shareholders, or third parties, or any combination thereof, whenever the bank or trust company has a claim or cause of action which the representatives of the bank or trust company, in violation of their duties, have failed to enforce, including a claim or cause of action against such representatives for their failure in this respect.

History.
Code 1933, § 41A-2011, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 313. 19 Am. Jur. 2d, Corporations, §§ 2231 et seq., 2312.
C.J.S.
9 C.J.S., Banks and Banking, §§ 478, 479. 18 C.J.S., Corporations, § 479 et seq.

ALR.
Standard of Review in Shareholder Derivative Action on Appeal in Federal Court, 38 A.L.R. Fed. 3d Art. 3.

7-1-441. Derivative actions by shareholders.

(a) In a derivative action involving a right which a bank or trust company may have properly asserted, but which its representatives wrongfully failed to enforce that has been brought by one or more shareholders of a bank or trust company to procure a judgment in its favor, the complaint shall be verified and shall allege that the plaintiff

is a shareholder of record at the time of bringing the action. It shall further allege:

(1) That the plaintiff had purchased his or her shares or was a shareholder of record at the time of the transaction of which he or she complains or that his or her shares thereafter devolved on him or her through one or more transfers by operation of law from one who was a holder of record or member at such time; or

(2) That the plaintiff is the holder of record of shares which at the time of the transaction of which he or she complains were held of record by a trustee of a trust in which the plaintiff held a beneficial interest or in which a beneficial interest was held by one from whom the shares have devolved upon the plaintiff through one or more transfers by operation of law.

(b) In any such action the complaint shall also allege with particularity the efforts of the plaintiff to secure the initiation of such action by the board of directors or comparable authority, or the reasons for not making such effort.

(c) Such action shall not be discontinued, compromised, or settled without the approval of the court having jurisdiction of the action. If the court shall determine that the interests of the members or of the shareholders of any class or classes will be substantially affected by such discontinuance, compromise, or settlement, the court shall direct that notice, by publication or otherwise, of the action and the proposed discontinuance, compromise, or settlement thereof be given to the members or to the shareholders of the class or classes whose interests it determines will be so affected; if notice is so directed to be given, the court may determine which one or more of the parties to the action shall bear the expense of giving the same in such amount as the court shall determine and find to be reasonable in the circumstances.

(d) If such action is successful, in whole or in part, or if anything is received by the plaintiff or plaintiffs as the result of the judgment or compromise or settlement of the action, the court may award the plaintiff or plaintiffs reasonable expenses, including reasonable fees of attorneys, and shall direct him or them to account to the bank or trust company for the remainder of the proceeds so received by him or them.

(e) In any such action, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendants the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action; and such damages as the court may assess shall be paid to the bank or trust company for damages such bank or trust company may have sustained due to adverse publicity brought about as a result of action brought without reasonable cause.

History.
Code 1933, § 41A-2012, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 27; Ga. L. 2016, p. 390, § 7-10/HB 811.

RESEARCH REFERENCES

Am. Jur. 2d.
19 Am. Jur. 2d, Corporations, §§ 2238 et seq., 2261 et seq., 2289, 2312, 2423 et seq., 2469 et seq., 2475.

C.J.S.
18 C.J.S., Corporations, § 477 et seq.

ALR.
Standard of Review in Shareholder Derivative Action on Appeal in Federal Court, 38 A.L.R. Fed. 3d Art. 3.

Part 11

Dividends, Distributions, and Preferred Share Acquisition

Law reviews.
For comment, "A Snapshot of Dual-Class Share Structures in the Twenty-First Century: A Solution to Reconcile Shareholder Protections with Founder Autonomy," see 68 Emory L.J. 337 (2018).

7-1-460. Restrictions on payment of dividends; limitation of actions for dividends or distributions.

(a) The board of directors of a bank or trust company may, from time to time, declare and the bank or trust company thereupon shall pay dividends on its outstanding shares in cash, property, or its own shares, except when the bank or trust company is insolvent or when the payment thereof would render the bank or trust company insolvent or when the declaration or payment thereof would be contrary to any restrictions contained in the articles, and subject to the following provisions:

(1) Dividends may be declared and paid in cash or property only out of the retained earnings of the bank or trust company unless otherwise approved in advance by the department on terms consistent with standards of safety and soundness;

(2) The department may approve the payment of dividends by a bank or trust company, prior to the time such bank or trust company achieves cumulative profitability:

(A) For the purpose of providing the shareholders of a Subchapter S bank with a source of funds to pay federal and state income taxes on the Subchapter S bank's income that is taxable to those shareholders; or

(B) If a bank or trust company is profitable on an annual basis and the payment of such dividend is consistent with standards of safety and soundness;

(3) Dividends may not be paid without the prior approval of the

department in excess of specified amounts as may be fixed by regulations of the department to assure that banks and trust companies maintain an adequate capital structure;

(4) Dividends may be declared and paid in lawfully held treasury shares or in authorized but unissued shares, provided that, in the case of a dividend of authorized but previously unissued shares, there shall be transferred to capital stock an amount equal to the aggregate par value of the shares distributed; and

(5) No dividends payable in shares of any class shall be paid in respect to shares of any other class unless the articles so provide or unless such payment is authorized by the affirmative vote or the written consent of the holders of a majority of the outstanding shares of the class in which the payment is to be made.

(b) A split or division of the issued shares of any class into a greater number of shares of the same class without increasing the capital stock of the bank or trust company shall not be construed to be a share dividend within the meaning of this Code section.

(c) If a bank or trust company has declared a cash dividend on any shares or any other distribution payable in cash or has sold fractional shares or scrip for the account of a shareholder and has mailed to a shareholder, at his address appearing on the records of the bank or trust company, a valid check in the amount of the dividend or other distribution or the proceeds of such sale to which such shareholder is entitled and, if such check would have been honored if duly presented to the bank on which it is drawn, no action for the recovery of such dividend or other distribution or for the amount thereof shall be brought by the shareholder or other person entitled thereto more than seven years after the date of mailing the check.

(d) If a bank or trust company has declared a dividend payable in its own shares or any other distribution payable in its own shares or in other than cash and has mailed to a shareholder, at his address appearing on the records of the bank or trust company, a certificate representing such shares or a notice setting forth the time and manner in which a distribution in other than its own shares or cash shall be paid, no action for the recovery of such dividends or other distribution or for the amount thereof shall be brought by the shareholder or other person entitled thereto more than seven years after the mailing of the share certificate or certificates or, in the case of a distribution in other than the shares of the bank or trust company or in cash, the time specified in the notice for the payment thereof.

(e) When the statute of limitations provided for in this Code section has run with respect to any unclaimed dividend, other unclaimed distribution, or unclaimed proceeds of the sale of fractional shares or

scrip, the cash or property represented thereby shall thenceforth be treated as an asset of the bank or trust company.

History.

Ga. L. 1919, p. 135, art. 19, §§ 29, 30; Code 1933, §§ 13-2029, 13-2030, 13-2031, 13-2032; Code 1933, § 41A-2101, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2009, p. 86, § 6/HB 141; Ga. L. 2012, p. 795, § 2/HB 945; Ga. L. 2019, p. 828, § 13/HB 185; Ga. L. 2020, p. 320, § 2/HB 781.

JUDICIAL DECISIONS

Former Code 1933, § 41A-2011 (see now O.C.G.A. § 7-1-460) was not unconstitutional as an unlawful delegation of legislative authority. Commercial Bank v. Department of Banking & Fin., 244 Ga. 172, 259 S.E.2d 435, 1979 Ga. LEXIS 1160 (1979).

Violation of regulations enforced by suspension or cancellation of license. — General Assembly did not provide that violation of regulations policing the industry and requiring certain acts to be performed in a specified manner would be a misdemeanor. In every instance, reasonable rules and regulations promulgated for administrative purposes or for policing the industry may be enforced as to licensees either by suspension or cancellation of a license. Commercial Bank v. Department of Banking & Fin., 244 Ga. 172, 259 S.E.2d 435, 1979 Ga. LEXIS 1160 (1979).

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 249.

C.J.S.

9 C.J.S., Banks and Banking, § 62.

ALR.

Duty and remedy as regards deferring payment of dividends from assets of insolvent bank or other insolvent corporation while there are undetermined claims or preferences, 88 A.L.R. 1301.

7-1-461. Distribution upon reduction of capital stock or paid-in capital.

(a) Upon the decrease of capital stock of a bank or trust company pursuant to amendment of its articles as provided in this chapter, the board of directors, subject to restrictions of the articles, may distribute to the shareholders of the bank or trust company an amount in cash equal to all or part of the amount of the decrease in capital stock, if immediately after such distribution the bank or trust company would have the capital stock required by this chapter.

(b) Any portion of the amount of a decrease in capital stock which is not distributed to shareholders in accordance with this Code section shall be transferred to paid-in capital.

(c) A bank or trust company, by resolution of its board of directors, may distribute to its shareholders amounts representing a reduction in its paid-in capital, provided that such distribution shall first be approved in writing by the department.

History.
Code 1933, § 41A-2102, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2019, p. 828, § 14/HB 185.

7-1-462. Dividends and distributions must be authorized by chapter.

The directors of a bank or trust company shall not declare dividends or authorize or ratify the distribution of any part of its assets to shareholders by purchase of its shares or otherwise, except as authorized by this chapter.

History.
Code 1933, § 41A-2103, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 248, 293.

7-1-463. Preferred share acquisition.

(a) Unless otherwise provided in its articles, a bank or trust company, by resolution of its board of directors and with the prior approval of the department, may redeem or otherwise acquire preferred shares. In determining whether or not to give its approval under this subsection, the department shall give primary consideration to the question of whether or not, after the cancellation of the preferred shares, the capital accounts of the bank or trust company would be adequate to support its anticipated deposit or trust business.

(b) Preferred shares which are redeemed or otherwise acquired shall be canceled and shall not be reissued without prior approval of the department.

History.
Code 1933, § 41A-2104, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2019, p. 828, § 15/HB 185.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 248, 293.

C.J.S.
9 C.J.S., Banks and Banking, § 243.

PART 12

MANAGEMENT

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms.
4A Am. Jur. Pleading and Practice Forms, Banks, § 20 et seq.

7-1-480. Board of directors.

(a) Administration of the business and affairs of a bank or trust company shall be the responsibility of a board of directors.

(b) Seventy-five percent of the directors shall be citizens of the United States and at least a majority shall:

(1) Reside in Georgia; or

(2) Reside within 40 miles of any banking location authorized to offer a complete banking or trust service.

(c) The residency requirements of paragraphs (1) and (2) of subsection (b) of this Code section shall not apply to banks having branches in states other than Georgia, provided that the residency of directors is consistent with the bank's articles of incorporation and bylaws.

(d) The department may waive or modify the requirements of subsection (b) of this Code section relating to the residency requirements in the State of Georgia.

(e) Notwithstanding other provisions of this Code section, directors who were legally qualified to serve on April 1, 1975, may continue to serve for such time as they are continuously members of the board of directors of their bank or trust company.

History.
Ga. L. 1898, p. 78, § 4; Civil Code 1910, § 2818; Ga. L. 1917, p. 62, § 1; Ga. L. 1919, p. 135, art. 19, §§ 1, 2; Ga. L. 1927, p. 195, § 8; Code 1933, §§ 13-2001, 13-2002, 109-103; Ga. L. 1943, p. 249, § 3; Ga. L. 1947, p. 476, § 1; Ga. L. 1947, p. 480, § 1; Ga. L. 1949, p. 378, § 1; Ga. L. 1959, p. 323, § 1; Ga. L. 1961, p. 196, § 1; Ga. L. 1966, p. 590, § 6; Ga. L. 1973, p. 811, § 1; Code 1933, § 41A-2201, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1986, p. 458, § 6; Ga. L. 1987, p. 1586, § 7; Ga. L. 1997, p. 485, § 15; Ga. L. 2000, p. 174, § 9; Ga. L. 2001, p. 970, § 4; Ga. L. 2020, p. 320, § 3/HB 781.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2000, "bank's" was substituted for "banks" in subsection (c).

Law reviews.
For article discussing limitations on the establishment and transaction of international banking in Georgia, see 27 Mercer L. Rev. 629 (1976).

For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001).

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 329 et seq., 476.

C.J.S.
9 C.J.S., Banks and Banking, §§ 99, 104 et seq., 111.

7-1-481. Adopting, amending, and repealing bylaws.

The board of directors shall have the power to adopt, amend, or repeal bylaws as specified in paragraph (4) of Code Section 7-1-260 unless such power is reserved exclusively to the shareholders by the articles or in bylaws previously adopted by the shareholders; but any bylaws adopted by the board of directors may be altered, amended, or repealed and new bylaws adopted by the shareholders. The shareholders may prescribe that any bylaw or bylaws adopted by them shall not be altered, amended, or repealed by the board of directors. Copies of the bylaws and any change, addition, or amendment thereto shall be filed with the department immediately upon adoption by the directors or the shareholders.

History.
Ga. L. 1898, p. 78, § 5; Civil Code 1910, § 2819; Code 1933, § 109-104; Code 1933, § 41A-2202, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 632, 633.

C.J.S.
9 C.J.S., Banks and Banking, § 48.

7-1-482. Number, term, and compensation of directors; effect of failure to maintain at least five directors.

(a) The articles or bylaws of any bank or trust company may fix the number of directors of its policy-making board at not less than five nor more than 25 and may provide that the board may, within such limitation, increase or decrease the number of directors by not more than two in any one year, provided that nothing in this subsection shall require a bank with a board of directors of less than five on July 1, 1972, to increase its board to five members. The failure of a bank or trust company to maintain at least five directors at any time does not exculpate the remaining directors from their obligations and liabilities associated with the actions and decisions made as directors of the financial institution, nor does it in any way void any actions taken or decisions made by the board of directors during any such time that there were less than five directors.

(b) Except as otherwise provided in this chapter, each director shall be elected by the shareholders for a term of one year or for staggered terms as provided in Code Section 14-2-806 and shall serve until he or

she resigns, is removed, or becomes disqualified or until his or her successor shall have been duly elected and qualified.

(c) Except as otherwise provided in the articles or bylaws, the board of directors may fix the compensation for directors; and a director may be a salaried officer of the bank or trust company.

(d) Notwithstanding the requirements of this Code section, the board of directors of a bank may appoint one or more nonpolicy-making regional boards of directors to consist of a number of persons to be determined by the board. The members of such regional boards may not set bank policy but may exercise certain powers, duties, and responsibilities as delegated by the board. Such regional board members shall have the same status as nonpolicy-making officers of the bank. All such delegations shall be documented in detail in the minutes of the board.

History.

Ga. L. 1898, p. 78, § 4; Civil Code 1910, § 2818; Ga. L. 1917, p. 62, § 1; Ga. L. 1919, p. 135, art. 19, § 1; Code 1933, §§ 13-2001, 109-103; Ga. L. 1947, p. 476, § 1; Ga. L. 1947, p. 480, § 1; Ga. L. 1966, p. 590, § 6; Code 1933, § 41A-2203, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2000, p. 174, § 10; Ga. L. 2011, p. 518, § 3/HB 239.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2001, a comma was deleted following "Code Section 14-2-806" in subsection (b).

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, §§ 330, 334.

C.J.S.

9 C.J.S., Banks and Banking, §§ 99, 104 et seq., 119.

7-1-483. Meetings of board; quorum; committees; acting without meeting.

(a) The board of directors shall hold regular meetings at such times as may be fixed by the bylaws and shall at all times be subject to call by the chairman of the board, by the president, or by any two members of the board. The board shall meet at least once in ten different months of each calendar year unless an alternative schedule is approved in writing by the department, but in no event shall the board meet less frequently than once in each calendar quarter.

(b) Unless otherwise provided in the articles or bylaws:

(1) A majority of all the directors in office shall constitute a quorum for the transaction of business; and actions of a majority of those present at a meeting at which a quorum is present shall be actions of the board;

(2) The board of directors may designate three or more of its number to constitute an executive committee or other committees which, to the extent provided in such resolution, shall have and

exercise the authority of the board of directors in regard to the business of the bank or trust company;

(3) Any action which may be taken at a meeting of the directors or of the members of an executive or other committee may be taken without a meeting if a consent or consents in writing setting forth the action shall be signed by all of the directors or all of the members of the executive or other committee and filed with the secretary of the bank or trust company; and

(4) The board of directors may determine that a meeting of such board will be held, in whole or in part, by any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means shall be considered to be present in person at the meeting.

History.
Ga. L. 1898, p. 78, § 4; Civil Code 1910, § 2818; Ga. L. 1917, p. 62, § 1; Ga. L. 1919, p. 135, art. 19, § 4; Code 1933, §§ 13-2004, 109-103; Ga. L. 1947, p. 476, § 1; Code 1933, § 41A-2204, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 28; Ga. L. 1988, p. 296, § 1; Ga. L. 2021, p. 323, § 6/HB 111.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 350.

C.J.S.
9 C.J.S., Banks and Banking, § 98.

7-1-484. Oath of directors; liability of persons who have not subscribed to such oath.

(a) Each director, before assuming office, shall take an oath or affirmation that he will diligently and honestly perform his duties in the administration of the affairs of the bank or trust company, that he will not permit a willful violation of law by the bank or trust company, and that he meets the eligibility requirements of this chapter and of the articles and bylaws.

(b) A copy of the oath shall be signed by each director and shall be placed into the minutes of the meetings of the directors. No director shall be authorized to participate in the affairs of the board or receive any compensation for service as a director until the oath has been executed by such director. Any person seeking to act in the capacity of a director before subscribing to the oath and otherwise qualifying for service pursuant to the bylaws of the bank or the laws and regulations governing the operations of the bank shall be fully liable for his actions to the same extent as if that person had qualified to serve as a bank director.

(c) The oath shall not modify in any manner the legal duties of or the standard of care for directors in the exercise of such duties.

History.
Ga. L. 1919, p. 135, art. 19, § 3; Code 1933, § 13-2003; Code 1933, § 41A-2205, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 12; Ga. L. 1990, p. 8, § 7; Ga. L. 2018, p. 214, § 8/HB 780.

Editor's notes.
Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 338.

C.J.S.
9 C.J.S., Banks and Banking, § 103.

7-1-485. Removal of directors; vacancies.

(a) The entire board of directors or an individual director may be removed without cause by the vote of shareholders entitled to cast at least a majority of the votes which all shareholders would be entitled to cast at an annual election of directors.

(b) The board may remove a director from office if:

(1) The director is adjudicated an incompetent by a court or is convicted of a felony;

(2) The director does not, within 60 days after his or her election or such longer time as the bylaws may specify, accept the office in writing or by attendance at a meeting and fulfill other requirements for holding the office;

(3) The director fails to attend regular meetings of the board for six successive monthly meetings or two successive quarterly meetings, if quarterly meetings have been approved by the department, without having been excused by the board;

(4) The director was an employee or duly elected officer of the bank or trust company and was discharged or resigned at the request of the board for reasons relating to performance of duties as an employee or officer of the bank or trust company;

(5) The director has been indicted for any crime involving moral turpitude, dishonesty, or breach of trust; or

(6) The director has failed to make payments on a loan or other extension of credit which causes a loss to a financial institution.

(c) Vacancies in the board of directors, whether caused by removal or otherwise and including vacancies resulting from an increase in the

number of directors, may be filled by the remaining members of the board, even though less than a quorum. Each director so elected shall be a director until his successor is elected by the shareholders, who shall make such election at the next annual meeting of shareholders or at any special meeting called for that purpose prior thereto.

History.
Ga. L. 1919, p. 135, art. 19, § 1; Code 1933, § 13-2001; Ga. L. 1947, p. 480, § 1; Ga. L. 1966, p. 590, § 6; Code 1933, § 41A-2206, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 13; Ga. L. 1989, p. 1211, § 9; Ga. L. 2017, p. 193, § 12/HB 143.

Cross references.
Right of department to require immediate suspension from office of director, officer, or employee of financial institution who is found to be dishonest, incompetent, or otherwise unqualified, § 7-1-71.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 329 et seq., 476.

C.J.S.
9 C.J.S., Banks and Banking, §§ 99, 104, 105.

7-1-486. Honorary and advisory positions.

The board of directors of any bank or trust company may appoint an individual as an honorary director or director emeritus or member of an advisory board. An individual so appointed may be compensated but may not vote at any meeting of the board of directors or be counted in determining a quorum and shall not have any responsibility or be subject to any liability imposed upon a director, or otherwise be deemed a director.

History.
Code 1933, § 41A-2207, enacted by Ga. L. 1974, p. 705, § 1.

7-1-487. Audits and financial reports.

(a) The board of directors shall at least once each year have made by independent certified public accountants an audit of the books and affairs of the bank or trust company, including such matters as may be required by the department and including, in the case of a trust company, accounts held in a fiduciary or other representative capacity. An audit of a bank holding company performed in accordance with this Code section may be made in lieu of individual audits of subsidiaries of the bank holding company. The department may by regulation establish minimum standards for audits and reports under this Code section.

(b) A report of the audit made under subsection (a) of this Code section shall be signed by the accountants who make it. A signed copy of the report shall be submitted to the board for approval or rejection

and kept in the files of the bank or trust company. The bank or trust company shall submit the audit to the department in accordance with department regulations.

History. Code 1933, § 41A-2208, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1211, § 10; Ga. L. 1997, p. 485, § 16.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, §§ 116, 117.

7-1-488. Officers, agents, and employees; employee share plans.

(a) A bank or trust company shall have a president, a secretary, and such other officers as the directors may from time to time designate. An individual may hold more than one office, except that the individual shall not be both president and secretary.

(b) Except as otherwise provided in the articles or bylaws, the board of directors shall elect the officers, fix their compensation, and fill vacancies, however occurring. An officer elected or appointed by the board may be removed by the board at any time, whenever in its judgment the best interests of the institution will be served thereby, without prejudice to any contract right of such officer. The department shall immediately be notified in writing when the individual holding the position of chief executive officer or president of the bank changes.

(c) The officers, as between themselves and the bank or trust company, shall have such authority and perform such duties as may be provided in the bylaws adopted by the board.

(d) A bank or trust company may also employ such agents or employees as may be required for the prompt and orderly discharge of its business.

(e)(1) Except as otherwise provided in the articles, a bank or trust company may adopt and carry out a plan, approved by the directors and the affirmative vote of a majority of the shares entitled to vote thereon, for the sale of shares, or for the granting of options for shares, to some or all of the officers and employees of the bank or trust company or of any affiliate of the bank or trust company or to a trustee on behalf of such employees, upon such terms and conditions and in such manner as may be provided by the bylaws or by the board. In any such plan:

(A) Such shares may be sold or optioned upon terms (not less than the par value thereof) which are deemed advantageous to the bank or trust company by the directors other than directors

who may benefit by their action or, if the number of directors who will not benefit by the action is fewer than three, by the shareholders; and

(B) In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders as to the adequacy of the consideration received for any rights or options to purchase shares under the plan shall be conclusive.

(2) Such a plan may be adopted whether or not it qualifies for special tax treatment under the laws of the United States.

History.
Ga. L. 1898, p. 78, § 5; Civil Code 1910, § 2819; Ga. L. 1919, p. 135, art. 19, § 9; Ga. L. 1922, p. 63, § 1; Code 1933, §§ 13-2009, 109-104; Code 1933, § 13-912, enacted by Ga. L. 1966, p. 590, § 3; Ga. L. 1968, p. 1045, § 1; Ga. L. 1969, p. 958, § 1; Code 1933, § 41A-2209, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 14; Ga. L. 1995, p. 673, § 17; Ga. L. 2016, p. 390, § 7-11/HB 811.

JUDICIAL DECISIONS

Evidence of stock option. — When there was conflicting evidence as to the existence of a stock option, whether the plaintiff bank president was promised that the option would be submitted to the shareholders, and whether it was the plaintiff or the defendant bank who prevented the performance of a condition precedent, the trial court erred in granting the bank's motion for summary judgment. Hammond v. Bank of Newnan, 217 Ga. App. 49, 456 S.E.2d 678, 1995 Ga. App. LEXIS 355 (1995).

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 329 et seq., 476.
C.J.S.
9 C.J.S., Banks and Banking, §§ 100, 104, 105, 119.
ALR.
Powers of bank president or vice president, 1 A.L.R. 693; 67 A.L.R. 970.
Remedies for determining right or title to office in unincorporated private association, 82 A.L.R.2d 1169.
Liability, under National Banking Act (12 USCS § 93), of national bank directors for retaliation against officer or employee who discloses or refuses to commit banking irregularity, 101 A.L.R. Fed. 377.

7-1-489. Fidelity bonds.

Any director who is authorized to handle money or negotiable assets on behalf of a bank or trust company and all officers and employees of a bank or trust company shall be bonded by a regularly incorporated surety company authorized to do business in this state, and the bank or trust company may pay the cost of such fidelity bonds. The form, amount, and surety of such fidelity bonds shall be such as are approved by the board of directors; but the department may require an additional amount or new or additional surety.

History.
Ga. L. 1919, p. 135, art. 19, § 10; Ga. L. 1920, p. 102, § 1; Ga. L. 1922, p. 63, § 1; Code 1933, § 13-2010; Code 1933, § 41A-2210, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2015, p. 344, § 10/HB 184.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 344, 476.

C.J.S.
9 C.J.S., Banks and Banking, §§ 102, 261.

7-1-490. Responsibility of directors and officers; delegation of investment decisions.

(a) Directors and officers of a bank or trust company shall discharge the duties of their respective positions in good faith and with the degree of diligence, care, and skill which an ordinarily prudent person would exercise under similar circumstances.

(b) In performing his or her duties, a director or officer may be entitled to rely upon:

(1) Other officers, employees, or agents of the bank or trust company whom the director or officer reasonably believed to be reliable and competent in the functions performed; and

(2) Information, data, opinions, reports, or statements provided by other officers, employees, agents of the bank or trust company, legal counsel, public accountants, investment bankers, or other persons as to matters involving the skills, expertise, or knowledge reasonably believed to be reliable and within such person's professional or expert competence.

(c) There shall be a presumption that the process directors and officers followed in arriving at decisions was done in good faith and that such directors and officers have exercised ordinary care; provided, however, that this presumption may be rebutted by evidence that such process constitutes gross negligence by being a gross deviation of the standard of care of a director or officer in a like position under similar circumstances.

(d) A bank, through its board of directors, may delegate to a correspondent bank the power to determine, within the limits set by law, the investments in which its assets, including reserve assets, may be held, provided that the bank must obtain the prior written approval of the department for such delegation.

(e) Nothing in this Code section shall:

(1) In any instance when fairness is at issue, such as consideration of the fairness of a transaction to the bank or trust company as evaluated under paragraph (3) of subsection (b) of Code Section

14-2-861, alter the burden of proving the fact or lack of fairness otherwise applicable;

(2) Alter the fact or lack of liability of a director or officer under the Official Code of Georgia Annotated, including Code Sections 7-1-492 and 7-1-494;

(3) Affect any rights to which the bank or trust company or its shareholders may be entitled under another law of this state or of the United States; or

(4) Deprive a director or officer of the applicability, effect, or protection of the business judgment rule.

History.

Code 1933, § 41A-2211, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1977, p. 730, § 7; Ga. L. 1982, p. 3, § 7; Ga. L. 2017, p. 693, § 1/HB 192; Ga. L. 2019, p. 1056, § 7/SB 52.

Editor's notes.

Ga. L. 2017, p. 693, § 4/HB 192, not codified by the General Assembly, provides that: "This Act shall apply only to causes of action arising on or after July 1, 2017."

Law reviews.

For article, "2013 Georgia Corporation and Business Organization Case Law Developments," see 19 Ga. St. B.J. 28 (April 2014).

For annual survey on business associations, see 66 Mercer L. Rev. 15 (2014).

For article, "2014 Georgia Corporation and Business Organization Case Law Developments," see 20 Ga. St. Bar. J. 26 (April 2015).

For annual survey of business associations, see 67 Mercer L. Rev. 15 (2015).

For article on the 2017 amendment of this Code section, see 34 Ga. St. U.L. Rev. 1 (2017).

For annual survey on trial practice and procedure, see 69 Mercer L. Rev. 321 (2017).

JUDICIAL DECISIONS

Judicial notice. — After the FDIC brought claims against a bank's former directors and officers for negligence, breach of fiduciary duty, and gross negligence, a court declined to take judicial notice of facts in the FDIC's Officer of Inspector General's Audit Report of the Bank and its Congressional testimony that the defendants alleged rebutted allegations that the defendants were negligent or grossly negligent because at the motion to dismiss stage, it was not for the court to weigh those facts against allegations of the complaint and determine, as a matter of law, whether the defendants breached the standard of care required under Georgia law. FDIC v. Adams, No. 1:12-cv-00726-JOF, 2013 U.S. Dist. LEXIS 165232 (N.D. Ga. Apr. 10, 2013).

Business judgment rule applies. — FDIC's claims against former officers and directors of a bank for ordinary negligence and breach of fiduciary duty were subject to the business judgment rule. The FDIC rebutted the business judgment presumption, and the FDIC's claims could go forward, as the allegations of the complaint, taken together, painted a picture of the officers and directors failing to implement any safeguards and ignoring the ones actually put in place so that they could pursue a rapid growth strategy and accumulate large profits in a short period

of time. FDIC v. Adams, No. 1:12-cv-00726-JOF, 2013 U.S. Dist. LEXIS 165232 (N.D. Ga. Apr. 10, 2013).

RESEARCH REFERENCES

C.J.S.

9 C.J.S., Banks and Banking, §§ 106, 107, 111.

ALR.

Powers of bank president or vice-president, 1 A.L.R. 693; 67 A.L.R. 970.

Implied, apparent or ostensible, and presumed authority of bank cashier to surrender or waive some right of bank, 108 A.L.R. 713.

Liability, under National Banking Act (12 USCS § 93), of national bank directors for retaliation against officer or employee who discloses or refuses to commit banking irregularity, 101 A.L.R. Fed. 377.

7-1-491. Financing involving directors or officers.

In addition to other provisions in this chapter and federal law, a bank or trust company shall not make loans or otherwise extend financing to any one of its directors or policy-making officers except on terms, rates, and conditions which are not preferential. Preferential terms, rates, and conditions shall be determined by comparison to those terms, rates, and conditions offered contemporaneously to other borrowers making substantially similar loan requests, having substantially similar credit histories, and offering substantially similar collateral. Such loans shall be made only after the application of prudent loan underwriting criteria normally applied to loan requests of a similar nature from applicants who are not directors and policy-making officers. Approval procedures for such loans should be designed to minimize any potential abuse by bank insiders.

History.

Ga. L. 1919, p. 135, art. 19, §§ 11, 12; Ga. L. 1920, p. 102, § 1; Code 1933, §§ 13-2011, 13-2012; Ga. L. 1968, p. 329, § 1; Code 1933, § 41A-2212, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1978, p. 1717, § 5; Ga. L. 1983, p. 602, § 12; Ga. L. 1984, p. 949, § 5; Ga. L. 1995, p. 673, § 18.

Administrative rules and regulations.

Loans and Discounts, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Banks, Rule 80-1-5-.01 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 450 et seq.

ALR.

Transactions by which officers or directors of banks realize on their deposits as unlawful preference, 84 A.L.R. 1493.

Construction and application of criminal statutes relating to loans by bank to officers, directors, stockholders, or employees of bank or of banking department, 90 A.L.R. 509.

Construction and application of statutes prohibiting or limiting loans to bank's officers or directors, 49 A.L.R.3d 727.

7-1-492. Prohibitions applicable to directors, officers, and employees.

(a) No director, officer, or employee of a bank or trust company shall:

(1) Receive anything of value for procuring or attempting to procure any loan from or investment by the bank or trust company;

(2) Purchase, or directly or indirectly be interested in purchasing, from the bank or trust company for less than its face value any promissory note or other evidence of indebtedness issued by the bank or trust company;

(3) Purchase or sell any other asset to the bank or trust company except:

(A) Upon terms not less favorable to the bank or trust company than those offered to other persons or corporations; and

(B) With the prior approval of the board of directors or a committee thereof authorized to act for the board, unless the transaction is made in the regular course of business.

(b) No director shall be eligible to vote concerning any purchase or sale where he is or would be a party to the transaction.

(c) It shall be unlawful for any bank or trust company to lend to any officer, director, or employee any funds held in trust under powers granted in this chapter.

History.
Code 1933, § 41A-2213, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1996, p. 848, § 7.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 450, 454.
C.J.S.
9 C.J.S., Banks and Banking, § 497.
ALR.
Powers of bank president or vice-president, 1 A.L.R. 693; 67 A.L.R. 970.
Transactions by which officers or directors of banks realize on their deposits as unlawful preference, 84 A.L.R. 1493.
Implied, apparent or ostensible, and presumed authority of bank cashier to surrender or waive some right of bank, 108 A.L.R. 713.

7-1-493. Actions against directors and officers.

(a) An action may be brought by any of the persons named in subsection (b) of this Code section against one or more directors or officers of a bank or trust company to procure for the benefit of the bank or trust company a judgment for the following relief:

(1) To compel the defendant to account for his or her official

conduct, or to decree any other relief called for by his or her official conduct, in the following cases:

(A) The neglect of, failure to perform, or other violation of his or her duties in the management of the bank or trust company or in the disposition of corporate assets committed to his or her charge;

(B) The acquisition by himself or herself, transfer to others, loss, or waste of corporate assets due to any neglect of, failure to perform, or other violation of his or her duties;

(C) The appropriation, in violation of his or her duties, of any business opportunity of the bank or trust company;

(2) To enjoin a proposed unlawful conveyance, assignment, or transfer of corporate assets or other unlawful corporate transaction, where there is sufficient evidence that it will be made;

(3) To set aside an unlawful conveyance, assignment, or transfer of corporate assets, where the transferee knew of its unlawfulness and is made a party to the action.

(b) An action may be brought for the relief provided in this Code section and in Code Section 7-1-494, relating to the liability of directors in certain cases, by the bank or trust company, or by a receiver, trustee in bankruptcy, officer, director, or judgment creditor thereof, or by a shareholder in accordance with Code Sections 7-1-440 and 7-1-441, relating to derivative actions.

(c) No action shall be brought for the relief provided in this Code section more than four years from the time the cause of action accrued.

(d) This Code section shall not limit any liability otherwise imposed by law upon any director or officer or any third party, provided that after April 1, 1975, Code Section 14-4-65, relating to improper dividends and liability of officers, shall no longer be applicable to officers or directors of banks or trust companies.

(e) Notwithstanding the foregoing, a bank or trust company may provide in its articles of incorporation for the elimination or limitation of the personal liability of a director to the bank or trust company or its shareholders to the same extent as a business corporation incorporated under the provisions of Chapter 2 of Title 14.

History.

Code 1933, § 41A-2214, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 29; Ga. L. 1987, p. 1586, § 8; Ga. L. 1993, p. 917, § 4; Ga. L. 2018, p. 214, § 9/HB 780.

Editor's notes.

Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law

applicable to litigation pending as of March 9, 2018."

Law reviews.

For article, "Statutes of Limitation: Counterproductive Complexities," see 37 Mercer L. Rev. 1 (1985).

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, §§ 402 et seq., 416.

C.J.S.

9 C.J.S., Banks and Banking, §§ 510, 511.

ALR.

Constitutionality of statutes relating to personal liability of officers or directors of bank, 57 A.L.R. 888.

False representation by officers or directors of bank or building and loan association that impairment of capital has been made good, as basis of action against them, 144 A.L.R. 1498.

Liability, under National Banking Act (12 USCS § 93), of national bank directors for retaliation against officer or employee who discloses or refuses to commit banking irregularity, 101 A.L.R. Fed. 377.

Standard of liability applicable to action against directors or officers of failed depository institution pursuant to 12 USCS § 1821(k), 125 A.L.R. Fed. 435.

7-1-494. Liability of directors in certain cases.

(a) In addition to any other liabilities imposed by law upon directors of a bank or trust company:

(1) Directors of a bank or trust company who vote for or assent to the declaration of any dividend or other distribution of the assets of a bank or trust company to its shareholders which is not authorized by this chapter or is contrary to any restrictions contained in the articles shall be jointly and severally liable to the bank or trust company for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this chapter or the restrictions in the articles to the extent that any depositor, creditor, or shareholder of the bank or trust company has suffered damage as a result thereof; and

(2) The directors of a bank or trust company who vote for or assent to any distribution of assets of a bank or trust company to its shareholders during the voluntary liquidation of the bank or trust company without the payment and discharge of, or making adequate provisions for, all known debts, obligations, and liabilities of the bank or trust company shall be jointly and severally liable to the bank or trust company for the value of such assets which are distributed, to the extent that such debts, obligations, and liabilities of the bank or trust company are not thereafter paid and discharged.

(b) A director of a bank or trust company who is present at a meeting of its board of directors at which action on any corporate matter is taken

shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail or statutory overnight delivery to the secretary of the bank or trust company within 24 hours after the adjournment of the meeting. Such right to dissent shall not apply to a director who, being present at the meeting, failed to vote against such action.

(c) A director shall not be liable under subsection (a) of this Code section if he relied and acted in good faith upon financial information of the bank or trust company represented to him to be correct by the president or the officer of the bank or trust company having charge of its books of account or stated in a written report by an independent or certified public accountant or firm of such accountants to reflect fairly the financial condition of such bank or trust company; nor shall he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be represented fairly on the books of the bank.

(d) Any director against whom any claim shall be asserted under or pursuant to this Code section for the payment of a dividend or other distribution of assets of a bank or trust company and who shall be held liable thereon shall be entitled to contribution from the shareholders who, knowing such dividend or distribution to have been made in violation of this chapter, accepted or received any such dividends or assets in proportion to the amounts received by them respectively.

(e) Any director against whom any claim shall be asserted under or pursuant to this Code section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

(f) No liability under this Code section shall be asserted more than six years from the time the cause of action accrued.

History.
Code 1933, § 41A-2215, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2000, p. 1589, § 3.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 402 et seq., 416.

C.J.S.
9 C.J.S., Banks and Banking, §§ 106, 107, 111, 124 et seq., 219 et seq., 511.

ALR.
Constitutionality of statutes relating to personal liability of officers or directors of bank, 57 A.L.R. 888.

Running of statute of limitations against action against bank directors or

officers for making excessive or unauthorized loans, 83 A.L.R. 1204.

Personal liability of officers or directors of bank in respect of trust funds illegally deposited in bank, 112 A.L.R. 1214.

Construction and application of statutes relating to civil liability of directors, officers or employees of bank, in case of false reports or statements, 114 A.L.R. 472.

Standard of liability applicable to action against directors or officers of failed depository institution pursuant to 12 USCS § 1821(k), 125 A.L.R. Fed. 435.

Part 13

Amendment of Articles

7-1-510. Authorized amendments; articles entirely restated; notice to Secretary of State.

(a) A bank or trust company may, in the manner provided in this part, amend its articles at any time in order to make any change therein which would then be authorized for inclusion in original articles under this chapter, including without limitation an amendment:

(1) To adopt a new name permitted to be used under this chapter;

(2) To renew the term for which it is to exist or to provide for perpetual duration;

(3) To change, add to, or diminish the statement of its purpose or purposes;

(4) To increase or diminish the aggregate number of shares which it has authority to issue or to reclassify the shares by changing the number, par value, designations, preferences, redemption provisions, or relative, participating, optional, or other special rights of the shares or the qualifications, limitations, or restrictions of such rights, either with or without an increase or decrease in the number of shares;

(5) To restate the articles in their entirety;

(6) To change its main office location to a new location; or

(7) In the case of a bank, to become a trust company and, in the case of a trust company, to become a bank, with or without retaining an existing capacity to engage in the banking or trust business as the case may be.

(b) Articles restated in their entirety shall state the street address and county of the current instead of the original main office of the bank or trust company and need not state the names or other information concerning the first directors or the incorporators.

(c) Articles need not be amended for the addition or change of a registered agent or the change of a registered office. The bank or trust

company shall, however, notify in writing the department and the Secretary of State of such changes.

History.

Ga. L. 1898, p. 78, § 7; Ga. L. 1910, p. 98, § 1; Civil Code 1910, § 2821; Ga. L. 1917, p. 81, § 1; Ga. L. 1919, p. 135, art. 9, § 1; Ga. L. 1919, p. 135, art. 10, § 1; Ga. L. 1920, p. 102, § 1; Ga. L. 1927, p. 344, §§ 5, 6; Code 1933, §§ 13-1001, 13-1101, 109-301, 109-302, 109-401, 109-505; Ga. L. 1943, p. 249, § 2; Ga. L. 1953, Jan.-Feb. Sess., p. 240, § 1; Ga. L. 1964, p. 75, § 1; Ga. L. 1965, p. 501, § 2; Ga. L. 1966, p. 692, §§ 28, 37; Ga. L. 1968, p. 1045, § 2; Code 1933, § 13-1201, enacted by Ga. L. 1969, p. 964, § 1; Ga. L. 1972, p. 727, § 4; Code 1933, § 109-302.1, enacted by Ga. L. 1973, p. 525, § 1; Code 1933, § 41A-2301, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 8; Ga. L. 1998, p. 795, § 21; Ga. L. 1999, p. 674, § 9.

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Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 41A-2305 are included in the annotations for this Code section.

Department cannot qualify approval of proposed articles of amendment. — Notice required under former Code 1933, § 41A-2305 must unqualifiedly state approval or disapproval by the Department of Banking and Finance of proposed articles of amendment in the form in which they are submitted and the department may not in the department's approval modify articles or otherwise condition the department's approval on a particular method of operation under approved articles; any attempt to qualify the department's approval is beyond the jurisdiction of the department and therefore void. 1975 Op. Att'y Gen. No. 75-126 (decided under former Code 1933, § 41A-2305).

RESEARCH REFERENCES

C.J.S.

9 C.J.S., Banks and Banking, § 34.

7-1-511. Proposal and adoption of amendments.

(a) An amendment of the articles shall be proposed by adoption of a resolution by the board of directors directing that it be submitted to a vote at a meeting of shareholders.

(b) The resolution proposing an amendment or amendments shall contain the language of each amendment by setting forth in full the articles as they would be amended or any provision thereof as it would be amended or by setting forth in full any matter to be added to or deleted from the articles. A copy of the resolution or a summary thereof shall be included with the notice of the meeting required under Code Section 7-1-6.

(c) Except as provided in subsections (d), (e), and (f) of this Code section, adoption of each amendment shall require the affirmative vote of the shareholders entitled to cast at least a majority of the votes which all shareholders are entitled to cast thereon and, if any class is entitled

to vote thereon as a class, of the holders of at least a majority of the outstanding shares of such class.

(d) If a proposed amendment would:

(1) Make any change in the preferences, redemption provisions, qualifications, limitations, restrictions, or special or relative rights of the shares of any class adverse to such class;

(2) Increase or decrease the par value of the shares of any class;

(3) Increase the authorized number of shares of any class;

(4) Limit or deny the existing preemptive rights of the shares of any class; or

(5) Authorize a new class of shares or increase the number of authorized shares of any class, senior or superior in any respect to the shares of any class previously authorized,

the holders of the outstanding shares of such class shall be entitled to vote as a class on such amendment regardless of any limitation stated in the articles on the voting rights of such class.

(e) Any amendment for the purposes set forth in paragraph (7) of subsection (a) of Code Section 7-1-510 shall require for its adoption the affirmative vote of at least two-thirds of all the shares entitled to vote thereon or of each class entitled to vote thereon where voting by class is required.

(f) Notwithstanding the other provisions of this Code section, the board of directors may adopt a resolution amending the articles to change the name of the bank or trust company without shareholder action unless the articles provide otherwise.

History.

Ga. L. 1917, p. 81, § 2; Ga. L. 1919, p. 135, art. 9, §§ 1, 2; Ga. L. 1920, p. 102, § 1; Ga. L. 1927, p. 344, § 6; Code 1933, §§ 13-1001, 13-1002, 13-2101, 109-402, 109-507; Ga. L. 1943, p. 249, § 2; Ga. L. 1953, Jan.-Feb. Sess., p. 240, § 1; Ga. L. 1957, p. 501, § 1; Ga. L. 1963, p. 550, § 1; Ga. L. 1965, p. 501, § 2; Ga. L. 1966, p. 463, § 2; Ga. L. 1966, p. 692, § 29; Ga. L. 1968, p. 1045, §§ 1, 2; Code 1933, § 13-1201, enacted by Ga. L. 1969, p. 964, § 1; Ga. L. 1972, p. 727, §§ 3, 4; Code 1933, § 41A-2302, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1999, p. 674, § 10; Ga. L. 2023, p. 651, § 6/HB 55, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, substituted "subsections (d), (e), and (f)" for "subsections (d) and (e)" near the beginning of subsection (c) and added subsection (f).

RESEARCH REFERENCES

C.J.S.

9 C.J.S., Banks and Banking, § 34.

7-1-512. Execution, contents, filing, and effect of articles of amendment.

(a) Upon the adoption of an amendment, articles of amendment shall be signed by two duly authorized officers of the bank or trust company under its seal and shall contain:

(1) The name of the bank or trust company;

(2) The street address and county of its main office;

(3) Whether it was incorporated with banking or trust powers or both;

(4) The time and place of the meeting of shareholders at which the shareholders approved the resolution of the board of directors, as originally proposed or as amended, and the kind and period of notice given to the shareholders;

(5) The number of shares entitled to vote on the amendment and, if the shares of any class are entitled to vote as a class, the number of shares of each such class;

(6) The number of shares voted for and against the amendment and, if shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the amendment; and

(7) The amendment adopted, which shall be set forth in full.

(b) The articles of amendment shall be filed with the department together with:

(1) The fee required by Code Section 7-1-862; and

(2) As soon as possible, a publisher's affidavit as proof of publication of the advertisement required by Code Section 7-1-513.

(c) The filing of articles of amendment shall constitute an application for a certificate of amendment. If the articles of amendment involve a change in the name of a bank or trust company, it shall reserve the proposed new name under the procedures of Code Section 7-1-131.

History.
Code 1933, § 41A-2303, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 30; Ga. L. 1981, p. 1366, § 15; Ga. L. 1983, p. 602, § 13; Ga. L. 1989, p. 1257, § 9; Ga. L. 1998, p. 795, § 22; Ga. L. 2015, p. 344, § 11/HB 184.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, § 34.

7-1-513. Certification of articles of amendment; delivery to bank or trust company; publication of notice.

When the articles of amendment are filed, the department shall certify one of the copies thereof and deliver the same to the bank or trust company. The bank or trust company shall cause to be published in a publication as specified in the rules, regulations, or written policies of the department a copy of the articles of amendment or, in lieu thereof, a statement in substantially the following form:

NOTICE OF AMENDMENT

> An application for a certificate of amendment of its articles of incorporation has been made by (name of bank or trust company) by filing such application with the Department of Banking and Finance in accordance with the applicable provisions of Chapter 1 of Title 7 of the Official Code of Georgia Annotated, known as the "Financial Institutions Code of Georgia." The (purpose) (purposes) of said articles of amendment (is) (are) (state the purpose of each amendment affected by the articles of amendment).

The articles of amendment or the statement must be published once a week for two consecutive weeks with the first publication occurring within ten days of receipt by the newspaper of the articles of amendment or statement.

History.
Ga. L. 1919, p. 135, art. 9, §§ 3, 4; Code 1933, §§ 13-1003, 13-1004; Ga. L. 1966, p. 692, §§ 30, 31; Code 1933, § 41A-2304, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 31; Ga. L. 1989, p. 1257, § 10; Ga. L. 1998, p. 795, § 23.

7-1-514. Approval or disapproval of articles of amendment.

(a) Upon receipt of the articles of amendment, the department shall conduct such investigation as it may deem necessary to determine:

(1) That the articles of amendment and supporting items satisfy the requirements of this chapter;

(2) Where the amendment would grant new powers or status to a bank or trust company, that the criteria for the granting of such powers or status as an original matter have been satisfied;

(3) Where the amendment decreases the capital stock of the institution, that the remaining capital stock will be adequate to support its anticipated banking or trust business;

(4) Where the amendment provides for a change to a new location, that the criteria for establishing a banking office at the new location have been satisfied; and

(5) That the interests of the shareholders, depositors, and the public will not be impaired by the amendment.

(b) Within 60 days after receipt of the articles of amendment, the department, in its discretion, shall approve or disapprove the articles of amendment on the basis of its investigation and criteria set forth in subsection (a) of this Code section. If the department shall approve the articles of amendment, it shall deliver its written approval to the Secretary of State with a copy of the amendment attached and notify the bank or trust company of its action. If the department shall disapprove the articles of amendment, it shall give written notice to the bank or trust company and shall furnish to the bank or trust company a statement generally setting out the unfavorable factors influencing its decision. The decision of the department shall be conclusive, except that it may be subject to judicial review as provided in Code Section 7-1-90.

History.
Ga. L. 1919, p. 135, art. 9, § 5; Code 1933, § 13-1005; Ga. L. 1966, p. 590, § 4; Ga. L. 1966, p. 692, § 32; Ga. L. 1968, p. 1045, § 4; Code 1933, § 41A-2305, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 11; Ga. L. 1999, p. 674, § 11.

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Notice must be unqualified. — Notice required under former Code 1933, § 41A-2305 must unqualifiedly state approval or disapproval by the Department of Banking and Finance of proposed articles of amendment in the form in which they are submitted and the department may not in the department's approval modify articles or otherwise condition the department's approval on a particular method of operation under approved articles; any attempt to qualify the department's approval is beyond the jurisdiction of the department and therefore void. 1975 Op. Att'y Gen. No. 75-126.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, § 34.

7-1-515. Issuance of certificate of amendment.

If all the fees and charges required by law have been paid and, in the case of a change of name, if the proposed new name of the bank or trust company continues to be reserved or is available on the records of the Secretary of State, upon the receipt by the Secretary of State of the written approval of the department and of proof of publication of the amendments as required by Code Section 7-1-513, the Secretary of State shall immediately issue to the bank or trust company a certificate of amendment and shall retain a copy thereof along with the approved articles of amendment, the written approval of the department, and the proof of publication.

History.
Ga. L. 1919, p. 135, art. 9, § 7; Code 1933, § 13-1007; Ga. L. 1966, p. 692, § 34; Code 1933, § 41A-2306, enacted by Ga. L. 1974, p. 705, § 1.

7-1-516. Effect of certificate of amendment.

(a) As of the issuance of the certificate of amendment by the Secretary of State, each amendment shall become effective and the articles shall be deemed to be amended accordingly.

(b) The certificate of amendment shall be conclusive evidence of the performance of all conditions required by this chapter for amendment of articles, except as against the state.

(c) No amendment shall affect any existing cause of action in favor of or against the bank or trust company, any pending action in which the bank or trust company is a party, or existing rights of persons other than shareholders. If the amendment changes the name of the bank or trust company, no action by or against the institution shall be abated for that reason.

History.
Code 1933, § 41A-2307, enacted by Ga. L. 1974, p. 705, § 1.

Part 14

Merger and Consolidation of State Banks and Trust Companies

JUDICIAL DECISIONS

Constitutionality of impairment of shareholders' rights under part. — Application of provisions dealing with merger and consolidation of state banks does not impair the shareholders' rights in such a way as to offend the constitutional prohibition against retroactivity. Baugh v. Citizens & S. Nat'l Bank, 248 Ga. 180, 281 S.E.2d 531, 1981 Ga. LEXIS 911 (1981).

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Disclosure and approval requirements for mergers involving banks are generally more difficult than the same procedures for nonbank corporations. 1981 Op. Att'y Gen. No. 81-103.

Banks are "corporations" for purposes of § 10-5-9(12). — Banks should be considered to fall within the term "corporation" as that term is used in registration exemption in O.C.G.A. § 10-5-9(12) since bank shareholders, in merger transactions, are adequately protected by other statutory provisions which effectuate the investor protection purpose of O.C.G.A. T. 10, C. 5. In addition, banks should be considered "corporations" because banks are given similar corporate powers as nonbank corporations, thereby evidencing intent on the part of the General Assembly to treat banks as corporations for purposes of general corporate law. 1981 Op. Att'y Gen. No. 81-103.

RESEARCH REFERENCES

ALR.
Novation where bank transfers its assets to another bank which assumes its obligation, 79 A.L.R. 82.

7-1-530. Authority to merge, consolidate, or exchange shares; requirements.

(a) Upon compliance with the requirements of this part and other applicable laws and regulations, including any branching and minimum age laws and regulations, banks or trust companies may merge or consolidate, provided that a trust company may merge or consolidate with a bank that is authorized to exercise trust powers so long as the resulting institution is a bank. Upon compliance with the requirements of this part and other applicable laws and regulations, including any branching and minimum age laws and regulations, a corporation other than a bank or trust company may acquire all of the outstanding shares of one or more classes or series of one or more banks or trust companies through a share exchange.

(b) A corporation or limited liability company other than a bank or trust company may be merged into or consolidated with, or may enter into a share exchange with, a bank or trust company, provided that:

(1) The resulting institution of the merger or consolidation is a bank or trust company;

(2) The resulting institution of the merger or consolidation, or the acquired bank or trust company in a share exchange, holds only assets and liabilities and is engaged only in activities which may be held or engaged in by a bank or trust company; and

(3) The merger, share exchange, or consolidation is not otherwise unlawful.

(c) A merger, share exchange, or consolidation pursuant to subsection (b) of this Code section shall be made by compliance with the requirements of this part. Title 14 shall not be applicable to such a merger, share exchange, or consolidation.

(d) A merger, share exchange, or consolidation across state lines shall also be subject to the provisions of Part 20 of this article.

(e) In the case of a merger of a Georgia state bank with any other bank or banks, with the Georgia bank as the resulting bank, any assets, lines of business, activities, or powers which may accrue to the resulting bank which would not be allowed for a Georgia state bank shall be provided for in the plan of merger. Such plan shall include the proposal for holding or disposal of such assets or the continuation or termination of such line of business, activity, or power. The department shall review

the plan to determine whether, in the interest of safety and soundness and consistent with the other objectives of Code Section 7-1-3, the activity, power, asset, or line of business should be approved, denied, or phased out within a reasonable period of time, to be determined by the department.

(f) As used in this part, the term:

(1) "Bank" includes a national bank or trust company with its main office in this state if such national bank or trust company is merging with a Georgia state bank or trust company.

(2) "Share exchange" means a plan of exchange of all of the outstanding shares of one or more classes or series of shares in accordance with this part.

(g) Subject to the provisions of this part, this Code section does not limit the power of a corporation or limited liability company other than a bank or trust company to acquire all or part of the shares of one or more classes or series of a bank or trust company through a voluntary exchange of shares or otherwise.

History.

Ga. L. 1919, p. 135, art. 13, § 1; Code 1933, § 13-1401; Ga. L. 1973, p. 278, § 1; Code 1933, § 41A-2401, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1996, p. 848, § 8; Ga. L. 1997, p. 485, § 17; Ga. L. 2000, p. 174, § 11; Ga. L. 2001, p. 970, § 5; Ga. L. 2003, p. 843, § 6; Ga. L. 2007, p. 502, § 4/SB 70; Ga. L. 2016, p. 390, § 2-7/HB 811; Ga. L. 2020, p. 320, § 4/HB 781; Ga. L. 2021, p. 323, § 7/HB 111; Ga. L. 2022, p. 220, § 8/HB 891.

Amendments.

The 2022 amendment, effective July 1, 2022, inserted "or limited liability company" in the beginning of subsection (b) and in subsection (g).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1996, "article" was substituted for "chapter" in subsection (d).

Law reviews.

For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001).

OPINIONS OF THE ATTORNEY GENERAL

Former Code 1933, § 41A-2401 (see now O.C.G.A. § 7-1-530) clearly had the effect of modifying pro tanto former Code 1933, § 22-1006 (see now O.C.G.A. § 14-2-1108): in cases of clear conflict between statutes the later repeals the earlier by implication. Moreover, even if the two had been enacted together, § 41A-2401 would control former § 22-1006 because it is the more specific provision. 1978 Op. Att'y Gen. No. 78-36.

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, §§ 191 et seq., 234.

C.J.S.

9 C.J.S., Banks and Banking, §§ 158 et seq., 657.

7-1-531. Merger, share exchange, or consolidation plan.

(a) The requirements for a merger, share exchange, or consolidation which must be satisfied by the parties thereto are as follows:

(1) The parties shall adopt a plan stating the method, terms, and conditions of the merger, share exchange, or consolidation, including the rights under the plan of the shareholders or members of each of the parties and any agreement concerning the merger, share exchange, or consolidation. Said plan shall specify:

(A) The name that such bank or trust company shall have upon and after such merger, share exchange, or consolidation, which may be the name of any one of the institutions or the combined names of two or more of the institutions or such other name as stated;

(B) The persons who shall constitute the board of directors of the bank or trust company after the merger, share exchange, or consolidation;

(C) In the case of a merger or consolidation, the manner and basis of converting the shares of each merged or consolidated institution into shares or other securities or obligations of the surviving bank or trust company and, if any shares of any of the merged or consolidated institutions are not to be converted solely into shares or other securities of the surviving bank or trust company, the amount of cash or securities of any other corporation, or combination of cash and such securities, which is to be paid or delivered to the holders of such shares in exchange for or upon the surrender of such shares, which cash or securities may be in addition to or in lieu of the shares or other securities of the surviving bank or trust company;

(D) In the case of a share exchange, the terms and conditions of the share exchange and the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or in part; and

(E) Such other provisions with respect to the proposed merger or consolidation as are deemed desirable.

(2) Adoption of the plan by each party thereto shall require the affirmative vote of at least:

(A) A majority of the directors; and

(B) Unless the article or bylaws require a greater vote, the shareholders or members entitled to cast a majority of the votes

which all shareholders or members are entitled to cast thereon and, if any class of shares is entitled to vote thereon as a class, the holders of a majority of the outstanding shares of such class, at a meeting of shareholders or members; provided, however, that approval from the shareholders or members of the surviving bank or trust company is not required if the conditions set forth in subsection (h) of Code Section 14-2-1103 are satisfied.

(3) If any party is a national bank, then the adoption of the plan shall comply with the applicable laws of such national bank's chartering entity, including, but not limited to, any provisions related to the adoption of such plan by the shareholders or members and directors of the bank and to the dissenting rights of shareholders or members of the bank.

(4) Whenever a meeting of shareholders or members is called for the purpose of taking action on a plan, the notice for such meeting shall include a copy or summary of the plan and a full statement of the rights and remedies of dissenting shareholders or members, the method of exercising them, and the limitations on such rights and remedies.

(b) Any modification of a plan which has been adopted shall be made by any method provided therein or, in the absence of such provision, by the same vote as that required for adoption.

History.

Ga. L. 1919, p. 135, art. 13, §§ 1, 2; Code 1933, §§ 13-1401, 13-1402; Ga. L. 1973, p. 278, § 1; Code 1933, § 41A-2402, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2007, p. 502, § 5/SB 70; Ga. L. 2018, p. 214, § 10/HB 780; Ga. L. 2021, p. 323, § 8/HB 111; Ga. L. 2022, p. 220, § 9/HB 891.

Amendments.

The 2022 amendment, effective July 1, 2022, substituted "shareholders or members" for "shareholders" throughout this Code section.

Editor's notes.

Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, §§ 191 et seq., 234.

C.J.S.

9 C.J.S., Banks and Banking, §§ 158 et seq., 657.

7-1-532. Articles of merger, share exchange, or consolidation; publication of notice.

(a) Upon adoption of the plan of merger, share exchange, or consolidation as provided in Code Section 7-1-531, the parties to the merger, share exchange, or consolidation shall file with the department articles

of a merger, share exchange, or consolidation as required by this Code section, together with the fee required by Code Section 7-1-862.

(b) The articles of merger, share exchange, or consolidation shall be signed by two duly authorized officers of each party to the plan under their respective seals and shall contain:

(1) The names of the parties to the plan and of the resulting bank or trust company or the acquiring corporation in a share exchange;

(2) The street address and county of the location of the main office and registered agent and registered office of each;

(3) The votes by which the plan was adopted and the time, place, and notice of each meeting in connection with such adoption;

(4) The name and county of residence of each director of the resulting bank or trust company or each director of the acquired corporation in a share exchange;

(5) In the case of a merger, any amendment of the articles of the resulting bank or trust company;

(6) In the case of a consolidation, the provisions required in articles of a new bank or trust company by paragraphs (4), (5), (6), (7), and (10) of subsection (a) of Code Section 7-1-392; and

(7) The plan.

(c) Together with the articles of merger, share exchange, or consolidation, the parties shall deliver to the department a copy of the notice of merger, share exchange, or consolidation and an undertaking, which may appear in the articles of merger, share exchange, or consolidation or be set forth in a letter or other instrument executed by an officer or any person authorized to act on behalf of such bank or trust company, that the request for publication of a notice of filing the articles of merger, share exchange, or consolidation and payment therefor will be made as required by subsection (d) of this Code section.

(d) No later than the next business day after filing the articles of merger, share exchange, or consolidation with the department, the parties shall mail or deliver to the publisher of a newspaper which is the official organ of the county where the main office of each party is located a notice which shall contain a statement that the articles of merger, share exchange, or consolidation have been filed with the department, the names of the institutions which are parties to the proposed merger, share exchange, or consolidation, and in the case of a merger the proposed name of the surviving bank or trust company, and shall designate a place where a copy of the articles of merger, share exchange, or consolidation may be examined. Subsections (b) and (c) of Code Section 7-1-7 shall also apply to the notice.

(e) The notice shall be published once a week for two consecutive weeks commencing within ten days after receipt of the notice by the newspaper.

(f) In the event the plan is amended as provided in Code Section 7-1-531, the parties shall promptly file with the department an amendment to the articles of consolidation, share exchange, or merger reflecting such amendment of the plan.

History.
Ga. L. 1922, p. 63, § 1; Code 1933, § 13-1403; Ga. L. 1972, p. 727, § 7; Code 1933, § 41A-2403, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 12; Ga. L. 1995, p. 673, § 19; Ga. L. 1998, p. 795, § 24; Ga. L. 1999, p. 81, § 7; Ga. L. 1999, p. 674, § 12; Ga. L. 2007, p. 502, § 6/SB 70; Ga. L. 2015, p. 344, § 12/HB 184; Ga. L. 2021, p. 323, § 9/HB 111.

7-1-533. Additional filings with department.

The parties to the plan shall also file with the department:

(1) An application and information desired by the department in order to evaluate the proposed merger, share exchange, or consolidation, which shall be made available in the form specified by the department;

(2) Applicable fees established by regulation of the department to defray the expenses of the investigation required by Code Section 7-1-534; and

(3) If the merger, share exchange, or consolidation involves the adoption of a new name, a certificate of the Secretary of State reserving said name under Code Section 7-1-131.

History.
Ga. L. 1919, p. 135, art. 13, §§ 2, 3; Code 1933, § 13-1404; Code 1933, § 41A-2404, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1978, p. 1717, § 6; Ga. L. 1989, p. 1257, § 13; Ga. L. 1995, p. 673, § 20; Ga. L. 2007, p. 502, § 7/SB 70.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 234.

C.J.S.
9 C.J.S., Banks and Banking, §§ 158 et seq., 657.

7-1-534. Approval or disapproval by department; resulting bank or trust company not chartered by department.

(a) Upon receipt of the articles of consolidation, share exchange, or merger and the filings required by Code Section 7-1-533, the department shall conduct such investigation as it may deem necessary to ascertain whether:

(1) The articles of merger, share exchange, or consolidation and supporting items satisfy the requirements of this chapter;

(2) The plan and any modification thereof adequately protect the interests of depositors, other creditors, and shareholders;

(3) The requirements for a merger, share exchange, or consolidation under all applicable laws have been satisfied and the resulting bank or trust company or the acquired bank or trust company in a share exchange would satisfy the requirements of this chapter applicable to it; and

(4) The merger, share exchange, or consolidation would be consistent with adequate and sound banking or fiduciary practice and in the public interest on the basis of:

(A) The financial history and condition of the parties to the plan;

(B) The proposed business plan; and

(C) The character of their management.

(b) Within 90 days after receipt of the articles of merger, share exchange, or consolidation, the notice of merger or share exchange, and the filings required by Code Section 7-1-533, or within an additional period of not more than 30 days after an amendment to the application is received within the initial 90 day period, the department shall, in its discretion, approve or disapprove the articles on the basis of its investigation and the criteria set forth in subsection (a) of this Code section. Except as provided in Code Section 7-1-535, the department shall give the Secretary of State written notice of its approval with a copy of the articles of merger, share exchange, or consolidation and a copy of the notice of merger or share exchange attached. The department shall also give the parties to the plan written notice of its decision and, in the event of disapproval, a statement in general of the reasons for its decision. The decision of the department shall be conclusive, except that it may be subject to judicial review as provided in Code Section 7-1-90.

(c)(1) If a merger or consolidation would result in a bank or trust company that would not be chartered by the department, prior to the consummation of the merger or consolidation, the bank or trust company shall:

(A) Notify the department of the proposed merger or consolidation;

(B) Provide such evidence of the adoption of the plan of merger or consolidation as the department may request;

(C) Notify the department of any abandonment or disapproval of the plan of merger or consolidation; and

(D) File with the department and the Secretary of State a certificate of the approval of the merger or consolidation by the appropriate regulator.

(2) Upon receipt of written confirmation from the department that the requirements of this subsection have been satisfied, each party to the merger or consolidation, except the resulting bank or trust company, shall cease to exist as a separate entity, as provided in subsection (c) of Code Section 7-1-536, and its articles shall automatically terminate.

History.
Code 1933, § 41A-2405, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 14; Ga. L. 1995, p. 673, § 21; Ga. L. 1996, p. 6, § 7; Ga. L. 2007, p. 502, § 8/SB 70; Ga. L. 2021, p. 323, § 10/HB 111.

Cross references.
Requirement that department approve change in control of financial institutions generally, § 7-1-231.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 234.

7-1-535. Federal approval or disapproval; issuance of certificate of merger, share exchange, or consolidation.

(a) If the laws of the United States require the approval of the merger, share exchange, or consolidation by any federal agency, the department may elect to not act on the application until it receives notice of the decision of such agency.

(b) If all the taxes, fees, and charges required by law shall have been paid and if the name of the resulting bank or trust company in a merger or consolidation continues to be reserved or is available on the records of the Secretary of State, upon receipt of the written approval of the department, the Secretary of State shall issue to the resulting bank or trust company or the acquiring corporation or limited liability company in a share exchange a certificate of merger, share exchange, or consolidation with the approved articles of merger or consolidation attached thereto and shall retain a copy of such certificate, articles, and approval by the department.

History.
Ga. L. 1922, p. 63, § 1; Code 1933, § 13-1403; Ga. L. 1972, p. 727, § 7; Code 1933, § 41A-2406, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1978, p. 1717, § 7; Ga. L. 2007, p. 502, § 9/SB 70; Ga. L. 2021, p. 323, § 11/HB 111; Ga. L. 2022, p. 220, § 10/HB 891.

Amendments.

The 2022 amendment, effective July 1, 2022, inserted "or limited liability company" near the middle of subsection (b).

7-1-536. Effect of merger, share exchange, or consolidation.

(a) As of the issuance of the certificate of merger, share exchange, or consolidation by the Secretary of State, the merger, share exchange, or consolidation shall be effective.

(b) The certificate of merger, share exchange, or consolidation shall be conclusive evidence of the performance of all conditions precedent to the merger, share exchange, or consolidation and of the existence or creation of the bank or trust institution, except as against the state.

(c) When a merger or consolidation becomes effective, each party to the plan, except the resulting bank or trust company, shall cease to exist as a separate entity but shall continue in, and the parties to the plan shall be, a single corporation which shall be the bank or trust company and which shall have, without further act or deed, all the property, rights, powers, trusts, duties, and obligations of each party to the plan. When a share exchange becomes effective, the shares of each acquired bank or trust company are exchanged as provided in the plan, and the former holders of the shares are entitled only to the share exchange rights provided in the plan of share exchange or to their rights under Code Section 7-1-537.

(d) The articles of the resulting bank or trust company shall be, in the case of a merger, the same as its articles prior to the merger with any change stated in the articles of merger or, in the case of a consolidation, the provisions stated in the articles of consolidation.

(e) The resulting bank or trust company, or the acquired bank or trust company in a share exchange, shall have the authority to engage only in such business and exercise only such powers as are then permissible upon original incorporation under this chapter and shall be subject to the same prohibitions and limitations as it would then be subject to upon original incorporation. It may, however, subject to permission of the department as set out in Code Sections 7-1-530 and 7-1-555, engage in any business and exercise any right that any bank or trust company which is a party to the plan could lawfully exercise or engage in immediately prior to the merger, share exchange, or consolidation.

(f) No liability of any party to the plan or of its shareholders, directors, or officers shall be affected nor shall any lien on any property of a party to the plan be impaired by the merger, share exchange, or consolidation. Any claim existing or action pending by or against any

party to the plan may be prosecuted to judgment as if the merger, share exchange, or consolidation had not taken place or the resulting bank or trust company may be substituted in its place.

History.

Ga. L. 1919, p. 135, art. 13, § 5; Code 1933, §§ 13-1406, 13-1407; Code 1933, § 41A-2407, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2001, p. 970, § 6; Ga. L. 2007, p. 502, § 10/SB 70.

JUDICIAL DECISIONS

Formal transfer not necessary. — Clear purpose of O.C.G.A. § 7-1-536 is to eliminate the necessity of a formal transfer or assignment of the property of the constituent bank to the consolidated bank. State Bank & Trust Co. v. Newby, 170 Ga. App. 865, 318 S.E.2d 738, 1984 Ga. App. LEXIS 2066 (1984).

Because creditor bank's claims, including the creditor's claim for fraud against the debtor, became claims of the successor bank by operation of merger between banks under the National Banking Act and Georgia law regarding merger of banks and corporations, the successor bank had standing to bring a non-dischargeability action. Wells Fargo Bank, N.A. v. Lovett (In re Lovett), 560 B.R. 372, 2016 Bankr. LEXIS 3877 (Bankr. M.D. Ga. 2016).

Assignment of judgment not required. — Bank into which judgment creditor bank had merged did not have to produce evidence of assignment of judgment prior to instituting garnishment proceeding in that bank's name. State Bank & Trust Co. v. Newby, 170 Ga. App. 865, 318 S.E.2d 738, 1984 Ga. App. LEXIS 2066 (1984).

Succession to trusteeship upon merger. — When a utility corporation, as settlor, pursuant to former § 53-12-31 created an express trust, the purpose being to secure the corporation's obligation to furnish water and sewerage services to the properties located in a subdivision, and the bank named as trustee merged with another bank under the authority of former §§ 13-1406 and 13-1407, the second bank succeeded by operation of law to the trusteeship upon the merger with the first bank. Smith v. Hawks, 182 Ga. App. 379, 355 S.E.2d 669, 1987 Ga. App. LEXIS 1701 (1987).

Name of corporate bank defendant in legal proceeding. — In a suit brought by mortgagors against the mortgagor bank that was taken over by a successor bank, the appellate court erred in dismissing the successor bank's appeal under O.C.G.A. § 9-11-25 for lack of standing based on the trial court's failure to add or substitute it as the defendant because the two corporations were deemed the same entity under federal and state law by virtue of their merger; thus, the claims originally filed by and against the mortgagee bank could continue. Nat'l City Mortg. Co. v. Tidwell, 293 Ga. 697, 749 S.E.2d 730, 2013 Ga. LEXIS 781 (2013).

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 234.

C.J.S.

9 C.J.S., Banks and Banking, §§ 158 et seq., 657.

ALR.

Liability of guarantor of or surety for bank deposit as affected by reorganization, merger, or consolidation of bank, 78 A.L.R. 381.

7-1-537. Rights of dissenting shareholders; surrender of certificates.

(a) A shareholder of a bank or trust company which is a party to a plan of proposed merger, share exchange, or consolidation under this part who objects to the plan shall be entitled to the rights and remedies of a dissenting shareholder as determined under Chapter 2 of Title 14, known as the "Georgia Business Corporation Code."

(b) The bank or trust company into which the other or others have been merged or consolidated, or the acquiring corporation in a share exchange, as the case may be, shall have the right to require the return of the original certificates of stock held by each shareholder in each or either of the institutions and in lieu thereof:

(1) To issue to each shareholder new certificates for such number of shares of the institution into which the others shall have been merged or consolidated or of the acquiring corporation in a share exchange; or

(2) To cause to be paid or delivered to each shareholder the amount of cash or securities of any other corporation or combination of cash and such securities as, under the plan of merger, share exchange, or consolidation, the said shareholder may be entitled to receive.

History.

Ga. L. 1919, p. 135, art. 13, §§ 4, 6; Code 1933, § 13-1405; Ga. L. 1973, p. 278, § 2; Code 1933, § 41A-2408, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 946, § 68; Ga. L. 1989, p. 1257, § 15; Ga. L. 2007, p. 502, § 11/SB 70.

Editor's notes.

The amendment to this Code section by Ga. L. 1989, p. 946, § 68, was superseded by the amendment by Ga. L. 1989, p. 1257, § 15, which was enacted later.

Law reviews.

For survey article on business associations, see 34 Mercer L. Rev. 13 (1982).

JUDICIAL DECISIONS

Former Code Section 14-2-251 (see now O.C.G.A. § 14-2-1320 et seq.) and O.C.G.A. § 7-1-537 make no provision for conditional dissent by a shareholder to a plan or proposed merger. Baugh v. Citizens & S. Nat'l Bank, 248 Ga. 180, 281 S.E.2d 531, 1981 Ga. LEXIS 911 (1981).

Corporation's power to impair shareholders' rights differs from state's power over corporations created by it. — There is a substantial difference between corporation's attempting to reserve right to impair vested rights of the corporation's shareholders through altering or amending the corporation's internal structure and retention by state of power to modify or withdraw charters granted to corporations created by the state. Baugh v. Citizens & S. Nat'l Bank, 248 Ga. 180, 281 S.E.2d 531, 1981 Ga. LEXIS 911 (1981).

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 194, 198, 238.
C.J.S.
9 C.J.S., Banks and Banking, §§ 158 et seq., 657.
ALR.
Constitutionality of recent legislation relating to merger, consolidation, or reorganization of banks as affected by rights of dissenting creditors or stockholders, 92 A.L.R. 1337; 96 A.L.R. 1445; 104 A.L.R. 1203.

Part 15

Conversions, Mergers, and Consolidations Involving National Banks

Cross references.
Requirement that department approve change in control of financial institutions generally, § 7-1-231.

RESEARCH REFERENCES

ALR.
Novation where bank transfers its assets to another bank which assumes its obligation, 79 A.L.R. 82.
Constitutionality of recent legislation relating to merger, consolidation, or reorganization of banks as affected by rights of dissenting creditors or stockholders, 96 A.L.R. 1445; 104 A.L.R. 1203.
Constitutionality, construction, and application of federal statute relating to power of national bank to engage in trust business, 153 A.L.R. 410.

7-1-550. National bank or federal savings bank to state bank or trust company conversions.

(a) Subject to this part and any applicable branching law or regulation, a national bank may convert to a bank or trust company upon:

(1) Compliance with the applicable laws of the United States, including any provisions thereof relating to approval of said conversion by the shareholders and directors of the national bank and to dissenting rights of shareholders in such national bank, and compliance with any other requirements prescribed by the department to protect the shareholders or members or the safety and soundness of the institution;

(2) Reserved;

(3) Approval of the conversion by the department as provided in this part; and

(4) Issuance of the appropriate certificate by the Secretary of State as provided in this part.

(b) Reserved.

(c) A federal savings bank may apply to the department to convert to

a state charter. The provisions of Code Section 7-1-293 shall apply to the resulting bank, and the conversion procedure shall be the same as for national bank conversions.

History.
Ga. L. 1953, Jan.-Feb. Sess., p. 73, §§ 3, 4; Code 1933, § 41A-2501, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1982, p. 3, § 7; Ga. L. 1996, p. 848, § 9; Ga. L. 1997, p. 485, § 18; Ga. L. 1999, p. 674, § 13; Ga. L. 2005, p. 826, § 10/SB 82; Ga. L. 2021, p. 323, § 12/HB 111.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 191 et seq., 234, 238.

C.J.S.
9 C.J.S., Banks and Banking, §§ 527, 597, 598.

7-1-551. Articles of conversion; fee.

(a) The party or parties desiring to consummate a conversion authorized by Code Section 7-1-550 shall, upon requisite approval of the plan by their directors and shareholders, file with the department articles of conversion together with the fee required by Code Section 7-1-862.

(b) The articles of conversion shall be signed by two duly authorized officers of the national bank under its seal and shall contain:

(1) Its name and the name of the resulting bank or trust company;

(2) The street address and county of its main office;

(3) The name and initial registered agent and the street address where the initial registered office will be located;

(4) The votes by which the plan of conversion was adopted and the time, place, and notice of each meeting in connection with such adoption;

(5) The name and county of residence of each director of the resulting bank or trust company;

(6) The provisions required in articles of a new bank or trust company by paragraphs (5), (6), (7), and (10) of subsection (a) of Code Section 7-1-392; and

(7) The plan of conversion.

History.
Ga. L. 1953, Jan.-Feb. Sess., p. 73, §§ 5, 6; Code 1933, § 41A-2502, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 16; Ga. L. 1999, p. 81, § 7; Ga. L. 1999, p. 674, § 14; Ga. L. 2015, p. 344, § 13/HB 184; Ga. L. 2021, p. 323, § 13/HB 111.

7-1-552. Filings with department.

In the case of a conversion, the national bank shall file with the department:

(1) Information desired by the department in order to evaluate the proposed conversion, in the form specified by the department;

(2) Applicable fees established by regulation of the department to defray the expenses of its investigation under Code Section 7-1-553; and

(3) A certificate of the Secretary of State showing that the proposed name of the resulting bank or trust company has been reserved under Code Section 7-1-131.

History. Ga. L. 1953, Jan.-Feb. Sess., p. 73, § 9; Code 1933, § 41A-2503, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1995, p. 673, § 22; Ga. L. 2021, p. 323, § 14/HB 111.

7-1-553. Approval or disapproval by department.

(a) In the case of a conversion, the department shall conduct such investigation as it may deem necessary to ascertain whether:

(1) The articles of conversion and supporting items satisfy the requirements of this chapter;

(2) The plan adequately protects the interests of depositors, other than creditors and shareholders; and

(3) The requirements for a conversion under all applicable laws have been satisfied and the resulting institution would satisfy the requirements of this chapter applicable to it.

(b) Within 90 days after receipt of the articles and the filings required by Code Section 7-1-552, the department shall, in its discretion, approve or disapprove the articles on the basis of its investigation and the criteria set forth in subsection (a) of this Code section. If the department shall approve the articles, it shall deliver its written approval with a copy of the articles attached to the Secretary of State and notify the national bank, and any other parties to the plan, of its action, provided that, if approval of any federal agency is required, the department may elect to not act on the application until such federal approval is given. If the department shall disapprove, at its option, the application, it shall give written notice to the national bank and any other parties to the plan of its disapproval and a statement to them generally of the reasons for its decision. The decision of the department shall be conclusive, except that it may be subject to judicial review under Code Section 7-1-90.

History.
Code 1933, § 41A-2504, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1977, p. 730, § 8; Ga. L. 1989, p. 1257, § 17; Ga. L. 2021, p. 323, § 15/HB 111.

7-1-554. Issuance of certificate of conversion.

If all the taxes, fees, and charges required by law shall have been paid and if the name of the resulting bank or trust company continues to be reserved or is available on the records of the Secretary of State, upon the receipt of the written approval of the department, the Secretary of State shall immediately issue to the resulting bank or trust company a certificate of conversion and shall retain a copy of such certificate, the articles, and the approval from the department.

History.
Ga. L. 1953, Jan.-Feb. Sess., p. 73, § 6; Ga. L. 1972, p. 727, § 6; Code 1933, § 41A-2505, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2021, p. 323, § 16/HB 111.

7-1-555. Effect of issuance of certificate of conversion.

Issuance of a certificate of conversion shall have the following effect:

(1) As of the issuance of the certificate of conversion by the Secretary of State, the conversion shall become effective;

(2) The certificate of conversion shall be conclusive evidence of the performance of all conditions required by this chapter for conversion of a national bank to a state bank or trust company, except as against the state;

(3) When a conversion becomes effective, the existence of the national bank shall continue in the resulting bank or trust company which shall have except as provided in paragraph (2) of this Code section, without further act or deed, all the property, rights, powers, trusts, duties, and obligations of the national bank;

(4) The articles of the resulting institution shall be the provisions stated in the articles of conversion;

(5) The bank or trust company shall have the authority to engage only in such lines of business and activities and exercise only such powers or hold such assets as are then permissible upon original incorporation under this chapter and shall be subject to the same prohibitions and limitations as it would then be subject to upon original incorporation; provided, however, that, if the converting institution owns or holds assets, engages in any business, or has powers that would not be allowed for a state bank, then the plan of conversion shall include a plan for holding or disposal of such nonconforming assets or the continuation or termination of such line of business, activity, or power. The department shall review the plan to determine whether, in the interest of safety and soundness and the

other objectives of Code Section 7-1-3, the activity, power, asset, or line of business should be approved, denied, or phased out within a reasonable period of time, to be determined by the department; and

(6) No liability of the national bank or of its shareholders, directors, or officers shall be affected, nor shall any lien on any property of the national bank be impaired, by the conversion. Any claim existing or action pending by or against the national bank may be prosecuted to judgment as if the conversion had not taken place, or the resulting bank or trust company may be substituted in its place.

History.

Ga. L. 1953, Jan.-Feb. Sess., p. 73, §§ 7, 12; Code 1933, § 41A-2506, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1998, p. 795, § 25; Ga. L. 2000, p. 174, § 12; Ga. L. 2001, p. 970, § 7; Ga. L. 2021, p. 323, § 17/HB 111; Ga. L. 2024, p. 1052, § 1(a)(17)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "except as provided in paragraph (2) of this Code section," for "(except as provided in paragraph (2) of this subsection)," in paragraph (3) and revised punctuation in paragraph (5).

RESEARCH REFERENCES

ALR.

Liability of guarantor of or surety for bank deposit as affected by reorganization, merger, or consolidation of bank, 78 A.L.R. 381.

7-1-556. State bank or trust company to national bank or federal savings institution conversions.

(a) A bank or trust company may convert to a national bank or a federal savings institution upon:

(1) Authorization by and compliance with the laws of the United States; and

(2) Adoption of a plan of conversion by the affirmative vote of at least:

(A) A majority of its directors; and

(B) The holders of two-thirds of each class of its shares at a meeting held upon not less than ten days' notice to all shareholders.

(b) A state bank or trust company which converts to a national bank or a federal savings institution shall:

(1) Notify the department of the proposed conversion;

(2) Provide such evidence of the adoption of the plan of conversion as the department may request;

(3) Notify the department of any abandonment or disapproval of the plan; and

(4) File with the department and with the Secretary of State a certificate of the approval of the conversion by the appropriate federal regulator.

(c) Conversion of a state institution to a national banking association or a federal savings institution shall be effective upon completion of the requirements in subsection (b) of this Code section. Upon receipt of written confirmation from the department that the requirements of subsection (b) of this Code section have been satisfied, the institution's articles as an institution existing under the laws of this state shall be automatically terminated.

History.
Code 1933, §§ 13-1305, 13-1306, 13-1307, 13-1308, 13-1309, enacted by Ga. L. 1949, p. 536, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 67, § 1; Code 1933, § 41A-2507, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1999, p. 674, § 15; Ga. L. 2021, p. 323, § 18/HB 111.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 191 et seq., 238.

C.J.S.
9 C.J.S., Banks and Banking, §§ 527, 597, 598.

Part 16

Sale and Other Disposition of Assets

RESEARCH REFERENCES

ALR.
Character as holder in due course of bank which takes over assets and assumes liabilities of another bank, 76 A.L.R. 1329.

7-1-570. Secured transactions and other dispositions of assets not requiring shareholder approval.

(a) Unless the articles or bylaws otherwise provide, the board of directors may authorize any of the following transactions without any vote or consent of the shareholders:

(1) Any mortgage or pledge of, or creation of a security interest in, or conveyance of title to, all or any part of the property and assets of the bank or trust company of any description, or any interest therein, for the purpose of securing the payment or performance of any contract, note, bond, or other obligation of the bank or trust company; or

(2) Any sale, lease, exchange, or other disposition of less than

substantially all the property and assets of the bank or trust company.

(b) Any transaction made as permitted by this Code section without any vote or consent of the shareholders may be upon such terms and conditions and for such consideration as the board may deem to be in the best interests of the bank or trust company.

History.
Code 1933, § 41A-2601, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

C.J.S.
18 C.J.S., Corporations, § 296 et seq.

7-1-571. Sale, lease, exchange, or other disposition of assets requiring shareholder approval.

A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a bank or trust company, in all cases other than those dealt with in Code Section 7-1-570, regarding secured transactions, may be made upon such terms and conditions which are otherwise legal and which shall be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition, specifying, to the extent that the board sees fit, any or all of the terms and conditions thereof and the consideration to be received by the bank or trust company therefor and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting;

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, in the manner provided in Code Section 7-1-6, and, whether the meeting is an annual or a special meeting, shall state that the purpose, or one of the purposes, is to consider the proposed sale, lease, exchange, or other disposition. The notice shall fairly summarize the material features of the proposed transaction and shall contain, where applicable, a clear and concise statement that, if the sale, lease, exchange, or other disposition is effected, shareholders may claim the rights of dissenting shareholders under this chapter;

(3) At such meeting the shareholders may authorize such sale, lease, exchange, or other disposition and may approve or fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the bank or

trust company therefor. Such authorization shall require the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares shall be entitled to vote as a class if the resolution proposing the sale, lease, exchange, or other disposition contains any provision which, if contained in a proposed amendment to the articles, would entitle such class of shares to vote as a class;

(4) If the shareholders approve the proposed sale or other disposition, the bank or trust company shall make application to the department for approval thereof in such form as may be specified by the department. The department shall, in its discretion, approve the sale or other disposition if the proposal is in conformity with law and if the interests of the public, depositors, trust beneficiaries, and other creditors of the bank or trust company are adequately protected;

(5) After such authorization by a vote of shareholders and by the department, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders;

(6) In the case of a sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of a bank or trust company, a notice shall be published in each county in which the bank or trust company has an office engaged in the banking or trust business in the manner prescribed by Code Section 7-1-532.

History. Code 1933, § 41A-2602, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2021, p. 323, § 20/HB 111.

RESEARCH REFERENCES

C.J.S.
18 C.J.S., Corporations, § 296 et seq.

7-1-572. Right of shareholder to dissent.

A shareholder of a bank or trust company shall have the right to dissent from any sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of a bank or trust company pursuant to Code Section 7-1-571, except for a sale wholly for cash pursuant to a plan by which all, or substantially all, of the net proceeds of the sale will be distributed to the shareholders in accordance with their respective interests within one year after the date of the sale. The

shareholders' right of dissent shall be exercised as provided in Chapter 2 of Title 14, known as the "Georgia Business Corporation Code."

History.
Code 1933, § 41A-2603, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 946, § 69; Ga. L. 1989, p. 1257, § 18; Ga. L. 2019, p. 828, § 16/HB 185.

Editor's notes.
The amendment to this Code section by Ga. L. 1989, p. 946, § 69, was superseded by the amendment by Ga. L. 1989, p. 1257, § 18, which was enacted later.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 194, 198, 238.

C.J.S.
18 C.J.S., Corporations, §§ 404 et seq., 433. 19 C.J.S., Corporations, § 837.

Part 17

Representative Offices and Registration

Editor's notes.
Ga. L. 1995, p. 673, effective July 1, 1995, repealed the Code section formerly codified at this part and enacted the current part. The former part consisted of Code Section 7-1-590 and was based on Ga. L. 1981, Ex. Sess., p. 8 (Code enactment Act) and Ga. L. 1985, p. 246, § 1; Ga. L. 1986, p. 458, § 7; Ga. L. 1987, p. 3, § 7.

Administrative rules and regulations.
Applications, Registrations and Notifications, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Banks, Rule 80-1-1-.01 et seq.

7-1-590. Definitions.

As used in this part, the term:

(1) "Bank" and "bank holding company" shall have the same meaning as in Part 18 of this article. A "banking business" is the business which a bank is authorized to do pursuant to this title. The power to receive deposits or the performance of any transaction directly or through an affiliate or agent relative to a deposit account shall be presumed to constitute a banking business.

(2) "Deposit production office" means a form of a representative office with the authority to solicit deposits, provide information about deposit products, and assist consumers to complete the application forms to open deposit accounts, provided that such office does not open deposit accounts, take deposits, or conduct any other banking business.

(3) "Domicile" means the home state as defined in paragraph (12) of Code Section 7-1-621 where a bank is chartered or where a bank holding company is incorporated.

(4) "Loan production office" is a form of a representative office,

where the solicitation of loans or of leases of personal property may occur, but not the closing of loans, the disbursement of loan proceeds to the borrower, nor any other banking business. It shall be established and registered as a representative office.

(5) "Representative office" is an office established by a bank, a bank holding company, or an agent or subsidiary of either for the purpose of conducting business activities other than a banking business and includes, but is not limited to, deposit production offices, loan production offices, and trust production offices. It shall not be considered to be a branch office or main office.

(6) "Trust production office" means a trust sales office of a qualifying individual or corporate fiduciary which office is not performing fiduciary activities. Sales activities shall consist primarily of marketing or soliciting in this state using mail, telephone, or electronic means or in person to act or propose to act as a fiduciary.

History.

Code 1981, § 7-1-590, enacted by Ga. L. 1995, p. 673, § 23; Ga. L. 1997, p. 485, § 19; Ga. L. 1999, p. 674, § 16; Ga. L. 2018, p. 214, § 11/HB 780; Ga. L. 2022, p. 220, § 11/HB 891; Ga. L. 2024, p. 354, § 1-7/HB 876, effective July 1, 2024.

Amendments.

The 2022 amendment, effective July 1, 2022, added paragraph (2), redesignated former paragraphs (2) through (5) as paragraphs (3) through (6), inserted "closing of loans, the" in paragraph (4), added "and includes, but is not limited to, deposit production offices, loan production offices, and trust production offices" at the end of the first sentence in paragraph (5), and in paragraph (6), deleted the former second sentence, which read: "The trust institution desiring to establish such an office in this state must apply to the department on forms provided by the department, must be approved by the commissioner to engage in sales activities in this state, and must register and pay any fees required for a representative office under Code Section 7-1-593.", deleted "outside of this state" from the end of the present second sentence, and deleted the former last sentence, which read: "The department shall be permitted to examine such trust production offices to ascertain whether they are limiting their activities as prescribed."

The 2024 amendment, effective July 1, 2024, inserted "to the borrower" near the end of the first sentence in paragraph (4).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1997, "means" was substituted for "shall mean" in the first sentence in paragraph (5) (now paragraph (6)).

Pursuant to Code Section 28-9-5, in 2022, a comma was added following "loan proceeds" in the first sentence of paragraph (4).

Editor's notes.

Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

7-1-591. Bank or bank holding company domiciled in state; out-of-state activities.

(a) A bank domiciled in this state and operating under the laws of this state or a subsidiary of such bank may establish a representative office anywhere in the state upon registering with the department. A

bank holding company domiciled in this state and operating under the laws of this state or a nonbank subsidiary of such bank holding company may establish a representative office anywhere in this state upon registering with the department.

(b) Subject to any limitation or restrictions of the host state and upon registering the representative office with the department, a Georgia chartered bank may conduct any activities at any representative office outside Georgia that are authorized by Georgia law or that are permissible for a bank chartered by the host state where the representative office is located, except to the extent such activities are expressly prohibited by the laws of this state or by any regulation or order of the commissioner applicable to the Georgia chartered bank and except where the activity is one that requires approval from the department, in which case such approval must be secured; provided, however, that the commissioner may waive any prohibition or requirement for approval if he or she determines, by order or regulation, that the involvement of out-of-state representative offices of the Georgia chartered bank in particular activities would not threaten the safety or soundness of such bank.

History.

Code 1981, § 7-1-591, enacted by Ga. L. 1995, p. 673, § 23; Ga. L. 1999, p. 674, § 16; Ga. L. 2016, p. 390, § 2-8/HB 811; Ga. L. 2020, p. 320, § 5/HB 781; Ga. L. 2022, p. 220, § 12/HB 891.

Amendments.

The 2022 amendment, effective July 1, 2022, deleted "or agent" following "subsidiary" twice in subsection (a).

Cross references.

Requirement of maintenance of registered office by financial institutions in state, § 7-1-132.

7-1-592. Bank or bank holding company operating under federal or other state law; permissible activities.

A bank or bank holding company domiciled in this state and operating under the laws of the United States or domiciled outside this state and operating under the laws of such other state or territory or of the United States, or its subsidiary, may establish representative offices anywhere in this state, provided that such bank or bank holding company conforms to the requirements of its primary regulator. The permissible activities conducted at such a representative office are governed by federal law if the bank is a national bank or by the law of the state or territory where the bank is domiciled if chartered by another state, except to the extent such activities are expressly prohibited by the laws of this state or by any regulation of the commissioner.

History.
Code 1981, § 7-1-592, enacted by Ga. L. 1995, p. 673, § 23; Ga. L. 1999, p. 674, § 16; Ga. L. 2016, p. 390, § 2-9/HB 811; Ga. L. 2022, p. 220, § 13/HB 891.
Amendments.
The 2022 amendment, effective July 1, 2022, deleted "or agent" following "subsidiary" in the first sentence and added the second sentence.
Cross references.
Requirement of maintenance of registered office by financial institutions in state, § 7-1-132.

RESEARCH REFERENCES

ALR.
In personam jurisdiction under long-arm statute of nonresident banking institution, 9 A.L.R.4th 661.

7-1-593. Notice of representative office closure; review of operations.

(a) Prior to closing a representative office, a bank, bank holding company, or a subsidiary of a bank or bank holding company shall post notice of the closing as required by Code Section 7-1-110.1.

(b) The department may review the operations of any representative office annually or at such greater frequency as it deems necessary to assure that the office does not transact a banking business.

History.
Code 1981, § 7-1-593, enacted by Ga. L. 1995, p. 673, § 23; Ga. L. 1999, p. 674, § 16; Ga. L. 2016, p. 390, § 2-10/HB 811; Ga. L. 2020, p. 320, § 6/HB 781; Ga. L. 2022, p. 220, § 14/HB 891.
Amendments.
The 2022 amendment, effective July 1, 2022, rewrote subsection (a), which read: "A bank or bank holding company domiciled in this state and having a representative office shall register such representative office with the department. Prior to closing a representative office, such bank or bank holding company must post notice of the closing as required by Code Section 7-1-110.1."

Part 18

Bank Branches, Offices, Facilities, and Holding Companies

Administrative rules and regulations.
Applications, Registrations, and Notifications, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Banks, Rule 80-1-1-.01 et seq.
Applications and Acquisitions, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Holding Companies, Rule 80-6-1-.01 et seq.

7-1-600. Definitions.

As used in this part, the term:

(1) "Bank" means any moneyed corporation authorized by law to receive deposits of money and commercial paper, to make loans, to

discount bills, notes, and other commercial paper, to buy and sell bills of exchange, and to issue bills, notes, acceptances, or other evidences of debt, and shall include incorporated banks, savings banks, banking companies, trust companies, and other corporations doing a banking business and may include corporations who provide some or all of the financial services listed in this paragraph by technological means in lieu of or in addition to traditional geographically based delivery systems but, unless the context otherwise indicates, shall not include national banks or similar corporations. Such term shall include "main office" and any "branch office," unless the context indicates that it does not.

(2) "Bank holding company" means "bank holding company" as defined in Code Section 7-1-605.

(3) "Banking office" or "banking location" means either a main office or a branch office.

(4) "Banking services" shall include all those offerings or services resulting from the exercise of banking powers as granted to banks in this title or by other applicable federal or state law or regulation.

(5) "Branch office" means any location of a bank other than the main office where banking services are offered to the public. It does not include a representative office as defined in Code Section 7-1-590 or a bank extension as defined in Code Section 7-1-603. The department may provide by regulation that certain other activities do or do not constitute the formation of a branch office.

(6) "Main office" means the principal banking location of a bank as such location appears in the records of the department. A bank shall indicate its principal banking location with the department, and if it fails to do so, the department shall choose a banking location of such bank to be the main office and shall so notify such bank.

History.

Ga. L. 1919, p. 135, art. 1, § 1; Ga. L. 1925, p. 119, § 1; Ga. L. 1927, p. 195, § 1; Code 1933, § 13-201; Ga. L. 1960, p. 67, § 2; Code 1933, § 13-201.1, enacted by Ga. L. 1960, p. 67, § 3; Ga. L. 1963, p. 602, § 1; Ga. L. 1970, p. 954, § 2; Ga. L. 1976, p. 168, § 1; Ga. L. 1986, p. 458, § 8; Ga. L. 1996, p. 6, § 7; Ga. L. 1997, p. 485, § 20; Ga. L. 1999, p. 674, § 17; Ga. L. 2016, p. 390, § 7-12/HB 811.

Cross references.

Applicability of "bank office" and "bank facility" definitions to definitions of "bank" and "branch" in the UCC, § 11-1-201(4).

Law reviews.

For annual survey of law of business associations, see 43 Mercer L. Rev. 85 (1991).

JUDICIAL DECISIONS

Authority to operate branch banks. — Although a bank holding company may change the corporate structure of the company's banking subsidiaries through

merger, consolidation, or purchase, and may continue all of the banking activities of the component banks, a bank holding company may not, through the company's banking subsidiary, acquire "branch banks" and continue to operate the branches as such. First Nat'l Bank of Commerce v. Community Bankers Ass'n, 260 Ga. 371, 394 S.E.2d 95, 1990 Ga. LEXIS 288 (1990).

Drive-in facilities. — Drive-in window would ordinarily fit within the definition of a bank facility. Jackson v. First Nat'l Bank, 349 F.2d 71, 1965 U.S. App. LEXIS 4820 (5th Cir. 1965).

Drive-in facility clearly comes within the Georgia definition of a bank facility. Jackson v. First Nat'l Bank, 246 F. Supp. 134, 1965 U.S. Dist. LEXIS 9926 (M.D. Ga. 1965).

OPINIONS OF THE ATTORNEY GENERAL

Mobile check cashing service would come under jurisdiction of State Banking Department. 1967 Op. Att'y Gen. No. 67-286.

Production Credit Associations are not banks, and statutes applicable to taxation of banks do not apply to Production Credit Associations located in the State of Georgia. 1957 Ga. Op. Att'y Gen. 312.

Public funds held by county officials may not be deposited in savings and loan associations. — Public funds held by county officials must be deposited in one or more solvent banks and may not be deposited in savings and loan associations. 1974 Op. Att'y Gen. No. 74-145.

When loan production office is a place of business. — When a loan production office performs all competitive and service-related functions in soliciting and servicing loans, it clearly is a place of business within the meaning of former Code 1933, § 13-201.1. 1974 Op. Att'y Gen. No. 74-12.

Classification of formerly established branch bank located in same county as principal office. — Place of banking business which is located within the county in which is located the principal office of the bank, and which was formerly a lawfully established branch bank within the meaning of former Code 1933, § 13-201.1 (see now O.C.G.A. § 7-1-600(5)), is for purposes of former Code 1933, §§ 13-203 and 13-203.1 (see now O.C.G.A. §§ 7-1-601 and 7-1-602) to be treated as a bank office as defined by former Code 1933, § 13-201.1 (see now O.C.G.A. § 7-1-600(4)). 1974 Op. Att'y Gen. No. 74-35.

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 623 et seq.

C.J.S.

9 C.J.S., Banks and Banking, §§ 46, 47.

7-1-601. Branch offices.

(a) Branch offices may be established by banks doing a lawful banking business in Georgia with the prior approval of the department as follows:

(1) New or additional branch offices may be established de novo in the manner provided in Code Section 7-1-602;

(2) New or additional branch offices may be established through merger, share exchange, consolidation, or sale of assets pursuant to Part 14, 15, 16, 19, or 20 of this article;

(3) A bank may acquire a branch office from another bank without acquisition of the entire bank; or

(4) A bank with two or more existing banking offices in Georgia may redesignate its existing main office as a branch office in accordance with the procedures established by the department.

(b) A bank not doing a lawful banking business in Georgia may become the owner of a branch office in Georgia provided such transaction is consummated under Section 12 or 13 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1811, et seq., as amended.

(c) Taxation of all banks shall be in the manner provided in Chapter 6 of Title 48.

(d) Each branch office will operate under the control and direction of the board of directors and executive officers of the bank, and the bank shall be responsible for adequately staffing the branch office to conduct the business of the branch office in accordance with this chapter, federal law, and the rules and regulations of the department.

History.

Ga. L. 1919, p. 135, art. 1, § 3; Ga. L. 1920, p. 102, § 1; Ga. L. 1927, p. 195, § 1; Code 1933, § 13-203; Ga. L. 1960, p. 67, § 4; Ga. L. 1970, p. 954, § 3; Ga. L. 1975, p. 474, § 1; Ga. L. 1978, p. 1710, § 1; Ga. L. 1987, p. 1586, § 9; Ga. L. 1996, p. 181, § 9; Ga. L. 1996, p. 642, §§ 1, 2; Ga. L. 1996, p. 848, § 10; Ga. L. 1999, p. 674, § 17; Ga. L. 2007, p. 502, § 13/SB 70; Ga. L. 2016, p. 390, § 2-12/HB 811.

Cross references.

Status of branch or separate office of bank for purpose of computing time within which and determining place at or to which action may be taken or notices or orders given under the Commercial Code, § 11-4-106.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1999, "Part" was substituted for "Parts" in paragraph (a)(2).

Law reviews.

For comment on United States v. Citizens & S. Nat'l Bank, 422 U.S. 86, 95 S. Ct. 2099, 45 L. Ed. 2d 41 (1975), see 10 Ga. L. Rev. 641 (1976).

For article discussing compliance with Federal Securities Act of 1933 in bank acquisitions and the issuance of securities of bank holding companies, see 14 Ga. St. B.J. 114 (1978).

For review of 1996 banking and finance legislation, see 13 Ga. St. U.L. Rev. 1 (1996).

For review of 1996 revenue and taxation legislation, see 13 Ga. U.L. Rev. 294 (1996).

JUDICIAL DECISIONS

"Branch bank" not necessarily interchangeable with "bank". — Term "branch bank" is not necessarily interchangeable with "bank." Community Bankers Ass'n v. First Nat'l Bank of Commerce, 193 Ga. App. 569, 388 S.E.2d 387, 1989 Ga. App. LEXIS 1563 (1989), aff'd, 260 Ga. 371, 394 S.E.2d 95, 1990 Ga. LEXIS 288 (1990).

Merger with branch not approved without merging entire bank. — Nothing in the Code expresses or implies any intent to permit approval of a bank holding company's merging or

consolidating with, or acquiring control of, a branch bank by itself without merging or consolidating with, or acquiring control of, the entire bank. Community Bankers Ass'n v. First Nat'l Bank of Commerce, 193 Ga. App. 569, 388 S.E.2d 387, 1989 Ga. App. LEXIS 1563 (1989), aff'd, 260 Ga. 371, 394 S.E.2d 95, 1990 Ga. LEXIS 288 (1990).

Using sister subsidiary of holding company which controls bank. — Fact that branch banking activities prohibited under former Code 1933, § 13-203 (see now O.C.G.A. § 7-1-601) are performed by sister subsidiary of holding company controlling the bank does not make such activities legal as such a contractual arrangement merely accomplishes indirectly what the bank is prohibited from doing directly. Jackson v. First Nat'l Bank, 430 F.2d 1200, 1970 U.S. App. LEXIS 7402 (5th Cir. 1970), cert. denied, 401 U.S. 947, 91 S. Ct. 933, 28 L. Ed. 2d 230, 1971 U.S. LEXIS 3055 (1971).

Georgia banks may not use armored cars to extend geographic reach of the bank's banking facility. Jackson v. First Nat'l Bank, 430 F.2d 1200, 1970 U.S. App. LEXIS 7402 (5th Cir. 1970), cert. denied, 401 U.S. 947, 91 S. Ct. 933, 28 L. Ed. 2d 230, 1971 U.S. LEXIS 3055 (1971).

Use of armored cars constituting branch banking. — Operation of armored truck bank messenger service of national bank, whose function is to transmit funds to bank, make change, transmit funds from the bank, and furnish teller service for payroll cashing, constitutes operation of a branch bank within the meaning of former Code 1933, § 13-203 (see now O.C.G.A. § 7-1-601). Jackson v. First Nat'l Bank, 292 F. Supp. 156, 1968 U.S. Dist. LEXIS 12614 (N.D. Ga. 1968).

Armored cars owned by a bank, which picked up deposits, were engaged in branch banking, even though depositors using services offered by the armored cars entered into a contract with the bank that deposits delivered to the armored car would not be deemed received until the deposits were physically delivered into the hands of the teller on the bank's premises. Jackson v. First Nat'l Bank, 430 F.2d 1200, 1970 U.S. App. LEXIS 7402 (5th Cir. 1970), cert. denied, 401 U.S. 947, 91 S. Ct. 933, 28 L. Ed. 2d 230, 1971 U.S. LEXIS 3055 (1971).

OPINIONS OF THE ATTORNEY GENERAL

Former Code 1933, § 13-203 was constitutional. 1948-49 Ga. Op. Att'y Gen. 4.

Legislative intent behind former Code 1933, § 13-203 was to prohibit establishment of new and additional branch banks. 1971 Op. Att'y Gen. No. 71-102.

Branch banking and bank holding company restrictions apply to bank facilities conducting only trust business. 1980 Op. Att'y Gen. No. 80-156.

Mortgage banking and factoring subsidiaries are nonbanking activities and are not included in former Code 1933, § 13-203 which restricts branch banking. 1972 Op. Att'y Gen. No. 72-131.

Former Code 1933, § 13-203 restrictions are inapplicable to establishment of foreign branch office of state-chartered trust company. 1970 Op. Att'y Gen. No. 70-59.

State trust company not prohibited from establishing foreign branch office to develop new international business. 1970 Op. Att'y Gen. No. 70-59.

Mere change in physical location of branch bank is not establishment of such a bank. 1958-59 Ga. Op. Att'y Gen. 17.

Operation of savings and loan across county lines. — Only branch of a savings and loan association located in the county affected, which is lawfully controlled by a bank holding company or as to which the bank holding company has received the requisite approvals to acquire control, may be lawfully acquired by a banking subsidiary of a bank holding company through a purchase and assumption and operated across county lines as a branch of the banking subsidiary; provided, such acquisition is approved by the commissioner of banking

and finance. 1988 Op. Att'y Gen. No. 88-13.

Merger of holding company's subsidiaries across county lines. — With respect to circumstances under which a bank holding company may merge two subsidiaries across county lines, there are two requirements: (1) the commissioner must approve, and (2) the merger must take place at the time the holding company acquires the bank which is to become a branch bank following merger. 1981 Op. Att'y Gen. No. 81-74.

Controlling geographical entity is the county. — For the purpose of determining whether a parent office of a national bank established on military reservation may establish a branch bank, the controlling geographical entity is the county, not the military reservation. 1975 Op. Att'y Gen. No. 75-141.

Exemption to subsection (c) under § 7-1-606(e). — It seems clear that O.C.G.A. § 7-1-606(e) creates at least a limited exception to the branching prohibition of O.C.G.A. § 7-1-601(c). 1981 Op. Att'y Gen. No. 81-74.

Parent bank directors must elect board of directors for branch bank. — When parent bank establishes a branch bank, the directors of the parent bank are required to elect either a board of directors or a loan committee for the branch bank. 1954-56 Ga. Op. Att'y Gen. 35.

Classification of formerly established branch bank located in same county as principal office. — Place of banking business which is located within the county in which is located the principal office of the bank, and which was formerly a lawfully established branch bank within the meaning of former Code 1933, § 13-201.1 (see now O.C.G.A. § 7-1-600(5)) is for purposes of former Code 1933, §§ 13-203 and 13-203.1 (see now O.C.G.A. §§ 7-1-601 and 7-1-602) to be treated as a bank office as defined by former Code 1933, § 13-201.1 (see now O.C.G.A. § 7-1-600(4)). 1974 Op. Att'y Gen. No. 74-35.

Finding of de facto branching not dependent upon finding that intermediary corporation is a sham and does no business on the corporation's own account. 1980 Op. Att'y Gen. No. 80-51.

Brokerage firm, in jointly operating an investment program, is not a branch. — When a brokerage firm, in operating an investment program in conjunction with a bank, is performing the firm's functions primarily for the firm's own benefit, it is in no sense a mere adjunct of the participating bank, and the program does not result in the operation of branches, offices, or facilities by the participating bank in violation of O.C.G.A. §§ 7-1-601 and 7-1-602. 1981 Op. Att'y Gen. No. 81-59.

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 623 et seq.

C.J.S.

9 C.J.S., Banks and Banking, §§ 22, 46, 47.

ALR.

Power of national bank to establish branches or maintain separate banking offices, 30 A.L.R. 927; 50 A.L.R. 1340; 136 A.L.R. 471.

Branch banks, 50 A.L.R. 1340; 136 A.L.R. 471.

Liability of guarantor of or surety for bank deposit as affected by reorganization, merger, or consolidation of bank, 78 A.L.R. 381.

What is a "branch bank" within statutes regulating the establishment of branch banks, 23 A.L.R.3d 683.

7-1-602. Applications for branch offices.

(a) Application to establish a branch office shall be made to the department in such form as it may prescribe from time to time. The department shall exercise its discretion in its consideration of the

application; but the department shall not approve the application until it has ascertained to its satisfaction that the public need and advantage will be promoted by the establishment of the proposed branch office, based upon the following factors:

(1) Reasonable opportunity for the proposed branch office to generate a sufficient profit;

(2) The character and fitness of the board of directors and management of the bank to command the confidence of the community and to warrant the belief that the business of the bank or trust company at the branch office will be honestly and efficiently conducted;

(3) The adequacy of the capital structure of the bank or trust company, particularly in view of the anticipated business to be generated by the proposed branch office; and

(4) The overall financial condition and safety and soundness of the applicant bank or trust company.

Where the department by rule, regulation, or written policy has provided for expedited processing of applications or for notice procedures, it may abbreviate its review of these criteria.

(b) After receipt of a complete application, the department shall have 30 days within which to approve or disapprove such application.

(c) The department may approve an application contingent upon the satisfaction of additional conditions, including the submission of information such as the date of opening and the capital outlay for the branch office. If the approval of a federal regulatory agency is required with respect to the branch office, the department may at its option withhold its written approval or disapproval until such federal approval is granted or denied or may withdraw its approval if the federal agency fails to act or refuses to grant approval. If the department disapproves the branch office, it shall notify the applicant of its disapproval and state generally in writing the unfavorable factors influencing its decision. The decision of the department is final, except that it may be subject to judicial review as provided in Code Section 7-1-90.

(d) The department may provide by regulation that a bank which meets certain financial and managerial criteria may, in lieu of application, file a written notification with the department at a time to be specified in such regulation.

(e) All lawfully established banking locations existing on July 1, 1999, other than a bank's main office, shall be known and shall qualify as branch offices.

(f) In the event of merger or consolidation of two or more banks, pursuant to Parts 14 and 15 of this article, the surviving or resulting

bank shall designate a main office and may retain and continue to operate any or all banking locations of each constituent bank as branch offices. In the event of the purchase of substantially all of the assets of a bank, subject to the review and approval by the commissioner of such transaction, the purchasing bank may retain and continue to operate any or all banking locations of the selling bank as branch offices.

(g) The department's approval may be revoked if conditions in the approval have not been satisfied or if other violations of law occur as a result of the branch office's opening or operation.

History.

Code 1933, § 13-203.1, enacted by Ga. L. 1960, p. 67, § 5; Ga. L. 1963, p. 602, § 2; Ga. L. 1970, p. 954, § 4; Ga. L. 1973, p. 127, § 1; Ga. L. 1975, p. 473, § 1; Ga. L. 1978, p. 1710, § 3; Ga. L. 1978, p. 2068, § 1; Ga. L. 1980, p. 1082, § 1; Ga. L. 1983, p. 602, § 14; Ga. L. 1999, p. 674, § 17; Ga. L. 2000, p. 174, § 13; Ga. L. 2016, p. 390, § 2-13/HB 811; Ga. L. 2020, p. 320, § 7/HB 781.

Law reviews.

For comment on United States v. Citizens & S. Nat'l Bank, 422 U.S. 86, 95 S. Ct. 2099, 45 L. Ed. 2d 41 (1975), see 10 Ga. L. Rev. 641 (1976).

For article discussing compliance with Federal Securities Act of 1933 in bank acquisitions and the issuance of securities of bank holding companies, see 14 Ga. St. B.J. 114 (1978).

For annual survey of law of business associations, see 43 Mercer L. Rev. 85 (1991).

JUDICIAL DECISIONS

"Branch bank" not necessarily interchangeable with "bank". — Term "branch bank", as used in O.C.G.A. § 7-1-602(e), is not necessarily interchangeable with "bank." Community Bankers Ass'n v. First Nat'l Bank of Commerce, 193 Ga. App. 569, 388 S.E.2d 387, 1989 Ga. App. LEXIS 1563 (1989), aff'd, 260 Ga. 371, 394 S.E.2d 95, 1990 Ga. LEXIS 288 (1990).

Pertinent criteria in determining whether bank facility is a branch office. — To determine whether a bank facility is a branch office, the court should look to four pertinent factual criteria; i.e., distance separating main banking house and the facility, number of intervening structures, lack of physical connection between main banking house and the facility, and the economic effect of the facility on the balance of competition between area banks. Dunn v. First Nat'l Bank, 345 F. Supp. 853, 1972 U.S. Dist. LEXIS 12996 (N.D. Ga. 1972).

Acquisition and operation of branch banks by holding company's subsidiary. — Although a bank holding company may change the corporate structure of the company's banking subsidiaries through merger, consolidation, or purchase, and may continue all of the banking activities of the component banks, a bank holding company may not, through the company's banking subsidiary, acquire "branch banks" and continue to operate those branches as such. First Nat'l Bank of Commerce v. Community Bankers Ass'n, 260 Ga. 371, 394 S.E.2d 95, 1990 Ga. LEXIS 288 (1990).

Merger with branch not approved without merging entire bank. — Nothing in the Code expresses or implies any intent to permit approval of a bank holding company's merging or consolidating with, or acquiring control of, a branch bank by itself without merging or consolidating with, or acquiring control of, the entire bank. Community Bankers Ass'n v. First Nat'l Bank of Commerce, 193 Ga. App. 569, 388 S.E.2d 387, 1989 Ga. App. LEXIS 1563 (1989), aff'd, 260 Ga. 371, 394 S.E.2d 95, 1990 Ga. LEXIS 288 (1990).

OPINIONS OF THE ATTORNEY GENERAL

Legislative intent behind former Code 1933, § 13-203.1 was to provide for establishment and operation of new and additional bank offices and bank facilities. 1971 Op. Att'y Gen. No. 71-102.

Section empowers commissioner to regulate establishment of bank offices and facilities. — Former Code 1933, § 13-203.1 empowered the superintendent of banks (now commissioner of banking and finance) to regulate the establishment of bank offices and bank facilities and to provide for criteria of examination and determination of public need and advantage in establishment of bank offices and bank facilities. 1971 Op. Att'y Gen. No. 71-102.

Establishment of multiple bank offices through use of mobile bank unit. — Georgia law does not prohibit a bank from establishing multiple bank offices or bank facilities, using a single mobile bank unit on a regular part-time basis. 1976 Op. Att'y Gen. No. 76-106.

In applying section, controlling geographical entity is the county. — For purpose of applying state law to parent office of national bank established on military reservation, the controlling geographical entity is the county, not the military reservation. 1975 Op. Att'y Gen. No. 75-141.

Parent office located on military reservation may operate office off reservation. — When two national banks whose parent banks are located in one county each have a branch bank in another county, even though it is on a military reservation, those banks may establish and operate additional offices in that first county off the military reservation. 1975 Op. Att'y Gen. No. 75-141.

Classification of formerly established branch bank. — Place of banking business which is located within the county in which is located the principal office of the bank, and which was formerly a lawfully established branch bank within the meaning of former Code 1933, § 13-201.1 (see now O.C.G.A. § 7-1-600(5)) is for purposes of former Code 1933, §§ 13-203 and 13-203.1 (see now O.C.G.A. §§ 7-1-601 and 7-1-602) to be treated as a bank office as defined by former Code 1933, § 13-201.1 (see now O.C.G.A. § 7-1-600(4)). 1974 Op. Att'y Gen. No. 74-35.

Brokerage firm, in jointly operating an investment program, is not a branch. — When a brokerage firm, in operating an investment program in conjunction with a bank, is performing the firm's functions primarily for the firm's own benefit, it is in no sense a mere adjunct of the participating bank, and the program does not result in the operation of branches, offices, or facilities by the participating bank in violation of O.C.G.A. §§ 7-1-601 and 7-1-602. 1981 Op. Att'y Gen. No. 81-59.

RESEARCH REFERENCES

ALR.

Power of banking corporation to loan money for others, 33 A.L.R. 597.

Branch banks, 50 A.L.R. 1340; 136 A.L.R. 471.

What is a "branch bank" within statutes regulating the establishment of branch banks, 23 A.L.R.3d 683.

7-1-603. Authorized extensions; restrictions.

(a) An approved banking location may have an extension, which is not a branch or main office, at which banking activities may occur. The extensions described in this Code section do not require approval but may have certain restrictions or required notifications.

(b) The following are extensions:

(1) "Automated teller machine" means electronic equipment which performs routine banking transactions, including, but not limited to, the taking of deposits for the public at locations off premises of a bank's main or branch office under regulations prescribed by the commissioner. This term includes electronic equipment that utilizes, or has the capability to utilize, live video chat with offsite bank personnel who may assist with banking services, including, but not limited to, account initiation.

(2) "Cash dispensing machine" means for the purposes of this part and as used in paragraph (4) of subsection (b) of Code Section 7-1-241 an automated or electronic terminal which dispenses cash or scrip redeemable for goods and services or for cash, goods, and services. Such machines may provide account information but may not initiate intrabank transactions other than those necessary and incidental to the dispensing of cash.

(3) "Night depository" means a drop box where customers can make deposits or payments outside of normal banking hours.

(4) "Point-of-sale terminal" means electronic equipment located in nonbank business outlets to record electronically bank transactions occurring as a result of the sale of goods or services.

For purposes of this Code section, the terms "automated teller machine," "point-of-sale terminal," "cash dispensing machine," and "night depository" shall not include personal communication devices such as telephones, computer terminals, modems, and other similar devices which are not accessible to the general public but are intended for use by a single bank customer. It is not the intent of this Code section to limit the ability of banks or other entities to utilize personal communication devices. The department may by regulation further define "automated teller machine," "point-of-sale terminal," "cash dispensing machine," "night depository," and "personal communication device" consistent with the objectives set forth in Code Section 7-1-3.

(c) The following are restrictions on location of an extension:

(1) Any federally insured bank may operate automated teller machines throughout the state. These machines may be operated individually by any bank or jointly on a cost-sharing basis by two or more banks;

(2) Any bank may operate cash dispensing machines throughout the state. Access to and use of cash dispensing machines may be available to all banks in this state on an individual or a shared basis;

(3) A night depository may be located anywhere in the state; and

(4) A point-of-sale terminal may be located anywhere in the state.

(d) An extension not defined in subsection (b) of this Code section is permitted, provided that such extension is located within the boundary lines of a single contiguous area of property owned or leased by the bank and used as a banking location, or if it is within 200 yards of such banking location. Banking services may be performed at the extension. Written notification to the department is required for such extension.

History.
Code 1933, § 13-203.2, enacted by Ga. L. 1966, p. 590, § 2; Ga. L. 1973, p. 526, § 1; Ga. L. 1975, p. 475, § 1; Ga. L. 1995, p. 673, § 24; Ga. L. 1997, p. 485, § 21; Ga. L. 1999, p. 674, § 17; Ga. L. 2003, p. 843, § 7; Ga. L. 2016, p. 390, § 2-14/HB 811; Ga. L. 2017, p. 774, § 7/HB 323; Ga. L. 2020, p. 320, § 8/HB 781.

OPINIONS OF THE ATTORNEY GENERAL

Legislative intent. — Former Code 1933, § 13-203.2 (see now O.C.G.A. § 7-1-603) would normally define the meaning of loan production offices only in reference to the remainder of that section, as opposed to banking law generally; when thus placed in context, the clear purpose of the enactment was to perfect Georgia's then existing legislation relating to expansion or extension of existing parent banks, branch banks, bank offices, and bank facilities. 1976 Op. Att'y Gen. No. 76-116.

Loan production offices may not be expanded or extended. — Former Code 1933, § 13-203.2 (see now O.C.G.A. § 7-1-603) meant that loan production offices, though the offices remain bank facilities for all other purposes pursuant to former Code 1933, § 13-201 (see now O.C.G.A. § 7-1-600(2)), may not be expanded or extended. 1976 Op. Att'y Gen. No. 76-116.

Foreign state banks may not maintain, directly or indirectly, loan production offices within this state. 1976 Op. Att'y Gen. No. 76-116.

Automated teller operations limited to financial institutions. — Nonfinancial institution may not establish and operate on the institution's own behalf an unmanned automated teller facility which provides cash withdrawal services. 1985 Op. Att'y Gen. No. 85-2.

RESEARCH REFERENCES

ALR.
Branch banks, 50 A.L.R. 1340; 136 A.L.R. 471.

What is a "branch bank" within statutes regulating the establishment of branch banks, 23 A.L.R.3d 683.

7-1-604. Banking business prohibited except as allowed by Title 7 or applicable federal law.

No bank shall carry on or conduct or do a banking business in this state except in accordance with the provisions of this title or federal law directly applicable to the bank. A "banking business" is the business which a bank is authorized to do pursuant to this title.

History.
Code 1933, § 13-204.1, enacted by Ga. L. 1967, p. 105, § 1; Ga. L. 1970, p. 954, § 5; Ga. L. 1999, p. 674, § 17; Ga. L. 2016, p. 390, § 2-15/HB 811.

JUDICIAL DECISIONS

Georgia banks may not use armored cars to extend geographic reach of their banking facility. Jackson v. First Nat'l Bank, 430 F.2d 1200, 1970 U.S. App. LEXIS 7402 (5th Cir. 1970), cert. denied, 401 U.S. 947, 91 S. Ct. 933, 28 L. Ed. 2d 230, 1971 U.S. LEXIS 3055 (1971).

Use of armored cars violating section. — Operation of armored truck bank messenger service of national bank, whose function is to transmit funds to bank, make change, transmit funds from bank, and furnish teller service for payroll cashing, constitutes carrying on, conducting, or doing bank business through banking facilities other than on premises of place of business of national bank and as such is illegal. Jackson v. First Nat'l Bank, 292 F. Supp. 156, 1968 U.S. Dist. LEXIS 12614 (N.D. Ga. 1968).

Armored cars owned by a bank, which picked up deposits, were engaged in branch banking, even though the depositors using the services offered by the armored cars entered into a contract with the bank that the deposits delivered to the armored car would not be deemed received until the deposits were physically delivered into the hands of the teller on the bank's premises. Jackson v. First Nat'l Bank, 430 F.2d 1200, 1970 U.S. App. LEXIS 7402 (5th Cir. 1970), cert. denied, 401 U.S. 947, 91 S. Ct. 933, 28 L. Ed. 2d 230, 1971 U.S. LEXIS 3055 (1971).

OPINIONS OF THE ATTORNEY GENERAL

Participation of bank with brokerage in offering investment program. — Actions of a bank, participating with a brokerage in offering a particular type of investment program, do not constitute the business of banking in violation of O.C.G.A. § 7-1-241 or O.C.G.A. § 7-1-604. 1981 Op. Att'y Gen. No. 81-59.

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, §§ 19 et seq., 178.

C.J.S.

9 C.J.S., Banks and Banking, §§ 29, 44, 45.

ALR.

What is a "branch bank" within statutes regulating the establishment of branch banks, 23 A.L.R.3d 683.

7-1-605. Bank holding companies; when company deemed to control bank or company; subsidiaries of bank holding companies.

(a)(1) Except as provided in paragraph (5) of this subsection, "bank holding company" means any company which has control over any bank or over any company that is or becomes a bank holding company by virtue of this part.

(2) Any company has "control" over a bank or over any company if:

(A) The company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the bank or company;

(B) The company controls in any manner the election of a majority of the directors or trustees of the bank or company;

(C) The commissioner determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company; or

(D) The company directly or indirectly owns, controls, or has power to vote more than 10 percent but less than 25 percent of any class of voting securities of the bank or company if no other company or person will own, control, or hold the power to vote a greater percentage of that class of voting securities immediately after the transaction.

(3) For the purposes of any proceeding under subparagraph (C) of paragraph (2) of this subsection, there is a presumption that any company which directly or indirectly owns, controls, or has power to vote less than 5 percent of any class of voting securities of a given bank or company does not have control over that bank or company.

(4) In any administrative or judicial proceeding under this part, other than a proceeding under subparagraph (C) of paragraph (2) of this subsection, a company may not be held to have had control over any given bank or company at any given time unless that company, at the time in question, directly or indirectly owned, controlled, or had power to vote 5 percent or more of any class of voting securities of the bank or company, or had already been found to have control in a proceeding under subparagraph (C) of paragraph (2) of this subsection.

(5) Notwithstanding any other provision of this subsection:

(A) No bank and no company owning or controlling voting shares of a bank is a bank holding company by virtue of its ownership or control of shares in a fiduciary capacity, except as provided in paragraphs (2) and (3) of subsection (c) of this Code section. For the purpose of the preceding sentence, bank shares shall not be deemed to have been acquired in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto; and

(B) No company is a bank holding company by virtue of its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith until two years after the date of acquisition.

(6) For the purposes of this part, any successor to a bank holding company shall be deemed to be a bank holding company from the date on which the predecessor company became a bank holding company.

(b) As used in this Code section and in Code Sections 7-1-606 through 7-1-608, the term:

(1) "Bank" means the same as defined in Code Section 7-1-600.

(2) "Company" means any corporation, limited liability company, partnership, business trust, association, commercial entity regardless of organizational structure, or any other trust unless by its terms it must terminate within 25 years or not later than 21 years and ten months after the death of individuals living on the effective date of the trust, but shall not include any corporation the majority of the shares of which are owned by the United States or by any state or any qualified family partnership as defined in the federal Bank Holding Company Act of 1956, as amended.

(3) The "Georgia Bank Holding Company Act" shall mean and include this Code section and Code Sections 7-1-606 through 7-1-608 together with Part 19 of this article and any applicable rules and regulations.

(4) "Subsidiary," with respect to a specified bank holding company, means:

(A) Any company 25 percent or more of whose voting shares (excluding shares owned by the United States or by any company wholly owned by the United States) is directly or indirectly owned or controlled by such bank holding company or is held by it with power to vote;

(B) Any company the election of a majority of whose directors is controlled in any manner by such bank holding company; or

(C) Any company with respect to the management or policies of which such bank holding company has the power, directly or indirectly, to exercise a controlling influence, as determined by the commissioner after notice and opportunity for hearing.

(5) "Successor" shall include any company which acquires directly or indirectly from a bank holding company shares of any bank, when and if the relationship between such company and the bank holding company is such that the transaction effects no substantial change in the control of the bank or beneficial ownership of such shares of such bank. The commissioner may, by regulation, further define the term "successor" to the extent necessary to prevent evasion of the purposes of this part.

(c) For the purposes of this part:

(1) Shares owned or controlled by any subsidiary of a bank holding company shall be deemed to be indirectly owned or controlled by such bank holding company;

(2) Shares held or controlled directly or indirectly by trustees for the benefit of:

(A) A company;

(B) The shareholders or members of a company; or

(C) The employees (whether exclusively or not) of a company;

shall be deemed to be controlled by such company; and

(3) Shares transferred by any bank holding company (or by the company which, but for such transfer, would be a bank holding company) directly or indirectly to any transferee that is indebted to the transferor, or has one or more officers, directors, trustees, or beneficiaries in common with or subject to control by the transferor, shall be deemed to be indirectly owned or controlled by the transferor unless the commissioner, after opportunity for hearing, determines that the transferor is not in fact capable of controlling the transferee.

History.

Code 1933, § 13-207, enacted by Ga. L. 1960, p. 67, § 6; Ga. L. 1973, p. 281, § 1; Ga. L. 1976, p. 168, § 2; Ga. L. 1998, p. 795, § 26; Ga. L. 1999, p. 674, § 17; Ga. L. 2016, p. 390, § 7-13/HB 811; Ga. L. 2022, p. 220, § 15/HB 891.

Amendments.

The 2022 amendment, effective July 1, 2022, deleted "or" from the end of subparagraph (a)(2)(B), substituted "; or" for a period at the end of subparagraph (a)(2)(C), added subparagraph (a)(2)(D), deleted ", except that this limitation is applicable in the case of a bank or company acquiring such shares prior to July 1, 1976, only if the bank or company has the right, consistent with its obligations under the instrument, agreement, or other arrangement establishing the fiduciary relationship, to divest itself of such voting rights and fails to exercise that right to divest within a reasonable period not to exceed one year after July 1, 1976" following "thereto" in subparagraph (a)(5)(A); and deleted "after July 1, 1976," following "Shares transferred" in paragraph (c)(3).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1997, in subsection (a), "subparagraph (C) of paragraph (2)" was substituted for "subparagraph (2)(C)" in paragraphs (a)(3) and (a)(4).

Pursuant to Code Section 28-9-5, in 1999, "this Code section and Code Sections 7-1-606 through 7-1-608" was substituted for "Code Sections 7-1-605 through 7-1-608" in paragraph (b)(3).

Law reviews.

For comment on United States v. Citizens & S. Nat'l Bank, 422 U.S. 86, 95 S. Ct. 2099, 45 L. Ed. 2d 41 (1975), see 10 Ga. L. Rev. 641 (1976).

For article, "Bank Directors: Understanding Their Role, Responsibility and Liability," see 40 Mercer L. Rev. 587 (1989).

OPINIONS OF THE ATTORNEY GENERAL

Commissioner has discretion to promulgate rules for regulation and examination. — Amendments to Georgia bank holding company statutes commit promulgation of rules for regulation, examination and control of bank holding companies doing business in Georgia to discretion of the commissioner, who should exercise the commissioner's discretion in the issuance of rules and regulations to extent necessary to effectuate the purposes of the bank holding company statutes. 1976 Op. Att'y Gen. No. 76-76.

Acquisition of security interest in bank's shares clearly brings transactions within the scope of former Code 1933, § 13-207 (see now O.C.G.A. § 7-1-605). 1976 Op. Att'y Gen. No. 76-26.

Unless shareholders are mere intermediaries shares not attributed to company. — Former Code 1933, § 13-207 (see now O.C.G.A. § 7-1-605) does not attribute to a company shares of stock of a bank held by the company's shareholders, unless the company is in control of the arrangement or is exercising control over the bank, using the company's shareholder as an intermediary. 1976 Op. Att'y Gen. No. 76-76.

Branch banking and bank holding company restrictions apply to bank facilities conducting only trust business. 1980 Op. Att'y Gen. No. 80-156.

Independent trustees of profit-sharing plan may be deemed a bank holding company. — Independent trustees of the profit-sharing plan for the employees of a bank would, in the event that the trust should directly or indirectly own, control, or hold, with the power to vote, more than five percent of the voting shares of two or more banks, be a bank holding company within the meaning of Georgia bank holding company laws. 1974 Op. Att'y Gen. No. 74-151.

Agreements not within subparagraph (a)(5)(B). — Agreement made in the course of securing previously contracted debt which transfers control of the shares of stock in the bank does not fall within the reach of former Code 1933, § 13-207 (see now O.C.G.A. § 7-1-605) provided that shares are disposed of within two years from the date of acquisition. 1976 Op. Att'y Gen. No. 76-26.

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 21.

7-1-606. Prohibited activities of bank holding company or subsidiary; exceptions.

(a)(1) It shall be unlawful, except with the prior approval of the commissioner:

(A) For any action to be taken that causes any company to become a bank holding company;

(B) For any action to be taken that causes a bank to become a subsidiary of a bank holding company;

(C) For any bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank if, after such acquisition, such company will directly or indirectly own or control 5 percent or more of the voting shares of such bank;

(D) For any bank holding company or subsidiary thereof, other than a bank, to acquire all or substantially all of the assets of a bank;

(E) For any bank holding company to merge or consolidate with, or enter into a share exchange with, any other bank holding company; or

(F) For any bank holding company to take any action which would violate the federal Bank Holding Company Act of 1956, as amended.

(2) Notwithstanding paragraph (1) of this subsection, these prohibitions shall not apply to:

(A) Shares acquired by a bank:

(i) In good faith in a fiduciary capacity, except where such shares are held under a trust that constitutes a company as defined in paragraph (2) of subsection (b) of Code Section 7-1-605 and except as provided in paragraphs (2) and (3) of subsection (c) of Code Section 7-1-605; or

(ii) In the regular course of securing or collecting a debt previously contracted in good faith, but such shares in securing or collecting any such previously contracted debt shall be disposed of within a period of two years from the date on which they were acquired;

(B) Additional shares acquired by a bank holding company in a bank in which such bank holding company owned or controlled a majority of the voting shares prior to such acquisition;

(C) A bank holding company of a national bank with its main office in Georgia acquiring a Georgia bank holding company, as such term is defined in paragraph (10) of Code Section 7-1-621, provided that such bank holding company has notified the department upon filing an application with the appropriate federal or state financial regulator and that the department has not objected to the transaction in accordance with the provisions of this subparagraph. The notification requirements of this subparagraph shall be satisfied by furnishing the department with a copy of the application or applications filed with the applicable bank supervisory agencies seeking approval for the proposed transaction and such other information as the department may request. In addition, the parties to such transaction shall file with the department a certificate of approval of the acquisition by the appropriate supervisory agencies prior to consummation of the transaction. The department may, for good cause shown, object to the transaction by letter to the bank holding company of a national bank with its main office in Georgia, the Georgia bank holding company, and to the appropriate federal or state financial regulator before consummation of the transaction. In the event of such objection, the acquisition cannot be consummated without the parties obtaining the approval of the department. Unless the department has objected to the transaction, the department shall forward to

the Secretary of State written confirmation that the requirements of this subparagraph have been satisfied; or

(D) Transactions for which the department has established by rule, regulation, or written policy a streamlined or alternative procedure, if such procedure specifically dispenses with the need for approval by the commissioner.

For the purpose of this paragraph, bank shares shall not be deemed to have been acquired in good faith in a fiduciary capacity if the acquiring bank or company has sole discretionary authority to exercise voting rights with respect thereto; but, in such instances, acquisitions may be made without prior approval of the commissioner if the commissioner, upon application filed within 90 days after the shares are acquired, approves retention or, if retention is disapproved, the acquiring bank disposes of the shares or its sole discretionary voting rights within two years after issuance of the order of disapproval.

(b)(1) The commissioner shall not approve nor shall any other procedure authorize:

(A) Any acquisition or merger or share exchange or consolidation under this Code section which would result in a monopoly or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the State of Georgia; or

(B) Any other proposed acquisition or merger or share exchange or consolidation under this Code section whose effect in any section of the state may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

(2) In every case, the department shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned.

(c) Reserved.

(d) The commissioner shall not grant any such contemplated approval until he or she shall first cause reasonable public notice of the proposed action to be given in the area to be affected and until he or she shall first afford to the public an opportunity to submit, for the commissioner's consideration, information, objections, and opinions as to the proposed action and its effect. The notice requirement may not

apply in the case of a streamlined procedure where the holding company meets certain qualifying criteria established by rule, regulation, or written policy of the department.

(e) Notwithstanding any other provisions of this part, a bank holding company which lawfully controls a bank or has received the requisite approvals under this Code section to acquire control of a bank may, with the approval of the commissioner, or as otherwise provided in this chapter or by departmental rule or regulation, either at the time such control is obtained or at any time thereafter, merge or consolidate such bank with another of such bank holding company's banking subsidiaries or have another of such bank holding company's banking subsidiaries acquire all or substantially all of the assets of such bank and consequently operate as a branch office of such other banking subsidiary. Nothing in this subsection shall be deemed to supersede, rescind, or modify any provision, requirement, or condition of this Code section which would otherwise be applicable to any acquisition of a banking subsidiary by a bank holding company under this Code section, nor shall it be deemed to supersede, rescind, or modify any provision, requirement, or condition of Part 14, 16, 19, or 20 of this article which would otherwise be applicable to the merger of banks or the acquisition or sale of all or substantially all of the assets of a bank.

History.

Code 1933, § 13-207.1, enacted by Ga. L. 1976, p. 168, § 3; Ga. L. 1980, p. 542, § 1; Ga. L. 1985, p. 1506, § 1; Ga. L. 1997, p. 143, § 7; Ga. L. 1998, p. 795, § 27; Ga. L. 1999, p. 674, § 17; Ga. L. 2007, p. 502, § 14/SB 70; Ga. L. 2022, p. 220, § 16/HB 891; Ga. L. 2024, p. 354, § 1-8/HB 876, effective July 1, 2024.

Amendments.

The 2022 amendment, effective July 1, 2022, substituted "It" for "On and after July 1, 1976, it" at the beginning of paragraph (a)(1), substituted "these prohibitions" for "this prohibition" in the beginning of paragraph (a)(2), substituted "such shares" for "any shares acquired after July 1, 1976," in division (a)(2)(A)(ii), deleted "or" from the end of subparagraph (a)(2)(B), added subparagraph (a)(2)(C), redesignated former subparagraph (a)(2)(C) as subparagraph (a)(2)(D); deleted "and the convenience and needs of the community to be served" from the end of paragraph (b)(2); substituted "Reserved" for "Nothing contained in this Code section shall affect the obligation of any person or company to comply with the provisions of any order of any court or of the commissioner entered prior to July 1, 1976" in subsection (c); and substituted "Part 14, 16," for "Part 14, 15, 16" in the last sentence in subsection (e).

The 2024 amendment, effective July 1, 2024, in subparagraph (a)(2)(C), substituted "provided that such bank holding company has notified" for "shall notify" and added "and that the department has not objected to the transaction in accordance with the provisions of this subparagraph" in the first sentence, substituted "with the applicable" for "with applicable" in the second sentence, inserted "to such transaction" and deleted "and the Secretary of State" preceding "a certificate" in the third sentence, and added the sixth sentence.

U.S. Code.

The federal Bank Holding Company Act, referred to in subparagraph (a)(1)(F) of this Code section, is codified as 12 U.S.C. § 1841 et seq.

Law reviews.

For annual survey of law of business associations, see 43 Mercer L. Rev. 85 (1991).

JUDICIAL DECISIONS

Purpose of subparagraph (a)(1)(C). — It is unlawful for any bank holding company to acquire or hold direct or indirect ownership or control of more than five percent of the voting shares of any bank. The purpose of the law is to preserve independence of such banks from the holding company. Independent Bankers Ass'n v. Board of Governors, 516 F.2d 1206, 170 U.S. App. D.C. 278, 1975 U.S. App. LEXIS 13397 (D.C. Cir. 1975) (decided under former Code 1933, § 13-207(a)(2) as it read prior to revision by Ga. L. 1976, p. 168, § 3).

Acquisition and operation of branch banks by holding company's subsidiary. — Although a bank holding company may change the corporate structure of its banking subsidiaries through merger, consolidation, or purchase, and may continue all of the banking activities of the component banks, a bank holding company may not, through its banking subsidiary, acquire "branch banks" and continue to operate them as such. First Nat'l Bank of Commerce v. Community Bankers Ass'n, 260 Ga. 371, 394 S.E.2d 95, 1990 Ga. LEXIS 288 (1990).

"Branch" not necessarily interchangeable with "bank". — Term "branch", as used in O.C.G.A. § 7-1-606(e), is not necessarily interchangeable with "bank". Community Bankers Ass'n v. First Nat'l Bank of Commerce, 193 Ga. App. 569, 388 S.E.2d 387, 1989 Ga. App. LEXIS 1563 (1989), aff'd, 260 Ga. 371, 394 S.E.2d 95, 1990 Ga. LEXIS 288 (1990).

Merger with branch not approved without merging entire bank. — Nothing in the Code expresses or implies any intent to permit approval of a bank holding company's merging or consolidating with, or acquiring control of, a branch bank by itself without merging or consolidating with, or acquiring control of, the entire bank. Community Bankers Ass'n v. First Nat'l Bank of Commerce, 193 Ga. App. 569, 388 S.E.2d 387, 1989 Ga. App. LEXIS 1563 (1989), aff'd, 260 Ga. 371, 394 S.E.2d 95, 1990 Ga. LEXIS 288 (1990).

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Exemption to branching prohibition. — It seems clear that O.C.G.A. § 7-1-606(e) creates at least a limited exception to branching prohibition of O.C.G.A. § 7-1-601(c). 1981 Op. Att'y Gen. No. 81-74.

Operation of savings and loan across county lines. — Only branch of a savings and loan association located in the county affected, which is lawfully controlled by a bank holding company or as to which the bank holding company has received the requisite approvals to acquire control, may be lawfully acquired by a banking subsidiary of a bank holding company through a purchase and assumption and operated across county lines as a branch of the banking subsidiary; provided, such acquisition is approved by the commissioner of banking and finance. 1988 Op. Att'y Gen. No. 88-13.

Merger of subsidiaries of holding company across county lines. — With respect to circumstances under which a bank holding company may merge two subsidiaries across county lines, there are two requirements: (1) the commissioner must approve, and (2) merger must take place at the time the holding company acquires the bank which is to become a branch bank following merger. 1981 Op. Att'y Gen. No. 81-74.

Careful phrasing of O.C.G.A. § 7-1-606(e) and its placement into existing statutes are inconsistent with an intent to authorize bank holding companies generally to merge their subsidiaries across county lines. 1981 Op. Att'y Gen. No. 81-74.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 21, 194 et seq., 234.

7-1-607. Registration, reporting, and examination of bank holding companies that control a bank.

(a) On an annual basis, each bank holding company that controls a bank chartered by the department shall register with the commissioner on forms provided or prescribed by him or her, which may include such information with respect to the financial condition, operation, management, and intercompany relationships of the bank holding company and its subsidiaries and related matters as the commissioner may deem necessary or appropriate to carry out the purposes of this part.

(b) The commissioner is authorized to issue such regulations and orders as may be necessary to enable him or her to administer and carry out the purposes of this Code section.

(c) The commissioner from time to time may require reports under oath to keep him or her informed as to whether the provisions of this Code section and such regulations and orders thereunder issued by him or her have been complied with; may make examinations of each bank holding company and each subsidiary thereof, the cost of which may be assessed against and paid by such holding company; and shall, as far as possible, use the reports of examination made by the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System for the purposes of this Code section.

(d) Bank holding companies that control a bank chartered by the department and subsidiaries or affiliates thereof shall be regulated, controlled, and examined by the commissioner to the same extent that he or she regulates, controls, and examines state banks under his or her jurisdiction, which would be in addition to the authority of the Federal Reserve Board as fixed by the laws of the United States. The commissioner is authorized, directed, and required to promulgate, with precision, rules and regulations and investment procedures in the regulation, examination, and control of bank holding companies that control a bank chartered by the department.

History.
Code 1933, § 13-207.2, enacted by Ga. L. 1976, p. 168, § 4; Ga. L. 1999, p. 674, § 17; Ga. L. 2016, p. 390, § 2-16/HB 811; Ga. L. 2017, p. 193, § 13/HB 143; Ga. L. 2022, p. 220, § 17/HB 891.

Amendments.
The 2022 amendment, effective July 1, 2022, substituted "an annual basis" for "On July 1, 1976, and annually thereafter on dates established by the commissioner" in subsection (a).

OPINIONS OF THE ATTORNEY GENERAL

Commissioner has discretion to promulgate rules for regulation and examination. — Amendments to Georgia bank holding company statutes commit promulgation of rules for regulation, examination and control of bank holding companies doing business in Georgia to discretion of the commissioner, who should exercise the commissioner's discretion in issuance of rules and regulations to the extent necessary to effectuate the purposes of bank holding company statutes. 1976 Op. Att'y Gen. No. 76-76.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 21.
11 Am. Jur. 2d, Banks and Financial Institutions, §§ 1192, 1194.

7-1-608. Bank holding companies; lawful and unlawful acquisitions; waiver.

(a) It shall be unlawful for a bank holding company to acquire direct or indirect ownership or control of any voting shares of any bank, including any federal savings and loan association or federal savings bank, if, after such acquisition, such bank holding company will directly or indirectly own or control 5 percent or more of the voting shares of such bank, or for any company to become a bank holding company as a result of the acquisition of control of such bank, unless:

(1) The bank being acquired is either a "bank" for the purposes of the federal Bank Holding Company Act of 1956, as amended (12 U.S.C. Section 1841), or a "savings and loan," a "state savings and loan," a "savings bank," or a "federal savings bank" whose deposits are insured under a federal deposit insurance program; and

(2) Such bank of the type described in paragraph (1) of this subsection has been in existence and continuously operating or incorporated as a bank for a period of three years or more prior to the date of acquisition.

(b) Notwithstanding the provisions of this Code section, the following activities are permitted. These activities regarding acquisitions by purchase and by formation are to be considered exceptions to the three-year age requirement contained in paragraph (2) of subsection (a) of this Code section:

(1) A bank holding company may acquire all or substantially all of the shares of a bank or trust company organized solely for the purpose of facilitating the acquisition of a federal or state chartered bank, savings and loan association, savings bank, or other corporation doing a banking business in this state or the trust department of such institutions, which has been in existence and continuously

operating or incorporated as such an institution or exercising trust powers for the minimum period prescribed in subsection (a) of this Code section;

(2) A company may become a bank holding company by virtue of acquiring control of a bank if neither the company nor any other company controlled by or controlling such company controls any other bank domiciled in this state or elsewhere;

(3) A bank holding company may acquire control through formation of a de novo bank in Georgia, provided that departmental approval and any required federal approvals are obtained; and

(4) A de novo bank established or formed pursuant to paragraph (3) of this subsection shall be subject to the three-year age requirement contained in paragraph (2) of subsection (a) of this Code section. A bank holding company may, however, merge or consolidate a de novo bank which may be less than three years old and that is established pursuant to paragraph (3) of this subsection into another bank owned by that holding company.

(c) The department may waive the application of the three-year age requirement in the case of a bank that has been found by federal or state regulators to be:

(1) Insolvent or in an unsafe or unsound condition to transact its business;

(2) In a condition where it has generally suspended payment of its obligations without authority of law; or

(3) Under any plan, order, or agreement of any kind with the FDIC under Section 12, 13, or 38 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1811, et seq., as amended.

(d) The commissioner may waive the three-year age requirement contained in paragraph (2) of subsection (a) of this Code section if the commissioner determines that the proposed acquisition will result in material improvement of the safety and soundness of an institution that is in less than satisfactory condition at the time of the proposed acquisition. No such waiver will be authorized unless the commissioner determines that the proposed acquisition will not present undue safety and soundness risks to the financial institutions involved. In making such determination, the commissioner shall consider the financial condition and regulatory safety and soundness ratings of the institutions affected and the ability of management to administer and supervise the resulting institution.

History. Code 1933, § 13-207.3, enacted by Ga. L. 1976, p. 168, § 5; Ga. L. 1980, p. 1081, § 1; Ga. L. 1981, p. 1008, § 1; Ga. L. 1983,

p. 602, § 15; Ga. L. 1985, p. 246, § 2; Ga. L. 1987, p. 1586, § 10; Ga. L. 1993, p. 917, § 5; Ga. L. 1996, p. 848, § 11; Ga. L. 1997, p. 143, § 7; Ga. L. 1999, p. 674, § 17; Ga. L. 2000, p. 174, § 14; Ga. L. 2002, p. 670, § 1; Ga. L. 2007, p. 502, § 15/SB 70; Ga. L. 2015, p. 344, § 14/HB 184; Ga. L. 2016, p. 390, § 7-4/HB 811; Ga. L. 2019, p. 828, § 17/HB 185.

Law reviews.

For article discussing compliance with Federal Securities Act of 1933 in bank acquisitions and the issuance of securities of bank holding companies, see 14 Ga. St. B.J. 114 (1978).

OPINIONS OF THE ATTORNEY GENERAL

Scope of application. — Prohibition of former Code 1933, § 13-207.3 applies equally to out-of-state banks and bank holding companies and to those organized in Georgia, or, in the case of national banks, located in Georgia. 1980 Op. Att'y Gen. No. 80-156.

Former Code 1933, § 13-207.3 was not designed to prohibit "phantom bank reorganizations." 1980 Op. Att'y Gen. No. 80-156.

Former Code 1933, § 13-207.3 prohibits transactions whereby a bank's trust department becomes a separate corporation wholly owned by the bank or the bank's parent. 1980 Op. Att'y Gen. No. 80-156.

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, §§ 518, 613.

7-1-609. Civil actions by department to enforce part.

The department may bring an appropriate civil action to enforce any provision of this part, whether by injunction or otherwise, in any superior court of this state having jurisdiction of one or more of the defendants.

History.

Code 1933, § 13-208, enacted by Ga. L. 1960, p. 67, § 7; Ga. L. 1970, p. 954, § 6.

JUDICIAL DECISIONS

Construction of word "may" in section. — Rule for construction of word "may" in a statute is, that when such statute concerns public interest, or affects rights of third persons, the word "may," shall be construed to mean "must" or "shall." Independent Bankers Ass'n v. Dunn, 230 Ga. 345, 197 S.E.2d 129, 1973 Ga. LEXIS 898 (1973).

Commissioner may proceed against state or national banks. — It is clear that the superintendent (now commissioner) is authorized to bring an action to enjoin a state bank for violation of the state's branching laws and the superintendent is likewise authorized to proceed against national banks for violation of Georgia's laws. Jackson v. First Nat'l Bank, 349 F.2d 71, 1965 U.S. App. LEXIS 4820 (5th Cir. 1965).

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, §§ 144, 154.

7-1-610. National bank rights.

National banks shall have the same but no greater rights under or by virtue of this part than the rights granted to banks and trust companies organized under the laws of this state.

History.
Ga. L. 1960, p. 67, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 1 et seq.

C.J.S.
9 C.J.S., Banks and Banking, § 1 et seq.

7-1-611. Penalties for violations.

Any bank, bank holding company, or company (as defined in Code Section 7-1-605) which violates subsection (a) of Code Section 7-1-601 or any provision of Code Section 7-1-602, Code Section 7-1-603, or Code Sections 7-1-605 through 7-1-608 shall be subject to civil monetary penalties of not less than $500.00 nor more than $5,000.00 unless it shall cease and desist therefrom within 60 days after notice of any such violation served on it by the department. Each day on which such violation occurs shall constitute a separate offense.

History.
Code 1933, § 13-9938, enacted by Ga. L. 1960, p. 67, § 8; Ga. L. 2000, p. 136, § 7; Ga. L. 2016, p. 390, § 7-14/HB 811.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, § 32.

7-1-612. [Reserved] Power of banks to contract with other banks for trust services.

History.
Code 1981, § 7-1-612, enacted by Ga. L. 1983, p. 602, § 16; Ga. L. 1986, p. 1244, § 2; repealed by Ga. L. 2023, p. 651, § 7/HB 55, effective July 1, 2023.

Editor's notes.
Ga. L. 2023, p. 651, § 7/HB 55, repealed and reserved this Code section, effective July 1, 2023.

PART 19

INTERSTATE ACQUISITIONS OF BANKS AND BANK HOLDING COMPANIES

Law reviews.

For article, "Georgia's Interstate Banking Legislation," see 20 Ga. St. B.J. 186 (1984).

For note on the 1994 amendments of Code Sections 7-1-620 to 7-1-626 and enactment of Code Section 7-1-627 (now repealed) of this part, prior to the 1996 revision of this part, see 11 Ga. St. U.L. Rev. 50 (1994).

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 8 et seq.

7-1-620. Purpose of this part.

This part governs the acquisition of banks having banking offices in Georgia by bank holding companies controlling bank subsidiaries having banking offices outside this state. It further governs the acquisition of banks having banking offices outside this state by bank holding companies controlling bank subsidiaries having banking offices in Georgia. It sets forth application, notice, and other related requirements. Acquisitions of banks having banking offices only in Georgia by bank holding companies controlling only bank subsidiaries having banking offices solely in Georgia are governed by the provisions of Code Sections 7-1-605 through 7-1-608.

History.

Code 1981, § 7-1-620, enacted by Ga. L. 1996, p. 279, § 1; Ga. L. 2004, p. 631, § 7; Ga. L. 2016, p. 390, § 2-17/HB 811.

Editor's notes.

Ga. L. 1996, p. 279, § 1, redesignated former Code Section 7-1-620 as present Code Section 7-1-621.

Law reviews.

For review of 1996 banking and finance legislation, see 13 Ga. St. U.L. Rev. 1.

7-1-621. Definitions.

As used in this part, the term:

(1) "Acquire," as applied to a bank holding company, means any of the following actions or transactions:

(A) The merger or consolidation with another bank holding company;

(B) The acquisition of the direct or indirect ownership or control of voting shares of another bank holding company or bank if, after such acquisition, such bank holding company will directly or indirectly own or control more than 5 percent of any class of voting shares of such bank holding company or bank;

(C) The direct or indirect acquisition of all or substantially all of the assets of another bank holding company or bank; or

(D) The taking of any other action that would result in the direct or indirect control of another bank holding company or bank.

"Acquire" shall also include a transaction where a bank subsidiary of a bank holding company merges or consolidates with, or acquires all or substantially all of the assets of, another bank.

(2) "Bank" means any "insured bank" as such term is defined in 12 U.S.C. Section 1813(h) of the Federal Deposit Insurance Act or any institution eligible to become such, provided that the term "bank" shall not include any "foreign bank" (which is defined as in 12 U.S.C. Section 3101 of the International Banking Act of 1978). The term "bank" as used in this part shall include any savings and loan association or state savings and loan association as such terms are defined in Code Section 7-1-4 and shall include federal savings banks and similar banking entities chartered under the laws of any state and whose deposits are insured under a federal deposit insurance program.

(3) "Bank holding company" means any company which is a bank holding company under Code Section 7-1-605.

(4) "Bank supervisory agency" means:

(A) The Office of Comptroller of Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to those agencies; and

(B) The agency of a state with primary responsibility for chartering and supervising banks.

(5) "Banking office" or "banking location" means a main office or a branch office as such terms are defined in this chapter or any other office at which a bank accepts deposits.

(6) "Commissioner" means the commissioner of banking and finance then in office and, where appropriate, all of his or her successors and predecessors in office.

(7) "Control" means that which is set forth in Code Section 7-1-605.

(8) "Deposits" means, with respect to a bank, all demand, time, and savings deposits of individuals, partnerships, corporations, the United States government, and states and political subdivisions in the United States. Determinations of deposits shall be made by reference to regulatory reports of condition or similar reports filed by such bank with state or federal regulatory authorities.

(9) "Georgia bank" means a bank whose home state is Georgia.

(10) "Georgia bank holding company" means a bank holding company that:

(A) Has its principal place of business in the State of Georgia; and

(B) Is not controlled by a bank holding company other than a Georgia bank holding company.

(11) "Georgia state bank" means a bank chartered under the laws of the State of Georgia.

(12) "Home state" means any state in the United States:

(A) With respect to a state bank, the state by which the bank is chartered;

(B) With respect to a national bank, the state in which the main office of the bank is located; or

(C) With respect to a foreign bank, the state determined to be the home state of the foreign bank under 12 U.S.C. Section 3103(c) of the International Banking Act.

(13) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is chartered.

(14) "Host state" means a state, other than the home state of a bank, in which the bank maintains or seeks to establish and maintain a branch.

(15) "Insured depository institution" shall have the same meaning as set forth in 12 U.S.C. Section 1813(c)(2) and (3) of the Federal Deposit Insurance Act, provided that the term "insured depository institution" shall not include any "foreign bank" (which is defined as in 12 U.S.C. Section 3101 of the International Banking Act of 1978).

(16) "Interstate merger transaction" means:

(A) The merger or consolidation of banks with different home states and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or

(B) The purchase of all or substantially all of the assets of a bank whose home state is different from the home state of the acquiring bank.

(17) "Out-of-state bank" means a bank whose home state is not Georgia, but the term does not include a foreign bank.

(18) "Out-of-state bank holding company" means a bank holding company other than a Georgia bank holding company.

(19) "Out-of-state state bank" means a bank chartered under the laws of a state other than Georgia.

(20) "Principal place of business" of a bank holding company means the state of charter in which the aggregate deposits of the bank subsidiaries of such bank holding company are largest.

(21) "Resulting bank" means a bank that has resulted from an interstate merger transaction under Part 20 of this article.

(22) "State" means any state of the United States, including the District of Columbia.

(23) "Subsidiary" means that which is set forth in Code Section 7-1-605.

History.

Code 1981, § 7-1-620, enacted by Ga. L. 1984, p. 1467, § 1; Ga. L. 1987, p. 251, § 1; Ga. L. 1988, p. 13, § 7; Ga. L. 1994, p. 215, § 1; Code 1981, § 7-1-621, as redesignated by Ga. L. 1996, p. 279, § 1; Ga. L. 1997, p. 143, § 7; Ga. L. 1999, p. 674, § 18; Ga. L. 2000, p. 174, § 15; Ga. L. 2015, p. 5, § 7/HB 90; Ga. L. 2016, p. 390, § 2-18/HB 811; Ga. L. 2017, p. 193, § 14/HB 143.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1996, "banking and finance" was substituted for "the Department of Banking and Finance" in paragraph (6) and "Federal Deposit Insurance" was substituted for "FDI" in paragraph (15).

Editor's notes.

Ga. L. 1996, p. 279, § 1, effective April 1, 1996, redesignated former Code Section 7-1-621 as present Code Section 7-1-622.

Law reviews.

For article, "Bank Directors: Understanding Their Role, Responsibility and Liability," see 40 Mercer L. Rev. 587 (1989).

7-1-622. Permissible acquisitions; ruling by department; scope of part.

(a) A bank holding company may acquire a bank in Georgia, and a bank holding company having its principal place of business in this state may acquire a bank having banking offices in another state, upon compliance with the provisions of Code Sections 7-1-605 through 7-1-611 and in particular Code Section 7-1-606, which provisions shall be expressly applicable to any such acquisition. Compliance with all applicable regulations, payment of applicable fees, and registration of the holding company shall be required. The restrictions of this Code section shall apply.

(b) Notwithstanding anything contained in subsection (a) of this Code section and subject to the permitted acquisitions of subsection (b) of Code Section 7-1-608, no bank or bank holding company may:

(1) Directly or indirectly acquire a Georgia bank unless such bank has been in existence and continuously operated or incorporated as a bank for a period of three years or more prior to the date of acquisition. Notwithstanding the foregoing, nothing shall prohibit an

out-of-state bank holding company from acquiring all or substantially all of the shares of a Georgia bank organized solely for the purpose of facilitating the acquisition of a bank which has been in existence and continuously operated as a bank for the requisite three-year period; or

(2) Directly or indirectly acquire a bank having banking offices in Georgia if the applicant (including all insured depository institutions which are affiliates of the applicant), upon consummation of the acquisition, would control 30 percent or more of the total amount of deposits of insured depository institutions in this state. The commissioner may by regulation adopt a procedure whereby the foregoing limitations on concentration of deposits may be waived upon showing of good cause. This restriction shall not apply, in the discretion of the commissioner, to transactions complying with paragraph (1) of subsection (b) of Code Section 7-1-623.

(c) The commissioner must rule on any application seeking approval to engage in a transaction under this Code section not later than 90 days following the date of submission of a completed application seeking such approval. If the commissioner decides to hold a public hearing in connection with the application, the time limit specified may be extended to 30 days after the conclusion of the hearing.

(d) If any acquisition involves or takes the form of an interstate merger transaction, the banks involved must comply with filing and other requirements in Part 20 of this article in addition to subsection (b) of this Code section.

(e) This part is not intended to discriminate against out-of-state bank holding companies or against foreign bank holding companies in any manner that would violate Section 3(d) of the Bank Holding Company Act, as amended by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994.

History.

Code 1981, § 7-1-621, enacted by Ga. L. 1984, p. 1467, § 1; Ga. L. 1994, p. 215, § 2; Code 1981, § 7-1-622, as redesignated by Ga. L. 1996, p. 279, § 1; Ga. L. 1997, p. 485, § 22; Ga. L. 1999, p. 674, § 19; Ga. L. 2002, p. 670, § 2; Ga. L. 2022, p. 220, § 18/HB 891; Ga. L. 2023, p. 651, § 8/HB 55, effective July 1, 2023.

Amendments.

The 2022 amendment, effective July 1, 2022, deleted former subparagraph (b)(2)(A), which read: "Immediately before the consummation of the acquisition for which an application is filed, the applicant (including any insured depository institution affiliate of the applicant) controls any insured depository institution or any branch of an insured depository institution in this state; and", redesignated the existing provisions of the introductory language of paragraph (b)(2) and subparagraph (b)(2)(B) as paragraph (b)(2), substituted "if the" for "if: The" in paragraph (b)(2); and deleted the former last sentence in subsection (c), which read: "If the commissioner fails to rule on the application within the requisite period, the proposed transaction shall stand approved.".

The 2023 amendment, effective July 1, 2023, substituted "Code Sections 7-1-605 through 7-1-611" for "Code Sections

7-1-605 through 7-1-612" in the first sentence of subsection (a).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1996, "article" was substituted for "chapter" in subsection (d).

Editor's notes.

Ga. L. 1996, p. 279, § 1, effective April 1, 1996, redesignated former Code Section 7-1-622 as present Code Section 7-1-623.

7-1-623. Acquisitions not requiring department approval; notifications.

(a) Subject to any applicable restrictions, an out-of-state bank holding company having a bank subsidiary with banking offices in Georgia may acquire a bank that does not have banking offices in this state, and an out-of-state bank holding company may acquire an out-of-state bank with branch offices in Georgia without the approval of the department.

(b) A bank holding company may engage in the transactions described in paragraphs (1) and (2) of this subsection without the necessity of complying with Code Section 7-1-622, provided that it notifies the department not less than 30 days following the consummation of the transaction.

(1) The acquisition of a Georgia bank, if such acquisition has been consummated with assistance from the Federal Deposit Insurance Corporation under Section 13(c) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. Section 1823(c); or

(2) The acquisition of a Georgia bank, if such acquisition has been consummated in the regular course of securing or collecting a debt previously contracted in good faith, as provided in and subject to the requirements of Section 3(a) of the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C. Section 1842(a). The bank or bank holding company must divest the securities or assets acquired within two years of the date of acquisition. The department may, in its discretion, permit the bank or bank holding company to retain such interest for up to three additional periods of one year each.

(c) An out-of-state bank holding company acquiring a Georgia bank holding company or Georgia state bank shall notify the department upon filing an application with the appropriate federal or state financial regulator. The notification requirements of this subsection shall be satisfied by furnishing the department with a copy of the application or applications filed with the applicable bank supervisory agencies seeking approval for the proposed transaction and such other information as the department shall request. In addition, the parties to such transaction shall file with the department a certificate of approval of the acquisition by the appropriate supervisory agencies prior to consummation of the transaction. The department may, for good cause shown, object to the transaction by letter to the out-of-state bank holding

company, the Georgia bank holding company, and to the appropriate federal or state financial regulator before consummation of the transaction. In the event of such objection, the acquisition cannot be consummated without the parties obtaining the approval of the department. Unless the department has objected to the transaction, the department shall forward to the Secretary of State written confirmation that the requirements of this subsection have been satisfied.

History.
Code 1981, § 7-1-622, enacted by Ga. L. 1984, p. 1467, § 1; Ga. L. 1988, p. 13, § 7; Ga. L. 1994, p. 215, § 3; Code 1981, § 7-1-623, as redesignated by Ga. L. 1996, p. 279, § 1; Ga. L. 1999, p. 674, § 20; Ga. L. 2016, p. 390, § 2-19/HB 811; Ga. L. 2022, p. 220, § 19/HB 891; Ga. L. 2024, p. 354, § 1-9/HB 876, effective July 1, 2024.

Amendments.
The 2022 amendment, effective July 1, 2022, rewrote subsection (a); substituted "The bank" for "If the bank acquired under this provision has banking offices in Georgia, the bank" at the beginning of the second sentence in paragraph (b)(2); and added subsection (c).

The 2024 amendment, effective July 1, 2024, in subsection (a), inserted a comma following "restrictions" and, in subsection (c), near the middle in the second sentence, substituted "with the applicable" for "with applicable"; in the third sentence, inserted "to such transaction" and deleted "and the Secretary of State" preceding "a certificate"; and added the last sentence.

Editor's notes.
Ga. L. 1996, p. 279, § 1, effective April 1, 1996, redesignated former Code Section 7-1-623 as present Code Section 7-1-624.

7-1-624. Prohibited acquisitions.

(a) Except as expressly permitted under this part, Part 20 of this article, or by federal law, no bank holding company may acquire a bank or a bank holding company controlling a bank chartered by the department.

(b) In the event any bank holding company makes an acquisition that is prohibited by this part, the commissioner shall require such bank holding company to divest itself immediately of its direct or indirect ownership or control of any Georgia banks or banking offices located in Georgia. The commissioner shall also have the power to enforce any other prohibitions in this part by requiring divestitures of nonconforming banks, bank holding companies, or assets. Alternatively, the commissioner shall have the power to impose fines and penalties or exercise such other remedies as are provided in this chapter, including, but not limited to, judicial actions.

History.
Code 1981, § 7-1-623, enacted by Ga. L. 1984, p. 1467, § 1; Ga. L. 1985, p. 149, § 7; Ga. L. 1994, p. 215, § 4; Code 1981, § 7-1-624, as redesignated by Ga. L. 1996, p. 279, § 1; Ga. L. 1997, p. 143, § 7; Ga. L. 2016, p. 390, § 2-20/HB 811.

Editor's notes.
Ga. L. 1996, p. 279, § 1, effective April 1, 1996, redesignated former Code Section 7-1-624 as present Code Section 7-1-625.

7-1-625. Provisions applicable to, and qualification of, bank holding companies in state; reciprocal agreements; confidentiality of reports.

(a) Any Georgia bank holding company controlling a bank having banking offices in Georgia and any out-of-state bank holding company controlling a Georgia state bank shall be subject to the provisions of Code Sections 7-1-605 through 7-1-611 and the rules and regulations of the department applicable to bank holding companies.

(b) Any out-of-state bank holding company that has a bank subsidiary with banking offices in Georgia that is not otherwise organized under the laws of this state or qualified to do business in this state shall qualify to do business in this state as a foreign corporation.

(c) The department may enter into cooperative and reciprocal agreements with the bank regulatory authorities of any state or the United States for the periodic examination of bank holding companies and may accept reports of examination and other records from such authorities in lieu of conducting its own examinations. The department may enter into joint actions with other regulatory bodies having concurrent jurisdiction or may enter into such actions independently to carry out its responsibilities under this title and assure compliance with the laws of this state. Any examinations or reports originated by Georgia or by another bank supervisory agency shall be deemed and treated as confidential according to Georgia law, and such confidentiality shall not be affected by the sharing of the examinations or reports. The department shall not be obligated to provide or disclose such examinations and reports to any third party. Agreements to share such examinations or reports shall contain provisions for dealing with confidentiality and subpoenas.

History.

Code 1981, § 7-1-624, enacted by Ga. L. 1984, p. 1467, § 1; Ga. L. 1994, p. 215, § 5; Code 1981, § 7-1-625, as redesignated by Ga. L. 1996, p. 279, § 1; Ga. L. 2018, p. 214, § 12/HB 780; Ga. L. 2022, p. 220, § 20/HB 891; Ga. L. 2023, p. 651, § 9/HB 55, effective July 1, 2023.

Amendments.

The 2022 amendment, effective July 1, 2022, inserted "Georgia" following "Any" and "and any out-of-state bank holding company controlling a Georgia state bank" in subsection (a); in subsection (b), inserted "out-of-state" following "Any" in the first sentence and deleted the former last two sentences, which read: "Such bank holding company shall agree to be bound by all the provisions of Code Sections 7-1-605 through 7-1-612 and by the provisions of this part. Any bank holding company having a Georgia bank subsidiary shall promptly advise the department of any changes in its registered office and agent."; and, inserted "or the United States" in the first sentence in subsection (c).

The 2023 amendment, effective July 1, 2023, substituted "Code Sections 7-1-605 through 7-1-611" for "Code Sections 7-1-605 through 7-1-612" in subsection (a).

Editor's notes.

Ga. L. 1996, p. 279, § 1, effective April 1, 1996, redesignated former Code Section 7-1-625 as present Code Section 7-1-626.

Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

7-1-626. Severability; construction with other laws.

(a) It is the express intention of the Georgia General Assembly to provide a unified and orderly method of permitting limited interstate banking. Thus, if any provision of this part establishing the framework within which interstate banking may occur or providing for registration, approval, and supervisory powers of the department and the commissioner is determined by final, nonappealable order of any Georgia or federal court of competent jurisdiction to be invalid or unconstitutional, the remaining provisions of this part shall not be affected and shall continue to apply to any bank, bank holding company, foreign bank, or other person or circumstance.

(b) Nothing contained in this part shall be construed to amend or modify the provisions of any other part of this chapter governing the supervision or regulation of banks and bank holding companies, as defined in this part, or the organization and powers of the department and the commissioner with respect thereto as provided in such other parts.

History.

Code 1981, § 7-1-625, enacted by Ga. L. 1984, p. 1467, § 1; Ga. L. 1994, p. 215, § 6; Code 1981, § 7-1-626, as redesignated by Ga. L. 1996, p. 279, § 1.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1996, in the second sentence of subsection (a), "may occur or" was substituted for "may occur," and a comma was deleted following "commissioner."

Editor's notes.

Ga. L. 1996, p. 279, § 1, repealed former Code Section 7-1-626, which was based on Code 1981, § 7-1-626, enacted by Ga. L. 1987, p. 1586, § 11; Ga. L. 1993, p. 917, § 6, relating to rights of bank holding companies consisting of building and loan associations.

Part 20

Interstate Banking and Branching by Merger

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 162 et seq.

7-1-628. Purpose; legislative findings; scope of part.

(a) It is the purpose of this part to permit interstate banking and branching by merger under Section 102 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, subject to the limita-

tions and requirements set out in this part and in Parts 14, 18, and 19 of this article.

(b) The scope of this part covers mergers where, upon consummation of the interstate merger transaction, the resulting bank will have banking locations in Georgia and at least one other state. It provides for certain approval, notice, and other requirements.

(c) In authorizing the expansion of interstate banking to this state, and in the interests of its citizens, the General Assembly finds that primary consideration should be given to the following:

(1) Affording protection and promoting convenience to bank depositors and other customers of financial institutions in this state;

(2) Preserving the advantages of a sound dual banking system and the competitive equality of state chartered institutions with federally chartered institutions; and

(3) Providing to the Department of Banking and Finance sufficient powers and responsibilities to implement these considerations.

(d) This part is not intended to discriminate against out-of-state bank holding companies or against foreign bank holding companies in any manner that would violate Section 3(d) of the Bank Holding Company Act, as amended by the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994.

History.

Code 1981, § 7-1-628, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 1998, p. 128, § 7; Ga. L. 2016, p. 390, § 2-21/HB 811; Ga. L. 2021, p. 323, § 21/HB 111; Ga. L. 2022, p. 220, § 21/HB 891.

Amendments.

The 2022 amendment, effective July 1, 2022, deleted the former last sentence in subsection (b), which read: "Mergers involving banks having present and resulting branches located only in this state are governed by Part 14 of this article. To the extent a bank participating in an interstate merger transaction is owned or controlled by a bank holding company, the applicable provisions of Part 19 of this article shall also apply.".

7-1-628.1. Definitions.

As used in this part, the term:

(1) "Bank" shall have the same meaning as "insured bank" in 12 U.S.C. Section 1813(h) of the Federal Deposit Insurance Act, provided that the term "bank" shall not include any "foreign bank" (which is defined as in 12 U.S.C. Section 3101 of the International Banking Act of 1978).

(2) "Bank holding company" shall have the same meaning as set forth in 12 U.S.C. Section 1841(a)(1) of the Bank Holding Company Act.

(3) "Bank supervisory agency" shall mean:

(A) Office of Comptroller of Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and any successor to those agencies; and

(B) The agency of a state with primary responsibility for chartering and supervising banks.

(4) "Branch" in the context of this part shall have the same meaning as "domestic branch" in 12 U.S.C. Section 1813(o) of the Federal Deposit Insurance Act. Nothing contained in this part shall be construed to amend or modify the provisions of any other part of this article.

(5) "Commissioner" means the commissioner of banking and finance then in office and, where appropriate, all of his or her successors and predecessors in office.

(6) "Control" means that which is set forth in Code Section 7-1-605.

(7) "Deposits" means, with respect to a bank, all demand, time, and savings deposits of individuals, partnerships, corporations, the United States government, and states and political subdivisions in the United States. Determinations of deposits shall be made by reference to regulatory reports of condition or similar reports filed by such bank with state or federal regulatory authorities.

(8) "Georgia bank" means a bank whose home state is Georgia.

(9) "Georgia bank holding company" means a bank holding company that:

(A) Has its principal place of business in the State of Georgia; and

(B) Is not controlled by a bank holding company other than a Georgia bank holding company.

(10) "Georgia state bank" means a bank chartered under the laws of the State of Georgia.

(11) "Home state" means:

(A) With respect to a state bank, the state by which the bank is chartered;

(B) With respect to a national bank, the state in which the main office of the bank is located; or

(C) With respect to a foreign bank, the state determined to be the home state of the foreign bank under 12 U.S.C. Section 3103(c) of the International Banking Act.

(12) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is chartered.

(13) "Host state" means a state, other than the home state of a bank, in which the bank maintains or seeks to establish and maintain a branch.

(14) "Insured depository institution" shall have the same meaning as set forth in 12 U.S.C. Section 1813(c)(2) and (3) of the Federal Deposit Insurance Act, provided that the term "insured depository institution" shall not include any "foreign bank" (which is defined as in 12 U.S.C. Section 3101 of the International Banking Act of 1978).

(15) "Interstate merger transaction" means:

(A) The merger or consolidation of banks with different home states and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; or

(B) The purchase of all or substantially all of the assets of a bank whose home state is different from the home state of the acquiring bank.

(16) "Out-of-state bank" means a bank whose home state is not Georgia, but the term does not include a foreign bank.

(17) "Out-of-state bank holding company" means a bank holding company other than a Georgia bank holding company.

(18) "Out-of-state state bank" means a bank chartered under the laws of a state other than Georgia.

(19) "Principal place of business" of a bank holding company means the state of charter in which the aggregate deposits of the bank subsidiaries of such bank holding company are largest.

(20) "Resulting bank" means a bank that has resulted from an interstate merger transaction under this part.

(21) "State" means any state of the United States, including the District of Columbia.

(22) "Subsidiary" means that which is set forth in Code Section 7-1-605.

History.

Code 1981, § 7-1-628.1, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 1999, p. 674, § 21; Ga. L. 2000, p. 174, § 16; Ga. L. 2016, p. 390, § 2-22/HB 811.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1996, "Federal Deposit Insurance" was substituted for "FDI" in paragraphs (1), (4), and (14); "article" was substituted for "chapter" in paragraph (4); "banking and finance" was substituted for "the Department of Banking and Finance" in paragraph (5); and "State" was

substituted for "state" in subparagraph (9)(A).

7-1-628.2. Mergers permitted; applicable provisions.

Interstate merger transactions between out-of-state banks and Georgia banks including Georgia state banks shall be permitted provided that the applicable conditions, approvals, and filing requirements are met by participating banks and bank holding companies. The approval procedure for mergers involving banks having offices located only in this state are governed by Part 14 of this article. To the extent a bank participating in a merger is owned or controlled by a bank holding company, the provisions of Part 19 of this article shall also apply to the transaction.

History. Code 1981, § 7-1-628.2, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 1997, p. 485, § 23; Ga. L. 2021, p. 323, § 22/HB 111.

7-1-628.3. Prohibited interstate merger transactions.

(a) Except as otherwise expressly provided in this subsection, an interstate merger transaction shall not be permitted under this part if, upon consummation of such transaction, the resulting bank (including all insured depository institutions that would be "affiliates," as defined in 12 U.S.C. Section 1841(k) of the resulting bank) would control 30 percent or more of the total amount of deposits held by all insured depository institutions in this state. The 30 percent limitation shall not apply, in the discretion of the commissioner, to transactions complying with paragraph (1) of subsection (b) of Code Section 7-1-623. The commissioner may by regulation adopt a procedure whereby the foregoing limitations on concentration of deposits may be waived upon showing good cause.

(b) An interstate merger transaction shall not be permitted under this part unless the Georgia bank shall have been in existence and continuously operating or incorporated as a bank on the date of such merger or acquisition for a period of at least three years, subject to any applicable exception contained in Code Section 7-1-608.

History. Code 1981, § 7-1-628.3, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 1997, p. 485, § 23; Ga. L. 1999, p. 674, § 22; Ga. L. 2002, p. 670, § 3; Ga. L. 2015, p. 344, § 15/HB 184; Ga. L. 2021, p. 323, § 23/HB 111.

7-1-628.4. Permissible interstate merger transactions.

(a) A Georgia state bank may enter into an interstate merger transaction where the Georgia state bank is the resulting bank, and as a result the Georgia state bank may establish, maintain, and operate

one or more branches in another state. The Georgia state bank must seek approval for the merger pursuant to the provisions in Part 14 of this article and must comply with federal law.

(b) An out-of-state bank may enter into an interstate merger transaction with a Georgia bank, and an out-of-state bank resulting from such transaction may maintain and operate branches in Georgia. The requirements of Code Section 7-1-628.5 shall be met by the resulting bank. In order to consummate such a merger with a resulting out-of-state state bank, a Georgia state bank shall comply with Code Sections 7-1-531 through 7-1-533 and 7-1-537, except that the format of the articles of merger submitted in accordance with Code Section 7-1-532 may be in conformity with the resulting bank's home state law if such law requires a format different from that specified by Code Section 7-1-532. A Georgia state bank shall comply with Code Section 7-1-534 if a national bank or a federal savings bank is to be the resulting bank.

(c) Any out-of-state bank which lawfully establishes a branch in this state or which subsequently becomes the owner of or controls interstate branches in Georgia, if such transaction is not covered by subsection (a) or (b) of this Code section, shall comply with the requirements in Code Section 7-1-628.5.

History.
Code 1981, § 7-1-628.4, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 1999, p. 674, § 23; Ga. L. 2022, p. 220, § 22/HB 891.

Amendments.
The 2022 amendment, effective July 1, 2022, substituted "Code Section 7-1-534" for "Code Section 7-1-556" in the last sentence in subsection (b).

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1996, "article" was substituted for "chapter" in the second sentence of subsection (a).

7-1-628.5. Requirement for out-of-state bank that is resulting bank of interstate merger transaction.

(a) An out-of-state bank that will be the resulting bank pursuant to an interstate merger transaction involving a Georgia state bank shall notify the commissioner of the proposed merger not later than the date on which it files an application for an interstate merger transaction with the responsible federal bank supervisory agency, provide such information as required by rule or regulation or as the commissioner may otherwise specify, and pay any filing fee required by regulation.

(b) Prior to consummation of an interstate merger between an out-of-state bank and a Georgia state bank, the resulting bank shall provide the commissioner with satisfactory evidence of all required approvals from all relevant bank supervisory agencies.

(c) Prior to consummation of an interstate merger between an out-of-state bank and a Georgia state bank, and continuously thereaf-

ter, the out-of-state bank shall maintain deposit insurance issued by a federal public body while it has a branch or any other location in this state.

(d) Any holding company of the resulting bank from an interstate merger transaction between an out-of-state bank and a Georgia state bank shall comply with Part 19 of this article and Code Sections 7-1-605 through 7-1-611.

History.
Code 1981, § 7-1-628.5, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 1998, p. 128, § 7; Ga. L. 1999, p. 674, § 24; Ga. L. 2016, p. 390, § 2-23/HB 811; Ga. L. 2017, p. 193, § 15/HB 143; Ga. L. 2023, p. 651, § 10/HB 55, effective July 1, 2023.

Amendments.
The 2023 amendment, effective July 1, 2023, substituted "Code Sections 7-1-605 through 7-1-611" for "Code Sections 7-1-605 through 7-1-612" in subsection (d).

7-1-628.6. Powers of out-of-state banks branching into Georgia.

(a) An out-of-state state bank which establishes and maintains one or more branches in Georgia under this part may conduct any activities at such branch or branches that are authorized under the law of this state for Georgia state banks.

(b) A Georgia state bank may conduct any activities at any branch outside Georgia that are authorized by Georgia law or that are permissible for a bank chartered by the host state where the branch is located, except to the extent such activities are expressly prohibited by the laws of this state or by any regulation or order of the commissioner applicable to the Georgia state bank and except where the activity is one that requires approval from the department, in which case such approval must be secured; provided, however, that the commissioner may waive any prohibition or requirement for approval if he or she determines, by order or regulation, that the involvement of out-of-state branches of the Georgia state bank in particular activities would not threaten the safety or soundness of such bank.

(c) An out-of-state bank that has established or acquired a branch in Georgia under this part may establish or acquire additional branches in Georgia to the same extent, but to no greater extent, that any Georgia bank may establish or acquire a branch in Georgia under applicable federal and state law.

History.
Code 1981, § 7-1-628.6, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 1999, p. 674, § 25; Ga. L. 2001, p. 970, § 8; Ga. L. 2016, p. 390, § 2-24/HB 811; Ga. L. 2020, p. 320, § 9/HB 781.

Law reviews.
For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001).

7-1-628.7. Examinations and reports; powers of commissioner.

(a) To the extent consistent with subsection (c) of this Code section, the commissioner may make such examinations of any branch established and maintained in this state by an out-of-state state bank as the commissioner may deem necessary to determine whether the branch is being operated in compliance with the laws of this state. The provisions of Parts 3 and 4 of Article 1 of this chapter are applicable to examinations.

(b) The commissioner may prescribe requirements for periodic reports regarding any out-of-state bank that operates a branch in Georgia pursuant to this part. The required reports shall be provided by such bank or by the bank supervisory agency having primary responsibility for such bank. Any reporting requirements prescribed by the commissioner under this subsection shall be: (1) consistent with the reporting requirements applicable to Georgia state banks; and (2) appropriate for the purpose of enabling the commissioner to carry out his or her responsibilities under this Code section.

(c) The commissioner may enter into cooperative, coordinating, and information sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch in Georgia of an out-of-state state bank or of any branch of a Georgia state bank in any host state, and the commissioner may accept such parties' reports of examination and reports of investigation in lieu of conducting his or her own examinations or investigations. Agreements to share should contain provisions for dealing with confidentiality and subpoenas.

(d) Notwithstanding any other law to the contrary, the commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a Georgia state bank or an out-of-state state bank operating a branch in this state pursuant to this part to engage the services of such agency's examiners at a reasonable rate of compensation, to provide the services of the commissioner's examiners to such agency at a reasonable rate of compensation, or for another arrangement that the commissioner may find expedient and reasonable.

(e) If appropriate in the discretion of the commissioner and pursuant to an interstate agreement with the pertinent host state regulator for the purpose of facilitating the regulation and supervision of a multistate Georgia state bank, the department may approve and collect from its chartered bank, as agent and home state regulator, examination and supervision fees assessed by a state where the Georgia bank has a branch and may remit such fees to the assessing out-of-state regulator.

Such fees shall not be considered revenue payable to the State of Georgia.

(f) In order to facilitate or implement interstate efforts to regulate and supervise a multistate Georgia state bank, the department may adjust its normal supervision examination fee assessment schedule and other rates and charges. Such adjustment may include any examination and supervision fees assessed by host state regulators, pursuant to subsection (e) of this Code section, as a part of the standard supervision and examination assessment.

(g) The commissioner may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch in Georgia of an out-of-state state bank or any branch of a Georgia state bank in any host state, provided that the commissioner may at any time take such actions independently if he or she deems such actions to be necessary or appropriate to carry out his or her responsibilities under this part or to ensure compliance with the laws of this state, but provided, further, that, in the case of an out-of-state state bank, the commissioner shall recognize the exclusive authority of the home state regulator over corporate governance matters and safety and soundness matters.

(h) Each out-of-state bank that maintains one or more branches in this state may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this state and regulations of the department.

(i) Any examinations or reports originated by Georgia or by another bank supervisory agency shall be deemed and treated as confidential according to Georgia law, and such confidentiality shall not be affected by the sharing of the examination or reports. The department shall not be obligated to provide or disclose such examinations or reports to any third party.

History.
Code 1981, § 7-1-628.7, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 2000, p. 174, § 17; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2021, p. 323, § 24/HB 111.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1996, "chapter" was substituted for "title" in the second sentence of subsection (a) and the designations "(1)" and "(2)" were substituted for "(i)" and "(ii)" in subsection (b).

7-1-628.8. Restrictions on de novo branches.

(a) As used in this Code section, the term "de novo branch" means a branch of a bank which:

(1) Is originally established by the bank as a branch; and

(2) Does not become a branch of the bank as a result of the

acquisition of another bank or of a branch of another bank or as the result of the merger, consolidation, or conversion of any such bank or branch.

(b) An out-of-state bank that does not have a branch in Georgia and whose deposits are federally insured may, upon obtaining the necessary approvals from its home state regulator, establish and maintain a de novo branch in this state to the extent that any Georgia bank could establish such a de novo branch.

(c) A Georgia state bank may establish and maintain a de novo branch in another state. Such Georgia state bank shall comply with the provisions of this article, including, but not limited to, obtaining approval from the department prior to establishing the branch.

History.
Code 1981, § 7-1-628.8, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 1997, p. 485, § 24; Ga. L. 2002, p. 670, § 4; Ga. L. 2016, p. 390, § 2-25/HB 811; Ga. L. 2021, p. 323, § 25/HB 111; Ga. L. 2024, p. 1052, § 1(a)(18)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "As used in this Code section, the term 'de novo branch'" for "A 'de novo branch'" in the beginning of subsection (a).

7-1-628.9. Establishment of out-of-state bank branches through acquisition.

(a) An out-of-state bank that does not have a branch in Georgia and whose deposits are federally insured may, upon obtaining the necessary approvals from its home state regulator, establish and maintain a branch in this state through the acquisition of a branch.

(b) A Georgia state bank may establish and maintain a branch in another state through the acquisition of a branch in compliance with the provisions of this article, including, but not limited to, obtaining approval from the department prior to acquiring the branch.

History.
Code 1981, § 7-1-628.9, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 2016, p. 390, § 2-26/HB 811; Ga. L. 2021, p. 323, § 26/HB 111.

7-1-628.10. Enforcement actions by commissioner.

If the commissioner determines that a branch maintained by an out-of-state state bank in this state is being operated in violation of any provision of the laws of this state, the commissioner shall have the authority to take all such enforcement actions as he or she would be empowered to take if the branch were a Georgia state bank, provided that the commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state state bank and, to the extent practicable, shall consult and cooperate with

the home state regulator in pursuing and resolving said enforcement action.

History.
Code 1981, § 7-1-628.10, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 2021, p. 323, § 27/HB 111.

7-1-628.11. Regulations; administrative fees.

The commissioner may promulgate such regulations and may provide for the payment of such reasonable filing, application, assessment, and administrative fees as he or she determines to be necessary or appropriate in order to implement the provisions of this part.

History.
Code 1981, § 7-1-628.11, enacted by Ga. L. 1996, p. 279, § 2.

7-1-628.12. Reporting by of out-of-state banks.

In order to determine compliance with Georgia law on deposit concentration limits or other areas of state compliance, reporting by out-of-state banks may be required by the commissioner.

History.
Code 1981, § 7-1-628.12, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 2021, p. 323, § 28/HB 111.

7-1-628.13. [Reserved] Notice of merger, consolidation, or other transaction involving out-of-state bank.

History.
Code 1981, § 7-1-628.13, enacted by Ga. L. 1996, p. 279, § 2; Ga. L. 2004, p. 631, § 7; repealed by Ga. L. 2021, p. 323, § 29/HB 111, effective July 1, 2021.

Editor's notes.
Ga. L. 2021, p. 323, § 29/HB 111 repealed and reserved this Code section, effective July 1, 2021.

7-1-628.14. Severability; construction with other laws.

(a) If any provision of this part or the application of such provision is found by any court of competent jurisdiction in the United States to be invalid as it pertains to any bank, bank holding company, foreign bank, or other person or circumstances, or is found to be superseded explicitly by federal law, the remaining provisions of this part shall not be affected and shall continue to apply to any bank, bank holding company, foreign bank, or other person or circumstance.

(b) Nothing contained in this part shall be construed to amend or modify the provisions of any other part of this chapter governing the supervision or regulation of banks and bank holding companies, as defined in this chapter, or with respect to the organization and powers of the department and the commissioner as provided in such other parts.

History.
Code 1981, § 7-1-628.14, enacted by Ga. L. 1996, p. 279, § 2.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1996, "part" was substituted for "section" in subsection (a).

7-1-628.15. Tax treatment.

(a) All banks engaged in interstate banking and branching in this state shall be obliged to adhere to the tax laws and regulations of Title 48 which pertain to such activities.

(b) The Department of Revenue shall address the tax treatment of financial organizations before June 1, 1997, in order to provide timely and appropriate taxation of banks which have adjusted their corporate structures according to this part and federal law.

History.
Code 1981, § 7-1-628.15, enacted by Ga. L. 1996, p. 279, § 2.

ARTICLE 3
CREDIT UNIONS

Cross references.
Credit Union Deposit Insurance Corporation, § 7-2-1 et seq.
Exemption from securities-registration provisions of securities issued by or guaranteed by credit union, § 10-5-8.
Administrative rules and regulations.
Books and Records, Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Credit Unions, Rule 80-2-1-.01 et seq.
Law reviews.
For article, "Small Loans Under Georgia Laws," see 3 Mercer L. Rev. 227 (1952).

PART 1
GENERAL PROVISIONS; ORGANIZATION

JUDICIAL DECISIONS

Approved certificate of incorporation is prerequisite to recovery on contract. — Holding of approved certificate of incorporation in accordance with O.C.G.A. § 7-1-1 et seq. is condition precedent to recovery on contract by credit union. Georgia Cent. Credit Union v. Weems, 157 Ga. App. 439, 278 S.E.2d 88, 1981 Ga. App. LEXIS 1861 (1981).

In contract action, proper organization and licensing must be proved. — In its action on a promissory note, whether the credit union was properly organized and licensed in accordance with O.C.G.A. § 7-1-1 et seq. at the time of the transaction was a matter to be proved by the credit union rather than a matter to be raised defensively by the borrower. Georgia Cent. Credit Union v. Weems, 157 Ga. App. 439, 278 S.E.2d 88, 1981 Ga. App. LEXIS 1861 (1981).

7-1-630. Subscribers; articles; filings; fee; directors.

(a) Any number of persons, not less than eight, having a common bond, as defined in subsection (b) of this Code section, may incorporate for the purpose of organizing a credit union in accordance with this article. The persons so desiring to become incorporated shall execute articles which shall set forth the following:

(1) The name of the proposed credit union;

(2) The territory in which it will operate;

(3) The location where its initial registered office will be located;

(4) The names and addresses of the subscribers, their occupation, length of service, and that each has subscribed to one share and paid for same;

(5) The names and addresses of the original directors;

(6) The proposed field of membership specified in detail and having the same common bond as the subscribers;

(7) That the purpose and nature of the business are to conduct a credit union with the rights and powers granted by this article; and

(8) The term of the existence of the credit union, which shall be perpetual unless otherwise limited.

(b) For purposes of this article, "common bond" means that specific relationship of occupation, association, or interest; residence or employment within a well-defined neighborhood, community, or rural district; employees of a common employer; or members of a bona fide cooperative, educational, fraternal, professional, religious, rural, or similar organization which tends to create a mutual interest between persons sharing the relationship. Persons related by blood, adoption, or marriage to or living in the same household with a person within such common bond and the surviving spouses of deceased members shall also be considered within the common bond.

(c) The subscribers shall file the articles with the department together with the fee specified in Code Section 7-1-862. The department shall certify a copy of the articles and return it to the subscribers.

(d) The subscriber shall file with the department a certificate from the Secretary of State attesting that the name of the proposed credit union has been reserved as authorized by Code Section 7-1-131.

(e) The subscriber shall file with the department a copy of the proposed bylaws setting forth the following:

(1) The date of the annual meeting, the manner of conducting the same, the number of members constituting a quorum and regulations

as to voting, and the manner of notification of the meeting, which shall comply with Code Section 7-1-6;

(2) The number of directors, which shall be not less than five nor more than 25, all of whom shall be members, and their powers and duties, together with the duties of the executive officers elected by the board of directors;

(3) The qualifications for membership of those coming within the initial common bond as required by this article;

(4) The conditions under which deposits are received and withdrawn; and

(5) The charges which shall be made, if any, for failure to meet obligations punctually; whether or not the credit union shall have the power to borrow; and such other matters consistent with this article as may be requisite to the organization and operation of the proposed credit union.

(f) The subscriber shall pay such fee as shall be established by regulation of the department to defray the cost of the investigation required by Code Section 7-1-632, provided that the department shall not be required to set such fee if in its judgment the fee would discourage the organization of credit unions under this article.

(g) The subscriber shall select at least five qualified persons who agree to serve on the board of directors. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, shall be executed by those who so agree and filed with the department along with the proposed bylaws.

(h) For the purposes of this article, the term "executive officer" means an individual who performs significant managerial, supervisory, or policy-making functions on behalf of a credit union, including, but not limited to, the chief executive officer, president, chief financial officer, chief operating officer, and other individuals who perform such functions.

History.

Ga. L. 1925, p. 165, § 1; Code 1933, § 25-101; Code 1933, § 41A-3001, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1244, § 1; Ga. L. 1989, p. 1257, § 19; Ga. L. 2005, p. 826, § 11/SB 82; Ga. L. 2015, p. 344, § 16/HB 184; Ga. L. 2016, p. 390, § 3-1/HB 811; Ga. L. 2017, p. 193, § 16/HB 143; Ga. L. 2019, p. 828, § 18/HB 185; Ga. L. 2024, p. 354, § 1-10/HB 876, effective July 1, 2024; Ga. L. 2024, p. 1052, § 1(a)(19)/SB 448, effective July 1, 2024.

Amendments.

The first 2024 amendment, effective July 1, 2024, in paragraph (e)(2), substituted "shall be" for "must be" twice and inserted "executive" preceding "officers" and added subsection (h).

The second 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substi-

tuted "means" for "is described as" in subsection (b).

OPINIONS OF THE ATTORNEY GENERAL

Former Code 1933, §§ 25-101, 25-108, and 25-109 (see now O.C.G.A. §§ 7-1-630, 7-1-651, and 7-1-653) indicate that each credit union has complete control over membership, and that eight persons could form a credit union and limit membership to the original eight incorporators. 1948-49 Ga. Op. Att'y Gen. 434.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 5 et seq., 189. 18A Am. Jur. 2d, Corporations, § 194 et seq.
C.J.S.
12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions, §§ 14, 15, 34.

7-1-631. [Reserved] Additional filings with department.

History.
Ga. L. 1925, p. 165, § 2; Code 1933, § 41A-3002, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1244, § 2; Ga. L. 1989, p. 1211, § 11; repealed by Ga. L. 2005, p. 826, § 12, effective May 5, 2005.

Editor's notes.
Ga. L. 2005, p. 826, § 12 repealed and reserved this Code section, effective May 5, 2005.

7-1-632. Approval or disapproval by department; certificate of incorporation.

(a) The department shall make an appropriate investigation of the articles and bylaws for the purpose of determining:

(1) Whether the articles and bylaws conform to this article;

(2) The general character and qualifications of the subscribers and the financial stability and future prospects of the sponsoring company, if any;

(3) The economic advisability of establishing the proposed credit union and such other facts and circumstances bearing on the proposed credit union as in the opinion of the department may be relevant;

(4) That a common bond exists in accordance with Code Section 7-1-630; and

(5) That the subscribers and person or corporation sponsoring the credit union are in agreement as to the services, if any, that the sponsor will provide.

(b) If the department determines to its satisfaction that the proposed credit union meets the criteria set forth above, it shall, within 90 days from receipt of the articles and in compliance with Code Section 7-1-630, send a copy of the articles and written approval of the articles to the Secretary of State after making such changes in the articles or bylaws consistent with this article and with the consent of the subscribers that it deems appropriate. Such approval shall indicate any changes made to the articles including changes from the proposed field of membership. If the department shall disapprove the articles, the procedures of subsection (b) of Code Section 7-1-635 shall be followed.

(c) Upon receipt of the approval of the department, the Secretary of State shall thereupon issue a certificate attesting to the incorporation of the credit union. The credit union shall, however, confine itself to organizational activities until it receives a permit to do business.

History.
Ga. L. 1925, p. 165, § 3; Code 1933, § 25-103; Code 1933, § 41A-3003, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1983, p. 602, § 17; Ga. L. 1989, p. 1257, § 20; Ga. L. 2005, p. 826, § 13/SB 82.

RESEARCH REFERENCES

Am. Jur. 2d.
18 Am. Jur. 2d, Corporations, § 41.

C.J.S.
18 C.J.S., Corporations, § 56 et seq.

7-1-633. Organizational meeting of directors; commencing of business.

(a) Within 30 days after receipt of the certificate of incorporation from the Secretary of State, an organizational meeting of the board of directors named in the articles of incorporation shall be held for the purpose of accepting the certificate and bylaws, appointing an audit committee and a credit committee or, in lieu thereof, loan officers pursuant to Code Section 7-1-658, naming the president, and electing or appointing other executive officers, as provided in Code Section 7-1-655, who shall serve until the first directors' meeting after the first annual meeting. Notice of the meeting shall be given at least five days prior to the date of the meeting.

(b) When the organization has been completed, the credit union shall notify the department of this fact and may commence business subject to its obtaining deposit insurance as required in Code Section 7-1-666.

History.
Ga. L. 1925, p. 165, §§ 4, 13; Code 1933, §§ 25-106, 25-113; Ga. L. 1956, p. 742, § 2; Ga. L. 1968, p. 465, § 6; Code 1933, § 41A-3004, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1244, § 3; Ga. L. 2004, p. 458, § 4; Ga. L. 2019, p. 828, § 19/HB 185; Ga. L. 2022, p. 220, § 23/HB 891; Ga. L. 2024, p. 354, § 1-11/HB 876, effective July 1, 2024.

Amendments.

The 2022 amendment, effective July 1, 2022, inserted "naming the president," in the first sentence in subsection (a).

The 2024 amendment, effective July 1, 2024, in the first sentence in subsection (a), inserted "an audit committee and", substituted "pursuant to Code Section 7-1-658" for "and an audit committee", and substituted "other executive officers" for "the officers".

RESEARCH REFERENCES

Am. Jur. 2d.

18 Am. Jur. 2d, Corporations, §§ 45, 47.
18B Am. Jur. 2d, Corporations, § 1056.

C.J.S.

18 C.J.S., Corporations, § 66.

7-1-634. Amendment of articles and bylaws; fee for investigation; approval or denial by department.

(a) Amendments to the bylaws of a credit union may be adopted and amendments of the articles may be requested by the affirmative vote of two-thirds of the authorized number of members of the board of directors at any duly held meeting thereof if the members of the board have been given prior written notice of said meeting and the notice has contained a copy of the proposed amendment or amendments. No amendment of the bylaws or of the articles shall become effective until approved in writing by the department.

(b) Every proposed amendment of the articles shall be filed with the department together with the fee specified in Code Section 7-1-862. Proposed amendments of the bylaws shall be filed with the department.

(c) The credit union may amend its bylaws to change its field of membership by adding additional groups of persons subject to the following conditions:

(1) Each new group must have a common bond that meets one of the descriptions in subsection (b) of Code Section 7-1-630; and

(2) The credit union must pay such fee as may be established by the department to defray the cost of investigation.

(d) The department shall grant or deny approval of a complete and accepted application to amend the bylaws within 90 days, subject to safety and soundness and other criteria established by the department for these applications.

(e) The department shall maintain a permanent record of any approved amendment to the bylaws of a credit union which changes the field of membership proposed in the original articles or as subsequently amended.

History.

Ga. L. 1925, p. 165, §§ 6, 11; Code 1933, §§ 25-104, 25-121; Ga. L. 1967, p. 595, § 3; Code 1933, § 41A-3005, enacted by

Ga. L. 1974, p. 705, § 1; Ga. L. 1976, p. 1681, § 2; Ga. L. 1983, p. 602, § 18; Ga. L. 1989, p. 1257, § 21; Ga. L. 1995, p. 673, § 25; Ga. L. 2005, p. 826, § 14/SB 82; Ga. L. 2015, p. 344, § 17/HB 184.

OPINIONS OF THE ATTORNEY GENERAL

Department may not disapprove bylaws which fully comply with O.C.G.A. § 7-1-630 et seq. — Superintendent (now commissioner) may not disapprove a bylaw which fully complies with the law or credit unions; the superintendent may only disapprove those bylaws which do not conform to the law. 1972 Op. Att'y Gen. No. 72-109.

RESEARCH REFERENCES

Am. Jur. 2d.
18 Am. Jur. 2d, Corporations, §§ 90, 164, 165.
C.J.S.
12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions, §§ 20, 24.

7-1-635. Procedure for approval or disapproval.

(a) The department shall, in its discretion, approve or disapprove of proposed amendments to the articles or to the bylaws within 90 days after they are submitted by the credit union and within that time shall so advise the Secretary of State of any changes to the articles and inform the credit union in writing of its approval or disapproval.

(b) If the department should disapprove any articles or proposed amendments to articles or bylaws, it shall state the reasons for its disapproval. The subscribers or credit union shall have reasonable time, not more than 90 days from the date of disapproval or such additional time as the department may allow, to correct any matters causing its disapproval. If such matter is corrected, the department shall then advise the Secretary of State and credit union in writing of its approval of changes to the articles or the credit union alone in writing of its approval in the case of amendment of the bylaws.

(c) Final action by the department in approving or disapproving articles or amendments thereto or to the bylaws shall be conclusive, except that it may be subject to judicial review under Code Section 7-1-90.

History.
Ga. L. 1967, p. 595, § 4; Code 1933, § 41A-3006, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 22; Ga. L. 2005, p. 826, § 15/SB 82.

OPINIONS OF THE ATTORNEY GENERAL

Department may not disapprove bylaws which fully comply with O.C.G.A. § 7-1-630 et seq. — Superintendent (now commissioner) may

not disapprove a bylaw which fully complies with the law or credit unions; the superintendent may only disapprove those bylaws which do not conform to the law. 1972 Op. Att'y Gen. No. 72-109.

RESEARCH REFERENCES

Am. Jur. 2d.
18 Am. Jur. 2d, Corporations, § 115.

7-1-635.1. Out-of-state credit unions.

(a) A credit union organized in another state may conduct business and establish a place of business in this state with the approval of the department. The department must find that the out-of-state credit union:

(1) Is a credit union organized under laws of a state other than the State of Georgia or of the United States, which state grants similar authority to credit unions organized under the laws of this state;

(2) Is financially solvent and operates in conformance with the laws and regulations of its charter jurisdiction; and

(3) Has deposit insurance issued by a federal public body that is comparable to that required for credit unions chartered in this state.

(b) The out-of-state credit union must agree to:

(1) Grant loans at rates not in excess of the rates permitted for credit unions incorporated under the laws of Georgia;

(2) Comply with the same consumer protection provisions that credit unions incorporated under this chapter must obey; and

(3) Designate and maintain an agent for the service of process in this state.

(c) The department may examine the operations of any out-of-state credit union for the purpose of determining that the scope of its activities does not exceed that allowed pursuant to this chapter and that the facility is otherwise operating in compliance with the applicable laws of this state. The department may by regulation establish minimum requirements for the maintenance of books and records in sufficient form to enable the department to carry out its responsibilities under this Code section.

(d) The department may enter into cooperative and reciprocal agreements with the credit union regulatory authority of any government for the periodic examination of credit union offices and facilities of any kind located within this state and may accept reports from such authorities in lieu of conducting its own examination for compliance with the laws of this state.

(e) A credit union which is approved under this Code section shall be exempt from the requirements of Article 15 of Chapter 3 of Title 14.

History.
Code 1933, § 41A-3008, enacted by Ga. L. 1981, p. 753, § 1; Ga. L. 1989, p. 1257, § 23; Ga. L. 2005, p. 826, § 16/SB 82; Ga. L. 2015, p. 344, § 18/HB 184; Ga. L. 2024, p. 354, § 1-12/HB 876, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, substituted "Chapter 3" for "Chapter 2" in subsection (e).

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1989, "does" was substituted for "do" in the first sentence of subsection (c).

Pursuant to Code Section 28-9-5, in 2005, "; and" was added at the end of paragraph (a)(2).

7-1-636. Effect on articles and duration of existing credit unions.

(a) Nothing in this chapter shall be construed to impair the validity of the articles of a credit union existing on April 1, 1975.

(b) Each credit union existing on April 1, 1975, shall have perpetual duration unless its articles are amended under this chapter to provide for a limited period of duration.

History.
Code 1933, § 41A-3007, enacted by Ga. L. 1974, p. 705, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Credit unions in existence prior to April 1, 1975. — Current state law governing credit unions which were in existence and validly operating prior to April 1, 1975, allows those credit unions to maintain the fields of membership that they possessed prior to April 1, 1975. 2004 Op. Att'y Gen. No. 2004-6.

Part 2

Credit Union Conservators

Editor's notes.
Ga. L. 2015, p. 344, § 19/HB 184, redesignated former Part 2 of Article 3 of Chapter 1, which consisted of Code Sections 7-1-650 through 7-1-670, as Part 3 of Article 3 of Chapter 1.

7-1-640. Appointment of conservators; authority; reporting requirement.

(a) The department may, in its discretion, appoint itself or a third party as conservator for a credit union when the credit union:

(1) Is insolvent or in an unsafe and unsound condition;

(2) Has suspended payment of obligations without authority of law;

(3) Has violated its articles or an order, statute, rule, or regulation and the department determines that its continued control of its own affairs threatens injury to the public, the financial community, members, or creditors; or

(4) Requests the department, by its board of directors, to appoint a conservator for the benefit of members or creditors.

(b) The right of the department to act as conservator of a credit union shall be in addition to all other rights, remedies, and powers of the department.

(c) The department may, in its discretion, before or after taking conservatorship, petition the principal court of a credit union for the appointment of a conservator pursuant to Code Section 7-1-643.

(d) The conservator shall conduct the business of the credit union and take steps toward the removal of the causes and conditions that have necessitated the appointment of a conservator. The conservator shall be immediately authorized to:

(1) Assume all powers of the members, directors, officers, and committees of the credit union;

(2) Take charge of the credit union and all of its property, books, records, and effects;

(3) Take any and all actions to operate the credit union in its own name or to conserve its assets as directed by the department, including, but not limited to, terminating or adopting any executory contracts to which the credit union may be a party;

(4) Take all necessary measures to preserve, protect, and recover any assets or property of the credit union, including any claim or cause of action belonging to or which may be asserted by the credit union, and administer the same in its own name as conservator;

(5) File, prosecute, and defend any suit that has been filed or may be filed by or against the credit union that is deemed by the conservator to be necessary to protect all interested parties or any property affected thereby;

(6) Exercise all rights, powers, and duties conferred on the credit union by this chapter; and

(7) Take any other actions that are necessary or incidental to carrying out the role of conservator.

(e) The conservator shall make reports to the department from time to time as may be required by the department.

History.
Code 1981, § 7-1-640, enacted by Ga. L. 2015, p. 344, § 19/HB 184.

7-1-641. Certificate of appointment.

(a) The department shall, immediately after appointing a conservator, file with the principal court of a credit union a certificate to be known as a certificate of appointment.

(b) The certificate of appointment shall set forth the basis for the department's appointment of a conservator and state the name of the conservator.

(c) If the department does not appoint a conservator prior to the date of the filing of the certificate of appointment or it appoints a new or additional conservator, the department shall file a supplement to the certificate of appointment setting forth such facts.

(d) The certificate of appointment and any supplement will be listed in the judgment index in the name of the credit union as defendant and the department as plaintiff.

History.
Code 1981, § 7-1-641, enacted by Ga. L. 2015, p. 344, § 19/HB 184.

7-1-642. Costs; immunity.

(a) All costs incident to conservatorship will be charged against the assets of the credit union to be allowed and paid as the department may determine.

(b) The department, its employees, and third parties acting as conservators are not subject to liability for actions related to a conservatorship, including, but not limited to, the appointment of a conservator, and no department funds shall be required to be expended on behalf of the credit union, its creditors, employees, or members, or any other party or entity.

History.
Code 1981, § 7-1-642, enacted by Ga. L. 2015, p. 344, § 19/HB 184.

7-1-643. Appointment of department as conservator.

(a) Whenever any court, upon the initiation of the department or other person entitled by law to institute such proceedings, determines that a conservator should be appointed, for any reason whatsoever, it shall appoint the department as conservator. Except as provided in

subsection (c) of this Code section, such court shall appoint only the department as conservator of a credit union.

(b) When appointed conservator by a court, the department shall serve in the same manner and with the same limitations and shall have the same rights, powers, and duties as if it were to become conservator without appointment by a court pursuant to Code Section 7-1-640. No court shall impose upon the department as conservator any duties or restrictions in conflict with this chapter.

(c)(1) In any proceeding for the appointment of a conservator of a credit union whose shares are insured by a public body of the United States, the court may, upon the recommendation of the department, whether or not the department is a party, appoint such public body as conservator.

(2) If a public body accepts the appointment, it shall have all the rights, powers, and duties of the department as conservator under this chapter and all the rights, powers, and duties as conferred by other applicable law.

(3) The posting of a bond shall not be required when a public body acts as conservator.

History.
Code 1981, § 7-1-643, enacted by Ga. L. 2015, p. 344, § 19/HB 184.

7-1-644. Bond.

(a) If the department appoints a conservator other than a public body of the United States that insures the shares of a credit union, an employee of the department, or the department itself, the conservator and any assistants shall provide a bond, payable to the credit union and executed by a surety company authorized to do business in this state.

(b) The amount of such bond shall be approved by the department and be in an amount to ensure the faithful discharge of duties in connection with the conservatorship and take into account the amount of money under the control of the conservator.

(c) The cost of such bond shall be paid from the assets of the credit union.

(d) Any person injured by a breach of the conditions on such bond has a right to bring a civil remedy in order to seek to collect on such bond.

(e) A bond of a credit union shall be deemed satisfactory if the department determines it covers a conservator and any assistants.

History.
Code 1981, § 7-1-644, enacted by Ga. L. 2015, p. 344, § 19/HB 184.

7-1-645. Show cause requirement; appointment of receiver; role of conservator; limitation on court's role.

(a) No later than ten days after the date a conservator is appointed pursuant to Code Section 7-1-640, a credit union may apply to its principal court for an order requiring the department to show cause why it should not be enjoined from continuing the conservatorship.

(b) If at any time the department determines that a credit union is not in a condition to continue business under a conservator, the department may appoint a receiver in accordance with Code Section 7-1-150.

(c) A conservator may conduct the business of a credit union and take steps toward the removal of the causes and conditions that have necessitated the appointment of a conservator until such time as:

(1) The department shall permit such credit union to continue business subject to such terms and conditions as may be imposed by the department;

(2) Such credit union is liquidated in accordance with the provisions of subsection (b) of this Code section; or

(3) Otherwise ordered by the principal court of such credit union.

(d) Except as provided in this chapter, no court shall take any action, except at the request of the department, to restrain or affect the exercise of powers or functions of a conservator.

History.
Code 1981, § 7-1-645, enacted by Ga. L. 2015, p. 344, § 19/HB 184.

Part 3

Operation and Regulation

Editor's notes.
Ga. L. 2015, p. 344, § 19/HB 184, redesignated former Part 2 of Article 3 of Chapter 1, which consisted of Code Sections 7-1-650 through 7-1-670, as Part 3 of Article 3 of Chapter 1.

7-1-650. Powers.

A credit union shall have, in addition to the powers common to all corporations under the laws of this state, the power to:

(1) Receive funds from its members or other financial institutions

in the form of shares and deposits on accounts or as evidenced by certificates of deposit issued by the credit union;

(2) Receive savings deposits from nonmembers, provided that such deposits are:

(A) Insured by or through a federal public body or are expressly authorized by state or federal law;

(B) Made in such a manner as expressly authorized by the bylaws;

(C) Not deposited in a share draft account; and

(D) Not bearing a greater rate of interest than the rate of interest paid to members for the same class of deposit;

(3) Make loans to members subject to approval by its credit committee or authorized employees pursuant to Code Section 7-1-658;

(4) On the authority of its board of directors or by employees authorized by the board of directors, invest:

(A) In general and direct obligations of the United States, including bonds and securities upon which payment of principal and interest is fully guaranteed by the United States; in general and direct obligations of any state or territorial government of the United States upon which payment of principal and interest is fully guaranteed by the state or territory; in general and direct obligations of counties, districts, and municipalities of any state or territorial government of the United States upon which payment of principal and interest is fully guaranteed by the issuing county, district, or municipality; obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, or any corporation designated in Section 846 of Title 31 of the United States Code as a wholly owned government corporation; or in obligations, participations, or other instruments of or issued by or fully guaranteed as to principal and interest by the Federal National Mortgage Association or the Government National Mortgage Association;

(B) Reserved;

(C) In loans to other credit unions, provided that the loans in the aggregate do not exceed 50 percent of the net worth of the lending credit union;

(D) By depositing its funds in banks, savings and loan associations, and credit unions; by purchasing certificates of deposit and

savings certificates which such financial institutions are authorized to issue; by selling or purchasing federal or correspondent (daily) funds through such financial institutions; and by selling or purchasing whole loans or loan participations. The authorizations in this subparagraph shall be subject to limitations prescribed in regulations issued by the department; and

(E) In any other types of investments authorized by the department, provided that such investments shall not, in the aggregate, exceed 25 percent of its net worth;

(5) Borrow from any source, provided that the total of such funded borrowings shall at no time exceed 200 percent of its net worth. The department may, notwithstanding the other provisions of this Code section, waive the requirements of this paragraph to permit an individual credit union to borrow for authorized purposes;

(6) Undertake, with the approval of the department, other activities which are not inconsistent with this chapter or regulations adopted pursuant thereto; provided, however, that no such approval shall be granted unless the commissioner determines the activities do not present undue safety and soundness risks to the credit union involved;

(7) Organize and engage in business without having any stated amount of capital subscribed or paid in other than that derived from the subscribers' qualifying shares, commence business with only such capital authorized and paid in as may be provided in its bylaws, and provide for the payment and withdrawal thereof as and in the manner provided by its bylaws;

(8) Purchase, hold, and convey real estate for the following purposes only:

(A) Such real estate as the credit union occupies or intends to occupy primarily for the transaction of its business, subject to the prior approval of the department except to the extent authorized by regulation;

(B) Such real estate as shall be conveyed to it in satisfaction of debt previously contracted in the course of its business; and

(C) Such real estate as it shall purchase at sales under judgments, decrees, or mortgage foreclosures pursuant to mortgages or security deeds held by it;

(9) Hold real estate acquired in the cases provided for by subparagraphs (B) and (C) of paragraph (8) of this Code section and real estate which has ceased to be used primarily as credit union premises, subject to a determination by a majority vote of its directors at

least once each year as to the advisability of retaining any such property and provided that no such property is held for more than five years without the prior written approval of the department;

(10) Hold property other than real estate, which is acquired in satisfaction of debts previously contracted and which a credit union is not otherwise authorized to own, for no longer than six months unless such time period is extended by the department;

(11) Dispose of property held pursuant to paragraphs (9) and (10) of this subsection through financing by the credit union without the advance of additional funds irrespective of the purchasers' membership in the credit union and of ordinarily applicable collateral margin requirements;

(12) Provide, in its articles of incorporation approved by a majority of its membership present and voting, for the elimination or limitation of personal liability of a director to the credit union or its members in their capacity as shareholders of the credit union to the same extent as a bank or trust company operating under the provisions of this chapter;

(13) Subject to any rules and regulations enacted by the department and in compliance with federal law and applicable provisions regarding insurable interests in Chapter 24 of Title 33, purchase, hold, or fund insurance on the life of any of its directors, officers, or employees, or any other person whose death might cause financial loss to the credit union, or, pursuant to any contract lawfully obligating the credit union as guarantor or surety, on the life of the principal obligor;

(14) Provide third-party payment services to its members;

(15) Provide check-cashing services, sale of payment instruments, or sale of international remittances to those consumers eligible for membership; and

(16) Enter into an agency relationship, as defined in Code Section 7-1-4, subject to restrictions and qualifications prescribed by rules and regulations of the department.

History.

Ga. L. 1925, p. 165, § 8; Code 1933, § 25-105; Ga. L. 1956, p. 742, § 1; Ga. L. 1968, p. 465, § 3; Code 1933, § 41A-3101, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1979, p. 417, § 1; Ga. L. 1981, p. 1244, § 4; Ga. L. 1987, p. 1586, §§ 12-14; Ga. L. 1989, p. 1211, § 12; Ga. L. 1990, p. 300, § 1; Ga. L. 1999, p. 674, § 26; Ga. L. 2005, p. 826, § 17/SB 82; Ga. L. 2015, p. 5, § 7/HB 90; Ga. L. 2016, p. 390, § 3-2/HB 811; Ga. L. 2017, p. 193, § 17/HB 143; Ga. L. 2018, p. 214, § 13/HB 780; Ga. L. 2019, p. 828, § 20/HB 185; Ga. L. 2022, p. 220, § 24/HB 891; Ga. L. 2023, p. 651, § 11/HB 55, effective July 1, 2023.

Amendments.

The 2022 amendment, effective July 1, 2022, deleted "but shall not have the power to offer third-party payment ser-

vices except as authorized under Code Section 7-1-670" from the end of paragraph (1), deleted "and" from the end of paragraph (12), substituted a semicolon for a period at the end of paragraph (13), and added paragraphs (14) and (15).

The 2023 amendment, effective July 1, 2023, in subparagraph (4)(A), inserted "general and direct" and "in general and direct obligations of any state or territorial government of the United States upon which payment of principal and interest is fully guaranteed by the state or territory; in general and direct obligations of counties, districts, and municipalities of any state or territorial government of the United States upon which payment of principal and interest is fully guaranteed by the issuing county, district, or municipality;"; substituted "Reserved" for the former provisions of subparagraph (4)(B), which read: "In general and direct obligations of the State of Georgia, its counties, districts, and municipalities which have been validated as provided by law, if no more than 25 percent of the shares and deposits of a credit union shall be invested in the obligations of any one such obligor"; rewrote subparagraph (4)(C), which read: "In loans to other credit unions, provided the loans do not exceed 10 percent of the shares, deposits, and surplus of the investing credit union;"; rewrote subparagraph (4)(E), which read: "In any other types of investments authorized by the department, including commercial paper, provided that such investments shall not, in the aggregate, exceed 10 percent of the shares, deposits, and surplus of the investing credit union or 15 percent of its equity capital, as defined by the department, in authorized investments issued by any single obligor;"; rewrote paragraph (5), which read: "Borrow from any source, provided that the total of such borrowings shall at no time exceed 50 percent of paid-in shares, deposits, and surplus. The department may, notwithstanding the other provisions of this Code section, temporarily waive the requirements of this paragraph to permit an individual credit union to borrow for emergency purposes;"; deleted "and" at the end of paragraph (14); substituted "; and" for a period at the end of paragraph (15); and added paragraph (16).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1987, "subparagraphs (B) and (C) of paragraph (8)" was substituted for "subparagraph (8)(B) and (C)" in the first sentence of paragraph (9).

Pursuant to Code Section 28-9-5, in 1988, in paragraph (7), a correction was made in the word "business" the second time it appears.

Editor's notes.

Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

JUDICIAL DECISIONS

Credit union may accept security deed as loan collateral. — Credit union has authority to accept title to real estate in the form of a security deed as collateral for loans which the credit union makes. Cole v. Georgia Cent. Credit Union, 243 Ga. 60, 252 S.E.2d 485, 1979 Ga. LEXIS 808 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Credit union cannot legally function as dues collection agent for labor union. — Legislature did not intend to grant credit unions any powers that were not necessary for or incidental to performing traditional credit union functions. Collection of dues on behalf of a labor union is not necessary for or incidental to performing traditional credit union functions; therefore, a credit union cannot legally function as a dues collection agent for a labor union. 1976 Op. Att'y Gen. No. 76-119.

Loan to nonmember may constitute investment in authorized obligation. — Former Code 1933, § 41A-3101 (see

now O.C.G.A. § 7-1-650) implied that a credit union may invest in authorized obligations irrespective of whether the obligation constitutes a loan to a nonmember. 1976 Op. Att'y Gen. No. 76-12.

Guaranteed portion of small business administration loans are legal investments. — Guaranteed portion of small business administration loans are obligations upon which payment of principal and interest is fully guaranteed by the United States and are therefore legal investments under former Code 1933, § 41A-3101. 1976 Op. Att'y Gen. No. 76-12.

Former Code 1933, § 41A-3101 (see now O.C.G.A. § 7-1-650) prevented a credit union from investing in United States government guaranteed participation in small business administration loans. 1976 Op. Att'y Gen. No. 76-12.

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, §§ 5 et seq., 189.

C.J.S.

12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions, § 88 et seq.

ALR.

Power of savings bank or similar institution to provide checking facilities or negotiable orders of withdrawal (NOW) to customers, 64 A.L.R.3d 1314.

7-1-651. Membership; shares.

(a) The membership of the credit union shall consist of the initial subscribers and such other persons within the field of membership as may have subscribed to one share, which has been paid by a person or the credit union, together with the required entrance fee and complied with all other requirements contained in the bylaws. No subscriber or other member shall hold more than one share out of any class of shares. The bylaws may provide for separate classes of shares for borrowers and depositors and for the par value of each share for each class, but in no event shall the par value be less than $1.00.

(b) Societies, associations, partnerships, limited liability companies, and corporations composed of persons who are eligible for membership or headquartered within the field of membership may be admitted to membership in the same manner and under the same conditions as such persons.

(c) A person or corporation who leaves the field of membership may be permitted to retain his membership in the credit union at the discretion of the board of directors.

(d) Customers of a bank that have been acquired by a credit union as a result of a merger or purchase and where the bank will cease to exist, due to a voluntary or involuntary dissolution, shall become members of the credit union upon the effective date of the underlying transaction; provided, however, that nothing herein shall be deemed as permitting a

public body to be a member of a credit union. As used in this subsection, the term "public body" shall have the same meaning as provided in Code Section 45-8-1.

History.
Ga. L. 1925, p. 165, §§ 1, 9; Code 1933, §§ 25-101, 25-108; Code 1933, § 41A-3102, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1985, p. 823, § 1; Ga. L. 2009, p. 86, § 7/HB 141; Ga. L. 2015, p. 344, § 20/HB 184; Ga. L. 2017, p. 193, § 18/HB 143; Ga. L. 2019, p. 828, § 21/HB 185; Ga. L. 2024, p. 354, § 1-13/HB 876, effective July 1, 2024.
Amendments.
The 2024 amendment, effective July 1, 2024, inserted "limited liability companies," in subsection (b).

OPINIONS OF THE ATTORNEY GENERAL

Former Code 1933, §§ 25-101, 25-108, and 25-109 (see now O.C.G.A. §§ 7-1-630, 7-1-651, and 7-1-653) indicate that each credit union has complete control over membership, and that eight persons could form a credit union and limit membership to the original eight incorporators. 1948-49 Ga. Op. Att'y Gen. 434.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 5 et seq., 189.
C.J.S.
12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions, §§ 59 et seq., 83.

7-1-651.1. In-person annual meetings; requirements for remote options; impact of emergency declaration.

(a) Except as provided in subsection (c) of this Code section, the annual meeting of the members shall be held in person.

(b) Members may participate and vote remotely at the meetings of the members if the bylaws of the credit union explicitly provide an option for remote participation and voting. If the bylaws so provide, the board of directors shall:

(1) Implement reasonable measures to:

(A) Provide members a reasonable opportunity to remotely participate in such meetings. Such measures may include, but are not limited to, audio webcast or other broadcast of the meeting but, in every instance, shall provide members the ability to communicate substantially concurrently with the proceedings;

(B) Enable members to vote at such meetings by means of electronic communication. Such measures may include, but are not limited to, telephonic or internet voting; and

(C) Verify that each person deemed present and permitted to

vote remotely is a member in order to ensure the integrity of the vote;

(2) Provide the option for remote participation and voting at no cost to members; and

(3) Keep a record of remote attendance by members and any vote or other action taken by a member participating remotely.

(c) In the event of a proclaimed emergency pursuant to Code Section 7-1-111, the board of directors may apply to the department for authorization to conduct a meeting of the members solely through remote participation. If such application is approved by the department, the board of directors shall comply with the requirements of subsection (b) of this Code section.

History.
Code 1981, § 7-1-651.1, enacted by Ga. L. 2021, p. 323, § 30/HB 111; Ga. L. 2022, p. 220, § 25/HB 891.
Amendments.
The 2022 amendment, effective July 1, 2022, deleted "or grant proxies" following "vote" in the first sentence in subparagraph (b)(1)(B).

7-1-652. Joint, minor, and trust shares and deposits; preferred capital base shares.

(a) A share may be issued and deposits received jointly in the names of a member and a nonmember with right of survivorship, but no joint tenant shall be permitted to vote, obtain loans, or hold office unless he is within the field of membership and is a qualified member.

(b)(1) A minor shall be allowed to have deposits in a credit union in his own name, and the deposits made by the minor shall not be subject to the control of his parent, guardian, or trustee. A minor may have third-party payment accounts. A receipt or acquittance signed by such a minor depositor shall be a valid and sufficient release and discharge of such credit union for any payment of any deposit to such minor. In the transactions involving payments to third parties out of the minor's account, the payment of an order of the minor shall be a valid and sufficient release and discharge of the credit union for any payment of such funds from the minor's account. This subsection shall continue to include, without limitation:

(A) Deposits in such credit unions by a minor with one or more adults or other minors, as party to and with the same effect as a multiple-party account under Article 8 of this chapter;

(B) The rental to a minor by said credit unions of a safe-deposit box or other receptacle for the safe deposit of property from such

minor (and the receipt of any such property), individually or jointly with one or more adults; and

(C) The dealing with a minor by said credit unions with respect to such a deposit account, third-party payment account, or safe-deposit agreement without the consent of a parent or guardian and with the same effect as though the minor were an adult.

(2) Any action of the minor with respect to such deposit account, third-party payment account, or safe-deposit agreement shall be binding on the minor with the same effect as though the minor were an adult.

(c) In addition to its regular shares, a credit union may offer to its members "preferred capital base" shares when permitted by its bylaws. Such shares may be held without limit, shall be subject to the following restrictions, and may entitle the holder to the following rights and preferences:

(1) Such shares shall have no par value;

(2) Such shares shall be redeemed only at a stated maturity of not less than one year or within ten days of such maturity;

(3) Such shares shall be transferable on the books of the credit union so long as the acquiring person is a member of the credit union;

(4) Such shares may have a preference on the payment of dividends and interest up to 2 percent over the dividend rate paid to members on regular shares and deposits or such higher rates as approved by the credit union members and the department. Any such preference shall be fixed at the time of issuance of the shares; and

(5) Such shares shall be subordinate to claims of depositors and other creditors in the event of liquidation of the credit union but shall rank ahead of the claims of regular shares.

History.

Ga. L. 1925, p. 165, § 17; Code 1933, § 25-111; Code 1933, § 41A-3103, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1244, § 5; Ga. L. 1985, p. 823, § 2; Ga. L. 1986, p. 458, § 9; Ga. L. 2003, p. 843, § 8.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2003, "and" was added following the semicolon at the end of paragraph (c)(4).

Cross references.

Multiple-party accounts, § 7-1-810 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, §§ 5 et seq., 189.

C.J.S.

12 C.J.S., Building and Loan

Associations, Savings and Loan Associations, and Credit Unions, § 84.

7-1-653. Expulsions and withdrawals; disposition of deposits, interest, shares, or dividends; reinstatement.

(a) At any regular or called meeting of the members, by a two-thirds' vote of those present, the members may expel from the credit union any member thereof. A member may withdraw from a credit union and a nonmember may withdraw deposits as provided in this Code section by filing a written notice of such intention. All deposits of an expelled or withdrawing member or nonmember with any interest accrued shall be paid to such member or nonmember, subject to 60 days' notice, after deducting any amounts due to the credit union by such member or nonmember. A credit union, upon the resignation or expulsion of a member, shall cancel the share, deposits, or dividends or interest due thereon and may apply the withdrawal value of such funds toward the liquidation of such member's indebtedness. Said expelled or withdrawing member or nonmember shall have no further right in said credit union or to any of its benefits, but such expulsion or withdrawal shall not operate to relieve said member or nonmember from any remaining liability to the credit union.

(b) A member may be expelled for reasons defined in the bylaws by a two-thirds' vote of the board of directors. An expelled member may obtain reinstatement by an affirmative vote of the majority of the members voting at the next annual meeting of the credit union.

(c)(1) In addition to the other powers set forth in this Code section, the board of directors may, by a two-thirds' vote of the directors, adopt and enforce a policy with respect to expulsion from membership based on:

(A) Nonparticipation by a member in the affairs of the credit union. Such policy shall require the board to consider a member's failure to maintain deposits, shares, or loans with the credit union;

(B) Activity inconsistent with the safe and sound operation of the credit union, which may include, but shall not be limited to:

(i) Causing a financial loss to the credit union;

(ii) Disrupting the operations of the credit union;

(iii) Committing fraud, attempted fraud, or other illegal behavior;

(iv) Engaging in inappropriate behavior; and

(v) Violating the membership agreement of the credit union.

(2) If such a policy is adopted, written notice of the policy and the effective date of such policy shall be provided to each member of the credit union not less than 30 days prior to the effective date of such policy. In addition, each new member shall be provided written notice of any such policy prior to or upon applying for membership.

History.
Ga. L. 1925, p. 165, §§ 16, 21; Code 1933, §§ 25-109, 25-110; Code 1933, §§ 41A-3104, 41A-3105, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1244, § 6; Ga. L. 1982, p. 3, § 7; Ga. L. 2005, p. 826, § 18/SB 82; Ga. L. 2010, p. 878, § 7/HB 1387; Ga. L. 2019, p. 828, § 22/HB 185; Ga. L. 2021, p. 323, § 31/HB 111.

OPINIONS OF THE ATTORNEY GENERAL

Credit unions have complete control over membership. — Former Code 1933, §§ 25-101, 25-108, and 25-109 (see now O.C.G.A. §§ 7-1-630, 7-1-651, and 7-1-653) indicate that each credit union has complete control over membership, and that eight persons could form a credit union and limit membership to original eight incorporators. 1948-49 Ga. Op. Att'y Gen. 434.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 5 et seq., 189.
C.J.S.
12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions, § 85 et seq.

7-1-654. Capital; right to offset loans, dues, and fines.

The capital of the credit union shall consist of the payments that have been made to it by the members on their qualifying shares. A credit union shall have a lien on a member's share and deposits and on dividends or interest payable thereon for and to the extent of any loan made by it to such member and of any dues and fines payable to it by such member.

History.
Ga. L. 1925, p. 165, § 16; Code 1933, § 25-110; Code 1933, § 41A-3105, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

C.J.S.
12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions, §§ 68, 69.

7-1-655. Board of directors; committees; officers.

(a) At the first annual meeting, the members shall elect from among their number a board of directors of no less than five nor more than 25 and at each annual meeting thereafter shall elect successors to the

members of the board of directors whose terms of office expire at such annual meeting.

(b) Except as this Code section permits the bylaws of a credit union to provide otherwise, members of the board of directors elected at the first annual meeting shall serve until the next annual meeting. A credit union may in its bylaws provide for staggered elections for members of the board of directors; but in that event the bylaws shall provide that as nearly as possible one-third of the board shall be elected at each annual meeting.

(c) At the organizational meeting and at its first meeting after each annual meeting of the members, the board of directors shall appoint an audit committee, credit committee, chairperson, and secretary. In addition, the board of directors may appoint other committees or executive officers consistent with the bylaws as the board deems desirable. No member of the audit committee may be an employee of the credit union.

(d) The chairperson of the credit and audit committees shall be appointed by the board from among its number. Both the credit and audit committees shall be accountable to the board and members of such committees may be removed by the board.

(e) Directors shall serve until their successors are chosen or have duly qualified. A director elected or appointed to fill an unexpired term shall be elected or appointed for the balance of that term.

(f) All members of the board of directors and committee members shall be sworn to perform faithfully the duties of their several offices in accordance with this chapter and the bylaws or as otherwise lawfully established. The oaths shall be subscribed in writing and a copy thereof shall be retained in the minutes of the meetings of the board. The oaths shall not modify in any manner the legal duties of or the standard of care for members of the board of directors and committee members in the exercise of such duties.

(g) The entire board of directors or an individual director may be removed from office without cause by the vote of a quorum of members at a properly called meeting.

(h) The board may remove a director from office if:

(1) The director is adjudicated an incompetent by a court or is convicted of a felony;

(2) The director does not, within 60 days of his or her election or such longer time as may be specified in the bylaws, accept the office in writing or by attendance at a meeting and fulfill other requirements for holding the office;

(3) The director fails to attend regular meetings of the board for six successive meetings without having been excused by the board;

(4) The director was an employee or duly elected officer of the credit union and was discharged or resigned at the request of the board for reasons relating to performance of duties as an employee or officer of the credit union; or

(5) For any reason set forth in the bylaws of the credit union.

(i) The board of directors, by a two-thirds' vote of a quorum of the board, may suspend any member of the credit union's board of directors, for cause, until the next membership meeting, which shall be held not less than seven nor more than 60 days after such suspension. The suspended person will be notified of the details of his or her suspension, and shall have the right to request a meeting with the board to reconsider his or her suspension prior to the membership meeting. Any suspended member of the board of directors may be removed by a majority vote of a quorum of members at a properly called meeting. At such meeting of the membership, the suspended person shall have the right to make a presentation to the members and the suspension shall be acted upon by the members at such meeting and the person shall be removed from, or restored to, the board.

(j) Vacancies in the board of directors, whether caused by removal or otherwise and including vacancies resulting from an increase in the number of directors, may be filled by the remaining members of the board, even though less than a quorum.

(k) The credit union shall immediately notify the department upon a change in president or chief executive officer.

(l) Each credit union shall keep minutes of the meetings of its members, board of directors, and committees of directors.

History.

Ga. L. 1925, p. 165, § 12; Code 1933, § 25-112; Ga. L. 1962, p. 74, § 1; Code 1933, § 41A-3106, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1976, p. 1681, § 3; Ga. L. 1981, p. 1244, § 7; Ga. L. 1989, p. 1211, § 13; Ga. L. 2011, p. 518, § 4/HB 239; Ga. L. 2015, p. 344, § 21/HB 184; Ga. L. 2016, p. 390, § 3-3/HB 811; Ga. L. 2018, p. 214, § 14/HB 780; Ga. L. 2019, p. 828, § 23/HB 185; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2022, p. 220, § 26/HB 891; Ga. L. 2023, p. 651, § 12/HB 55, effective July 1, 2023; Ga. L. 2024, p. 354, § 1-14/HB 876, effective July 1, 2024.

Amendments.

The 2022 amendment, effective July 1, 2022, deleted "president," following "chairperson," in the first sentence in subsection (c).

The 2023 amendment, effective July 1, 2023, rewrote the last sentence of subsection (c), which read: "No member of the audit committee may serve as a member of the credit committee or as an officer, unless the board of directors functions as the credit committee as provided for in subsection (f) of Code Section 7-1-658."

The 2024 amendment, effective July 1, 2024, in subsection (b), deleted "and

until their successors are elected and qualified" from the end of the first sentence; in subsection (c), substituted "chairperson, and secretary. In addition, the board of directors may appoint other committees or executive officers" for "chairperson, secretary, and such other officers"; rewrote subsection (e); in subsection (f), substituted "board of directors" for "board and all officers" near the beginning in the first sentence and substituted "of the board of directors and committee members" for "and officers" in the third sentence; and added subsection (l).

Editor's notes.

Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

Ga. L. 2023, p. 651, § 12/HB 55, which amended this Code section, referred to "paragraph (c)" in the directory language of the Act and should have referred to "subsection (c)".

7-1-656. Directors; duties; meetings; quorum; voting; prohibited activities.

(a) The board of directors shall be responsible for the affairs, funds, and records of the credit union and shall meet as often as necessary. The board of directors shall meet at least once during ten different months of each calendar year unless an alternative schedule is approved in writing by the department, but in no event shall the board meet less frequently than once in each calendar quarter. Unless the bylaws specifically reserve any or all of the duties to the members, it shall be the special duty of the directors:

(1) To act upon all applications for membership or approve the actions of an officer without loan granting authority, designated by the board of directors to approve applications for membership;

(2) To determine from time to time rates of interest and dividends which shall be allowed on deposits, loans, and income consistent with this article and other applicable laws and to authorize any interest refunds on such classes of loans and under such conditions as the board prescribes;

(3) To fix the amount of the fidelity bond which shall be required of all directors, officers, employees, agents, or members having custody of funds, properties, or records; provided, however, that the amount of such fidelity bond shall not be less than such minimum requirements as shall be prescribed by regulation of the department and shall be in such form as may from time to time be approved by the department;

(4) To fix within the restrictions imposed by statute the maximum amount of deposits which may be made by and the maximum amount that may be loaned to any one member;

(5) To fill vacancies on the board of directors, credit committee, and audit committee until the election and qualification of a successor;

(6) To have charge of the investment of funds of the credit union other than loans to members within the restrictions imposed by statute or delegate investment authority to a qualified committee or officer as designated by the board of directors;

(7) To appoint any committees deemed necessary; and

(8) To perform such other duties as the members may from time to time authorize.

(b) Unless otherwise provided in the articles or bylaws of a credit union:

(1) A majority of all directors shall constitute a quorum for the transaction of business and actions of a majority of those present at a meeting at which a quorum is present shall be deemed as actions of the board of directors;

(2) The board of directors may designate three or more of its number to constitute a credit committee, audit committee, or other committees which, to the extent provided in a resolution, shall have and exercise the authority of the board of directors with regard to the business of a credit union; and

(3) Any action authorized to be taken at a meeting of the board of directors or a credit, audit, or other committee may be taken without a meeting if the action is set forth in writing and approved and signed by all directors or all members of the credit, audit, or other committee entitled to vote with respect to the underlying subject matter.

(c) No director, officer, or committee member of a credit union shall:

(1) Receive anything of value for procuring or attempting to procure any loan from or investment by such credit union;

(2) Purchase, or directly or indirectly be interested in purchasing, from the credit union a promissory note or other evidence of indebtedness issued by the credit union for less than face value; or

(3) Purchase or sell any other asset to the credit union except:

(A) Upon terms not less than favorable to the credit union than those offered other persons or corporations; and

(B) With prior approval of the board of directors or a committee thereof authorized to act for the board, unless the transaction is made in the regular course of business.

(d) No director shall be eligible to vote concerning any purchase or sale when such director is or would be a party to the transaction.

(e) The provisions of Code Section 7-1-490 relative to the responsibilities of directors and officers and the delegation of

investment decisions shall be applicable to the duties of directors, credit and audit committee members, and officers of credit unions.

(f) The board of directors may appoint an individual as an honorary director or director emeritus or member of an advisory board. An individual so appointed may be compensated but shall not vote at any meeting of the board of directors or be counted in determining a quorum and shall not have any responsibility for or be subject to any liability imposed upon a director or otherwise be deemed a director.

(g) The board of directors may determine that a meeting of such board will be held, in whole or in part, by any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by such means shall be considered to be present in person at the meeting.

History.

Ga. L. 1925, p. 165, § 13; Code 1933, § 25-113; Ga. L. 1956, p. 742, § 2; Ga. L. 1968, p. 465, § 6; Code 1933, § 41A-3107, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 32; Ga. L. 1981, p. 1244, § 8; Ga. L. 1989, p. 1211, § 14; Ga. L. 2002, p. 1220, § 6; Ga. L. 2005, p. 826, § 19/SB 82; Ga. L. 2015, p. 344, § 22/HB 184; Ga. L. 2018, p. 214, § 15/HB 780; Ga. L. 2019, p. 828, § 24/HB 185; Ga. L. 2020, p. 320, § 10/HB 781; Ga. L. 2021, p. 323, § 32/HB 111; Ga. L. 2022, p. 220, § 27/HB 891; Ga. L. 2024, p. 354, § 1-15/HB 876, effective July 1, 2024.

Amendments.

The 2022 amendment, effective July 1, 2022, rewrote the former first sentence in subsection (a), which read: "The board of directors shall be responsible for the affairs, funds, and records of the credit union and shall meet as often as necessary, but at least once during ten different months of each calendar year."

The 2024 amendment, effective July 1, 2024, substituted "deposits, loans, and income" for "deposits and charged on loans" in paragraph (a)(2) and inserted "directors," near the beginning of paragraph (a)(3).

Editor's notes.

Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

RESEARCH REFERENCES

C.J.S.

12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions, § 53 et seq.

7-1-657. Duties of audit committee; inspections; comprehensive annual audits; use of independent accountants.

(a) The audit committee shall be responsible for securing a comprehensive audit of the credit union at least once each year unless such time period is modified pursuant to the rules and regulations of the department. Except as provided for in subsection (c) of this Code section, the committee shall employ the services of a licensed, independent certified public accountant or firm of such accountants to make such comprehensive audit. The results of the audit shall be submitted

to the board, and the committee shall present a summary of the results of the audit to the membership. The committee shall make recommendations to the board for the correction of any deficiencies disclosed by the audit. The annual audit shall include a confirmation of the share, deposit, and loan accounts of the members and such other procedures as the department might require. The annual audit shall be preserved with the records of the credit union, and a copy of such audit shall be filed with the department upon request by the department.

(b) The audit committee, from time to time, may conduct or cause to be conducted other audit functions or reviews of operations or may make or cause to be made an inspection of the assets and the liabilities of the credit union. The committee shall report the results of any such reviews to the board of directors and shall be responsible for making specific recommendations to the board regarding any unsafe, unsound, or unauthorized activities discovered.

(c) Based upon the total assets of a credit union, the complexity of a credit union, or other factors, the department may enact rules and regulations authorizing certain credit unions to obtain the required comprehensive audit from an individual or entity that is not a licensed, independent certified public accountant or firm of such accountants so long as the individual or entity is independent or otherwise qualified.

History.
Ga. L. 1925, p. 165, § 15; Code 1933, § 25-114; Code 1933, § 41A-3108, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1244, § 9; Ga. L. 2002, p. 1220, § 7; Ga. L. 2015, p. 344, § 23/HB 184; Ga. L. 2017, p. 193, § 19/HB 143; Ga. L. 2019, p. 828, § 25/HB 185.

7-1-658. Loans.

(a) Credit unions may lend money to their members at reasonable rates of interest, which shall not exceed 1 ¼ percent each month on the unpaid balance, or such greater rates as shall be authorized for other financial institutions for such purposes as may be approved by the credit committee.

(b) Loans shall be supervised as follows:

(1) The credit committee shall have the general supervision of all loans to members. The credit committee shall hold such meetings as the business of the credit union may require and not less frequently than once each quarter to consider applications for loans. Reasonable notice of such meetings shall be given to all members of the committee. Actions of the credit committee shall be reported to the board in such form as the board shall prescribe at each regular meeting of the board. No loan shall be made unless it is approved by a majority of the entire committee, except as provided in this Code section;

(2) The credit committee may appoint one or more employees to be

loan officers and delegate to such persons the power to approve or disapprove loans to a borrower that do not in the aggregate exceed 5 percent of the net worth of the credit union subject to such limitations or conditions set forth in this Code section for loans generally and such further limitations and conditions as the credit committee prescribes. Records of loans approved shall be maintained in such form as the credit committee shall prescribe and shall be made available to the credit committee upon request. The credit committee may not appoint more than one of its members to be a loan officer. No person shall have the authority to disburse funds of the credit union for any loan which has been approved by such person;

(3) In lieu of a credit committee, the board of directors may appoint one or more loan officers and delegate to such persons the power to approve or disapprove loans to a borrower that do not in the aggregate exceed 5 percent of the net worth of the credit union subject to such limitations or conditions set forth in this Code section for loans generally and such further limitations and conditions as the board may prescribe. All other duties of the credit committee as described in this article shall become the duties of the board of directors. Records of loans approved shall be maintained by the loan officers in such form as the board shall prescribe and a listing of all loans made, including the name of the borrower and the amount of the loan, shall be submitted to the board at each meeting; and

(4) Members may appeal a credit decision made by a loan officer to the credit committee or to the board if denied by the credit committee. Where there is no credit committee, appeal shall be made to the board.

(c) Loans may be made to executive officers, directors, and committee members of the credit union under the same general terms and conditions as to other members of the credit union; provided, however, that no person shall participate in approving any loan in which he or she has a direct or indirect financial interest. The approval of all loans to officers, directors, and committee members of the credit union shall be reported to the board of directors at its next meeting.

(d) As used in this Code section, the term "person" or "corporation" includes, but is not limited to, an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, or unincorporated organization.

(e) No credit union shall be authorized to make loans to any one person or corporation where the aggregate of such loans and obligations together exceeds 5 percent of the net worth of the credit union unless each loan in excess of said 5 percent limit is approved in advance by the board of directors or the credit committee subject to the provisions set

forth in subsections (f) and (g) of this Code section. Approval by the board of directors or credit committee shall be recorded in the formal minutes of the actions of the board or the credit committee by name of borrower, amount of loan, maturity of loan, general type of collateral, and such other information as required pursuant to the rules and regulations of the department. Any action required by this subsection may be taken as prescribed in Code Section 7-1-656, provided that the minutes of the proceedings of the board of directors or credit committee reflect such action and each director taking such action signs the minutes reflecting such action by no later than the next regular meeting of the board or credit committee attended by such director.

(f) Except as provided in subsection (g) of this Code section, a credit union shall not directly or indirectly make loans or have obligations to any one person or corporation which in aggregate exceed 5 percent of the net worth of the credit union at the time of issuance of a binding commitment unless the entire amount of such loans and obligations is secured by good collateral or other ample security and does not exceed 25 percent of the net worth at the time of issuance of a binding commitment. Except as otherwise indicated in subsection (g) of this Code section, the purchase or discount of agreements for the payment of money or evidences of indebtedness shall be regarded as indirect loans to the person or corporation receiving the proceeds of such transactions. In estimating the legal lending limit for any one person or corporation, loans to related corporations, partnerships, and other entities shall be combined subject to regulations established by the department.

(g) The limitations of subsection (f) of this Code section shall not apply to:

(1) Obligations of and obligations guaranteed by:

(A) The United States;

(B) The State of Georgia or a public body thereof authorized to levy taxes;

(C) Any state of the United States or any public body thereof if the obligations or guarantees are general obligations; or

(D) Any agency of this state as defined in subparagraph (a)(1)(A) of Code Section 50-14-1;

(2) Obligations to the extent secured by:

(A) Obligations fully guaranteed by the United States;

(B) Guaranties or commitments or agreements to take over or purchase made by any public body of the United States or any corporation owned directly or indirectly by the United States; or

(C) Loan agreements between a local public agency or a public housing agency and an instrumentality of the United States pursuant to national housing legislation under which funds will be provided for payment of the obligations secured by such loan agreements;

(3) Obligations with respect to the sale of federal or correspondent funds to financial institutions having their deposits insured to the same extent as that required of similar institutions chartered in this state;

(4) A renewal or restructuring of a loan as a new loan or extension of credit following the exercise by the credit union of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limits of this Code section, unless:

(A) New funds are advanced by the credit union to the borrower, except as permitted under this Code section;

(B) A new borrower replaces the original borrower; or

(C) The department determines that a renewal or restructuring was undertaken as a means to evade the credit union's lending limit; and

(5) Unsecured obligations below the unsecured legal lending limit in conjunction with secured obligations below the secured legal lending limit so long as the total aggregate liability for both secured and unsecured obligations is $150,000.00 or less.

(h) The department may, by regulation not inconsistent with this Code section, prescribe definitions of and requirements for transactions included in or excluded from the indebtedness to which this Code section applies. The department may, by regulation or otherwise, specify that the liabilities of a group of one or more persons or corporations or both shall be considered as owed by one person or corporation for the purposes of this Code section because the borrowers within the group are related through common control or the group meets other criteria established by the department for the combination of indebtedness for legal lending limitation purposes.

(i) Except as provided in subsection (e) of this Code section, approval of loans by the credit committee shall be evidenced, prior to disbursement of the loan proceeds, by a writing signed by a committee member stating that the committee has approved the loan. If the board appoints loan officers in lieu of a credit committee, it shall establish policies for approval of loans by those loan officers.

(j) Notwithstanding the provisions of subsections (b) and (e) of this Code section requiring prior approval by the board of directors or credit

committee for all loans that in the aggregate exceed 5 percent of its net worth, the department upon request by a credit union may increase the threshold for such approval but in no event shall such threshold exceed $150,000.00.

History.

Ga. L. 1925, p. 165, §§ 14, 18; Code 1933, §§ 25-115, 25-116; Ga. L. 1962, p. 74, § 2; Ga. L. 1968, p. 465, §§ 4, 5; Code 1933, § 41A-3109, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1976, p. 1681, §§ 4, 5; Ga. L. 1981, p. 1244, § 10; Ga. L. 1994, p. 1780, § 2; Ga. L. 2004, p. 458, § 5; Ga. L. 2018, p. 214, § 16/HB 780; Ga. L. 2020, p. 320, § 11/HB 781; Ga. L. 2022, p. 220, § 28/HB 891; Ga. L. 2023, p. 651, § 13/HB 55, effective July 1, 2023; Ga. L. 2024, p. 354, § 1-16/HB 876, effective July 1, 2024.

Amendments.

The 2022 amendment, effective July 1, 2022, deleted "and" from the end of paragraph (g)(3), substituted "; and" for a period at the end of subparagraph (g)(4)(C), and added paragraph (g)(5).

The 2023 amendment, effective July 1, 2023, added subsection (j).

The 2024 amendment, effective July 1, 2024, in the first sentence in subsection (c), inserted "executive" preceding "officers" near the beginning and substituted "no person" for "no officer, director, committee member, or employee" near the middle; and, in paragraph (g)(5), substituted "$150,000.00" for "$50,000.00".

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2020, an extra period was deleted in the middle of paragraph (b)(2).

Editor's notes.

Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

Law reviews.

For article discussing methods of computation of finance charges in Georgia consumer credit contracts, see 30 Mercer L. Rev. 281 (1978).

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Credit unions may make loans to members only. — Credit unions may make loans to and exact interest rate permitted by former Code 1933, § 41A-3109 from members only. 1975 Op. Att'y Gen. No. 75-2.

Loans by banks. — Authority contained in former Code 1933, § 41A-3109 (see now O.C.G.A. § 7-1-658) was limited to a designated type of loan, a loan by a credit union to a member, or shareholder; thus if a bank possesses any authority under former Code 1933, § 41A-1313 (see now O.C.G.A. § 7-1-292) similar to that of credit unions under this section, the authority extends only to loans to shareholders of the bank. 1975 Op. Att'y Gen. No. 75-2.

Loans exceeding unsecured debt limit must be secured; secured debt limit may not be exceeded. — All amounts loaned by credit unions in excess of unsecured debt limits established by subsection (d) of former Code 1933, § 41A-3109 must be secured by adequate collateral and in no event may that secured debt limit be exceeded. 1975 Op. Att'y Gen. No. 75-67.

Subsection (a) of former Code 1933, § 41A-3109 was not violated by investment in small business administration guaranteed participations. 1976 Op. Att'y Gen. No. 76-12.

Neither former Code 1933, § 41A-3109 (see now O.C.G.A. § 7-1-658) nor former Code 1933, § 41A-3101 (see now O.C.G.A. § 7-1-650) prevented a credit union from investing in United States government guaranteed participations in small business administration loans. 1976 Op. Att'y Gen. No. 76-12.

Section does not give authority to banks. — Former Code 1933, § 41A-1313 (see now O.C.G.A. § 7-1-658) did not permit banks to charge rates of interest authorized to other organizations by virtue of a special charter, including

authority under former Code 1933, § 41A-1309 (see now O.C.G.A. § 7-1-658) establishing an interest rate which credit unions were authorized to exact. 1975 Op. Att'y Gen. No. 75-2.

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, §§ 5 et seq., 189.

C.J.S.

12A C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions, §§ 127 et seq., 139 et seq., 152, 153.

ALR.

Enforceability of provision in loan commitment agreement authorizing lender to charge standby fee, commitment fee, or similar deposit, 93 A.L.R.3d 1156.

7-1-659. Entrance fees; reserves; exclusion of state and federal credit union reserves from tax calculations.

(a) A credit union may charge entrance fees as provided in the bylaws. All such fees shall, after payment of organizational expense, be known as reserve income and shall be added to the regular reserve of the credit union.

(b) Immediately before the payment of each dividend, the gross earnings of the credit union shall be determined. There shall be set aside from that amount, as allowances for credit losses, sums adequate to cover such anticipated losses, based on the risk characteristics of the loan portfolio.

(c) All credit unions shall be subject to the capital and reserve requirements of Part 702 of the Rules and Regulations of the National Credit Union Administration, known as Prompt Corrective Action. Credit unions that are less than ten years old shall operate according to a business plan which shall contain requirements for reserves and which shall be approved by the department. The department shall have the discretion to require additional capital and reserves to assure the safety and soundness of any credit union.

(d) In addition to regular reserves, special reserves to protect the interest of members shall be established when found necessary in any special case by the board of directors of the credit union or by the department.

(e) All reserves of credit unions or federal credit unions established in accord with generally accepted accounting principles or upon the specific direction of the department or any federal regulatory body or for the purpose of complying with any conditions lawfully imposed by the department or any federal regulatory body shall not be considered as surplus or undivided profits of any credit union for tax purposes.

History.
Ga. L. 1925, p. 165, § 19; Code 1933, § 25-117; Ga. L. 1956, p. 742, § 3; Code 1933, § 41A-3110, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2002, p. 1220, § 8; Ga. L. 2023, p. 651, § 14/HB 55, effective July 1, 2023.

Amendments.
The 2023 amendment, effective July 1, 2023, substituted "amount, as allowances for credit losses" for "amount as an allowance for loan and lease losses" in the second sentence of subsection (b).

RESEARCH REFERENCES

C.J.S.
12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions, §§ 61, 62.

7-1-660. Dividends.

(a) As used in this Code section, the term "dividend" means a designated distribution of earnings other than the payable contracted rate of interest due to members and depositors in all deposit and share account categories.

(b) At such intervals and for such periods as the board of directors may authorize, dividends from undivided earnings may be declared at such amounts as are determined by the board, provided that such dividends shall not be paid until provision for the transfer to the allowances for credit losses has been made. Dividends in excess of specified amounts prescribed by regulations of the department to ensure that credit unions maintain an adequate capital structure shall not be paid without the prior approval of the department. In such cases, the proposed dividend or interest may be paid after approval by the department upon its determination that such payment would be in the continued best interest of the credit union, would promote its stability, and would not impair its ability to repay its creditors other than its members and depositors.

History.
Ga. L. 1925, p. 165, § 13; Code 1933, § 25-113; Ga. L. 1956, p. 742, § 2; Ga. L. 1968, p. 465, § 6; Code 1933, § 41A-3111, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 33; Ga. L. 1981, p. 1244, § 11; Ga. L. 2005, p. 826, § 20/SB 82; Ga. L. 2006, p. 72, § 7/SB 465; Ga. L. 2010, p. 878, § 7/HB 1387; Ga. L. 2023, p. 651, § 15/HB 55, effective July 1, 2023.

Amendments.
The 2023 amendment, effective July 1, 2023, rewrote this Code section, which read: "At such intervals and for such periods as the board of directors may authorize, dividends and interest from retained earnings may be declared at such rates as are determined by the board, provided that such dividends and interest shall not be paid until provision for the transfer to the allowance for loan losses has been made. Dividends or interest in excess of 100 percent of a credit union's net earnings before dividends shall be approved in writing by the department prior to payment, provided that an application from a credit union with net worth equal to or in excess of the requirements for a well-capitalized credit union, as defined by the National Credit Union Administration rules and regulations, shall be deemed to be approved five business days after the receipt of the dividend approval form by the department unless the department

notifies the credit union that the dividend is not approved within this period. The proposed dividend or interest may be paid after approval by the department upon its determination that such payment would be in the continued best interest of the credit union, would promote its stability, and would not impair its ability to repay its creditors other than its shareholders and depositors."

RESEARCH REFERENCES

Am. Jur. 2d.

18A Am. Jur. 2d, Corporations, §§ 824, 825.

C.J.S.

12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions, §§ 72, 73.

7-1-661. Fiscal year; special meetings of members; voting and proxies.

The credit union fiscal year shall end at the close of business on December 31, unless the bylaws of the credit union specify a different fiscal year. Unless the articles of incorporation or bylaws provide otherwise, special meetings of the members may be held by order of the chairperson of the board of directors, the president or chief executive officer, or at least 20 percent of the directors in office. In addition, special meetings of the members may be held on written request of 5 percent of the members or such other amount as the articles of incorporation or bylaws shall specify; provided, however, that such articles or bylaws shall not require written request from more than 25 percent of the members for a special meeting to be held. At all meetings a member shall have but one vote. No member may vote by proxy; but a society, association, partnership, or corporation having membership in the credit union may be represented by one person duly authorized by said society, association, partnership, or corporation to represent it. At any meeting the members may decide on any matter of interest to the credit union and may overrule the board of directors, provided that the notice of the meeting shall have stated the question to be considered.

History.

Ga. L. 1925, p. 165, § 11; Code 1933, § 25-121; Code 1933, § 41A-3112, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1244, § 12; Ga. L. 2023, p. 651, § 16/HB 55, effective July 1, 2023; Ga. L. 2024, p. 354, § 1-17/HB 876, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2023, added ", unless the bylaws of the credit union specify a different fiscal year" at the end of the first sentence.

The 2024 amendment, effective July 1, 2024, substituted the present provisions of this Code section for the former provisions, which read: "The credit union fiscal year shall end at the close of business on December 31, unless the bylaws of the credit union specify a different fiscal year. Special meetings of the members may be held by order of the directors or on written request of 10 percent of the members. At all meetings a member shall have but one vote. No member may vote by proxy; but a society, association, partnership, or corporation having membership in the credit union may be represented by

one person duly authorized by said society, association, partnership, or corporation to represent it. At any meeting the members may decide on any matter of interest to the credit union and may overrule the board of directors, provided the notice of the meeting shall have stated the question to be considered.".

RESEARCH REFERENCES

C.J.S.
12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions, § 66.

7-1-662. Taxes to which subject.

Credit unions shall not be subject to any tax except the ad valorem tax upon property imposed by the Constitution of this state unless made subject thereto by express provision of the law specifically naming credit unions and making them subject thereto. All ad valorem taxes against credit unions shall be assessed upon the value of their shares, including surplus and undivided profits, and not upon their assets, other than real estate; and the rate of taxation shall not exceed the rate of taxation imposed on banking corporations, provided that, so long as federal credit unions are exempt from the payment of the tax imposed under this Code section, state credit unions shall likewise be exempt.

History.
Ga. L. 1925, p. 165, § 24; Code 1933, § 25-123; Ga. L. 1943, p. 279, § 2; Code 1933, § 41A-3113, enacted by Ga. L. 1974, p. 705, § 1.

Law reviews.
For comment, "If It Quacks Like a Duck: In Light of Today's Financial Environment, Should Credit Unions Continue to Enjoy Tax Exemptions?," see 28 Ga. St. U.L. Rev. 1367 (2012).

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Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Code 1933, §§ 25-101 and 25-123 are included in the annotations for this Code section.

Credit unions are exempt from Corporate Franchise Tax Act. — State and federal credit unions are exempt under present laws from taxes imposed under the Corporate Franchise Tax Act. 1965-66 Op. Att'y Gen. No. 66-92 (decided under former Code 1933, §§ 25-101 and 25-123).

Credit union purchases exempt from Sales and Use Tax Act. — Former Code 1933, § 41A-3113 (see now O.C.G.A. § 7-1-662) being later in time than the Sales and Use Tax Act contained in former Code 1933, Ch. 92-34A (see now O.C.G.A. § 48-8-1 et seq.) will exempt purchases of credit unions from taxes imposed by the Sales and Use Tax Act. 1974 Op. Att'y Gen. No. 74-136.

7-1-663. Rules and regulations.

Without limitation on the authority conferred by Article 1 of this chapter, the department is authorized to make such rules and regulations not inconsistent with this article and other applicable statutes

governing the operation of credit unions as it may consider reasonable and proper for the protection of all funds invested. The department shall solicit comments from credit unions at least annually for recommended changes to the department's rules and regulations.

History.
Code 1933, § 25-123.1, enacted by Ga. L. 1968, p. 465, § 1; Code 1933, § 41A-3114, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2005, p. 826, § 21/SB 82.

7-1-664. Credit union equipment, operations, and locations.

(a) For purposes of this Code section, the term:

(1) "Automated teller machine" means electronic equipment which performs routine banking transactions, including, but not limited to, the taking of deposits for the public at locations off premises of a credit union's main or branch office under regulations prescribed by the commissioner. Such term includes electronic equipment that utilizes, or has the capability to utilize, live video chat with offsite credit union personnel capable of assisting with banking services, including, but not limited to, account initiation.

(2) "Cash dispensing machine" means an automated or electronic terminal which dispenses cash or scrip redeemable for goods and services or for cash, goods, and services; provided, however, that such terminal is not capable of initiating intrabank transactions other than those necessary and incidental to the dispensing of cash.

(3) "Extension" means a location at which banking activity may occur but which is not a branch or main office.

(4) "Night depository" means a drop box where customers can make deposits or payments outside of normal banking hours.

(5) "Point-of-sale terminal" means electronic equipment located in non-credit union business outlets to record electronically credit union transactions occurring as a result of the sale of goods or services.

(b) A credit union location shall be authorized to operate an automated teller machine, cash dispensing machine, night depository, or point-of-sale terminal without prior approval of the department; provided, however, that such extension complies with the requirements of this Code section and any rules and regulations of the department relating to notification.

(c) A credit union may operate an extension as follows:

(1) Any federally insured credit union may operate an automated teller machine at any location in the state;

(2) Any credit union may operate a cash dispensing machine at any location in the state;

(3) Any credit union may operate an automated teller machine or a cash dispensing machine individually or jointly with one or more credit unions;

(4) Any credit union may operate a night depository or point-of-sale terminal at any location in the state;

(5) Any credit union may operate an extension not defined in subsection (a) of this Code section, provided that such extension is located within 200 yards of the boundary lines of a single contiguous area of property owned or leased by the credit union and used as a credit union location. Prior to the operation of such extension, the credit union shall notify the department in writing; and

(6) All other extensions must be approved by the department prior to the operation of such extension.

(d) This Code section shall not apply to personal communication devices such as telephones, computer terminals, modems, and other similar devices which are not accessible to the general public but are intended for use by a single credit union member. The department may by regulation further define "automated teller machine," "cash dispensing machine," "night depository," "point-of-sale terminal," and "personal communication device" consistent with the objectives set forth in Code Section 7-1-3.

History.
Code 1981, § 7-1-664, enacted by Ga. L. 2020, p. 320, § 12/HB 781.

Editor's notes.
This Code section formerly pertained to payment of deposits of deceased depositors in state and federal credit unions. The former Code section was based on Ga. L. 1967, p. 595, § 6; Code 1933, § 41A-3115, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 34; Ga. L. 1976, p. 1388, § 4 and was reserved and repealed by Ga. L. 1983, p. 661, § 2, effective July 1, 1983.

7-1-665. Main office and branch offices.

(a) For purposes of this Code section, the term:

(1) "Branch office" means any location of a credit union other than the main office where financial services are offered to members.

(2) "Main office" means the principal location of a credit union as such location appears in the records of the department.

(b) A credit union shall indicate its principal location with the department, and if it fails to do so, the department shall choose a location of such credit union to be the main office and shall so notify such credit union.

(c) A credit union may maintain offices at locations other than its main office if the maintenance of such branch offices shall be reasonably necessary to furnish service to its membership. The establishment of

branch offices shall be subject to the prior approval of the department upon application to it in such form as it may prescribe by regulation. Participation in shared branching networks does not constitute the establishment of branch offices under this Code section.

(d) The department shall exercise its discretion in its consideration of an application to establish a branch office; provided, however, that the department shall not approve an application until it has satisfactorily ascertained that a need exists and the establishment of the proposed branch office would be advantageous to members. Such determination may be made upon consideration of the following factors:

(1) Reasonable opportunity for the proposed branch office to generate a sufficient profit;

(2) The character and fitness of the board of directors and management of the credit union to command the confidence of the membership and to warrant the belief that the business of the credit union at the branch office will be honestly and efficiently conducted;

(3) The adequacy of the capital structure of the credit union, particularly in view of the anticipated business to be generated by the proposed branch office; and

(4) The overall financial condition and safety and soundness of the applicant credit union.

Where the department by rule, regulation, or written policy has provided for expedited processing of applications or for notice procedures, it may abbreviate its review of these criteria.

(e) After receipt of a complete application, the department shall have 30 days within which to approve or disapprove such application.

(f) The department may approve an application contingent upon the satisfaction of additional conditions, including the submission of information such as the date of opening and the capital outlay for the branch office. The department may revoke such contingent approval if conditions in the approval have not been satisfied or if other violations of law occur as a result of the branch office's opening or operation.

(g) If the department disapproves an application to establish a branch office, it shall notify the applicant of its disapproval and state generally in writing the unfavorable factors influencing its decision. The decision of the department is final, except that it may be subject to judicial review as provided in Code Section 7-1-90.

(h) The department may provide by regulation that a credit union which meets certain criteria may, in lieu of filing a branch application, file a written notification with the department.

(i) In the event of merger or consolidation of two or more credit

unions, the resulting credit union shall indicate its main office with the department and may retain and continue to operate as branch offices any or all credit union locations of the merged institutions which had been approved by the department prior to such merger or consolidation. In the event of the purchase of substantially all of the assets of a credit union, subject to the review and approval by the department of such transaction, the purchasing credit union may retain and continue to operate as branch offices any or all credit union locations of the selling credit union which had been approved by the department prior to such purchase.

History.
Code 1933, § 41A-3116, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2005, p. 826, § 22/SB 82; Ga. L. 2020, p. 320, § 13/HB 781.

7-1-666. Deposit insurance requirements; public notices when deposits not properly insured.

(a) Every credit union shall be required to obtain deposit insurance satisfactory to the department before it may conduct business and accept deposits, except that credit unions which have had their deposit insurance coverage withdrawn or canceled may, in the discretion of the department, continue to accept deposits, provided that, within six months after withdrawal or cancellation of insurance, such credit unions shall obtain deposit insurance written by an insurance company authorized to transact business in this state and acceptable to the department or by the National Credit Union Administration. The department may, in its discretion, for cause shown, extend the time limitation in which deposit insurance must be obtained.

(b) Deposit insurance required to be obtained in subsection (a) of this Code section need not be in excess of amounts insured by the National Credit Union Administration at the time the insurance is obtained; but, whenever the insurance coverage is, in the opinion of the department, less than amounts insured by the National Credit Union Administration, the credit union shall be required to post a sign in boldface print, in letters at least four inches high, at a conspicuous place near the entrance of such credit union, which states "Deposits Not Insured" or "Deposits Insured Up To (insert amount of deposit insurance)." Such wording shall also follow the name of the credit union wherever it is written or printed and shall be posted in writing which is easily legible in letters at least one inch high at each window or desk receiving deposits.

History.
Code 1933, § 41A-3117, enacted by Ga. L. 1974, p. 705, § 1.

Cross references.
For similar provisions relating to de-

posit insurance requirements for banks, § 7-1-244.

7-1-667. Mergers.

(a) A credit union may, with the approval of the department and in accordance with such uniform rules and regulations as it shall make and promulgate, be merged with another credit union under the articles of such credit union. Such merger may occur regardless of whether the credit unions serve the same field of membership, so long as there is adopted a plan agreed upon by the majority of the board of each credit union joining the merger and approved by not less than a majority of the members of the credit union being acquired present and eligible to vote at the meeting called for that purpose. The department may allow waiver of the member vote if, in its judgment, the merger is necessary to protect the safety and soundness of either or both credit unions. All property, property rights, and interests of the merging credit union shall, upon merger, be transferred to and vested in the continuing credit union without deed, endorsement, or other instrument of transfer; and the debts and obligations of the merging credit union shall be deemed to have been assumed by the continuing credit union; and thereafter the articles of the merging credit union shall be void.

(b) The provisions of Article 8 of Chapter 4 of Title 14, relating to merger and consolidation, shall no longer be applicable to credit unions.

(c) For purposes of this Code section, the term "credit union" shall include a federal credit union.

(d) When a credit union merges with another credit union, one shall be designated as the continuing credit union by the credit unions participating in the merger. The participating credit union that is not the continuing credit union shall be designated as the merging credit union.

(e) Upon adoption of the plan of merger, the parties to the merger shall file with the department a merger application, the articles of merger, and the fees required by Code Section 7-1-862. The articles of merger shall be signed by two duly authorized officers of each party to the plan of merger under their respective seals and shall contain:

(1) The names of the parties to the plan and of the resulting continuing credit union;

(2) The street address and county of the location of each main office, registered agent, and registered office;

(3) The votes by which the plan was adopted and the time, place, and notice of each meeting conducted in connection with such adoption;

(4) The name and county of residence of each director of the resulting continuing credit union; and

(5) Any amendments of the articles of the resulting continuing credit union.

(f)(1) Upon receipt of the information set forth in subsection (e) of this Code section, the department shall conduct such investigation as it deems necessary to ascertain whether:

(A) The articles of merger and supporting information satisfy the requirements of this chapter;

(B) The plan of merger and any modification thereof adequately protects the interests of members and other creditors;

(C) The requirements for a merger under all applicable laws have been satisfied and the resulting continuing credit union would satisfy the applicable requirements of this chapter; and

(D) The merger would be consistent with adequate and sound banking practice and in the public interest on the basis of:

(i) The financial history and condition of the parties to the plan of merger;

(ii) The proposed business plan; and

(iii) The character of their management.

(2) The department shall, in its discretion, approve or disapprove a merger on the basis of its investigation and the criteria set forth in paragraph (1) of this subsection. The department shall give written notice to:

(A) The Secretary of State of its approval of a merger along with a copy of the articles of merger; and

(B) The parties to the plan of its decision and, in the event of disapproval, a statement in general of the reasons for its decision.

(g) The rights and privileges of the members of each merging credit union shall remain intact, provided that, if any person is a member of more than one of the participating credit unions, such person shall only be entitled to one set of membership rights in the continuing credit union.

(h) In the case of a merger of a Georgia state-chartered credit union with any other credit union, with the Georgia state-chartered credit union as the continuing credit union, any assets, lines of business, activities, or powers which may accrue to the continuing credit union which would not be allowed for a Georgia state-chartered credit union shall be provided for in the plan of merger. Such plan shall include the

proposal for holding or disposal of such assets or the continuation or termination of such line of business, activity, or power. The department shall review the plan to determine whether, in the interest of safety and soundness and consistent with the other objectives of Code Section 7-1-3, the activity, power, asset, or line of business should be approved, denied, or phased out within a reasonable period of time to be determined by the department.

History.
Code 1933, § 41A-3118, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1980, p. 972, § 7; Ga. L. 2005, p. 826, § 23/SB 82; Ga. L. 2015, p. 344, § 24/HB 184; Ga. L. 2017, p. 193, § 20/HB 143; Ga. L. 2019, p. 828, § 26/HB 185; Ga. L. 2021, p. 323, § 33/HB 111.

OPINIONS OF THE ATTORNEY GENERAL

Credit unions in existence prior to April 1, 1975. — Current statutory provisions governing mergers of state-chartered credit unions allow the field of membership of a pre-1975 credit union to be included in a plan of merger and assumed by the surviving credit union. 2004 Op. Att'y Gen. No. 2004-6.

RESEARCH REFERENCES

C.J.S.
12A C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions, § 242 et seq.

7-1-668. Conversion of state and federal credit unions.

(a) Any credit union operating in this state may convert into a federal chartered credit union, and any federal credit union may convert into a credit union organized under this chapter upon approval of the authority under whose supervision the converted credit union will operate and upon compliance with applicable federal laws as to a converted federal credit union and upon compliance with applicable state laws as to a converted credit union. In the case of a federal credit union converting to a state credit union, such converting credit union may keep its existing members at the time of conversion, but after conversion eligibility for membership in the converted credit union must comply with state law. If there are other areas of noncompliance with state law, the credit union must provide the department with a plan to bring those areas into compliance with Georgia law within a reasonable period, to be determined by the department.

(b) The procedure for obtaining such approval and effecting the conversions in the case of a credit union shall be as follows:

(1) A meeting of the board of directors, either regular or special, shall be called for the purpose of voting on converting from a federal credit union to a credit union or from a credit union to a federal credit

union. A majority of the board of directors shall adopt a resolution approving the contemplated conversion;

(2) A meeting, either regular or special, of the members shall then be called for voting on the proposed conversion. Notice of said meeting shall be given in the manner prescribed in Code Section 7-1-6 and shall include a statement indicating that the proposed conversion will be considered at the meeting. Proof of giving of the notice shall be by the affidavit of the president of the credit union. A majority of the members present at this meeting shall then approve the proposed conversion; and

(3) Within ten days after such approval of the conversion, the president or vice-president and treasurer shall file a verified copy of the resolution adopted by the board of directors with the state or federal authority under whose supervision the converting credit union is to operate.

(b.1) In addition to the requirements of subsection (b) of this Code section, in the case of a federal credit union converting to a credit union:

(1) The federal credit union shall file with the department:

(A) The articles of conversion, which shall contain:

(i) Its name and the name of the resulting credit union;

(ii) The street address and county of its main office;

(iii) The name and initial registered agent and the street address where the initial registered office will be located;

(iv) The votes by which the plan of conversion was adopted and the time, place, and notice of each meeting conducted in connection with such adoption;

(v) The name and county of residence of each director of the resulting credit union;

(vi) The provisions required in articles of a new credit union by paragraphs (6), (7), and (8) of subsection (a) of Code Section 7-1-630; and

(vii) The plan of conversion;

(B) The fees required by Code Section 7-1-862;

(C) An application and information desired by the department in order to evaluate the proposed conversion, in the form specified by the department;

(D) Applicable fees established by regulation of the department to defray the expenses of its investigation of the conversion application; and

(E) A certificate from the Secretary of State showing that the proposed name of the resulting credit union has been reserved pursuant to Code Section 7-1-131;

(2) The department shall conduct such investigation as it deems necessary to ascertain whether:

(A) The articles of conversion and supporting items satisfy the requirements of this chapter;

(B) The plan adequately protects the interests of depositors, other than creditors; and

(C) The requirements for a conversion under all applicable laws have been satisfied and the resulting institution would satisfy the applicable requirements of this chapter; and

(3) Within 90 days after receipt of the articles and all of the filings required by this subsection, the department shall, in its discretion, approve or disapprove the articles on the basis of its investigation and the criteria set forth in this Code section. If the department approves the application, it shall deliver written approval with a copy of the articles attached to the Secretary of State and notify the federal credit union, and any other parties to the plan, of its action, provided that, if approval of any federal agency is required, the department may elect to not act on the application until such federal approval is given. If the department disapproves the application, it shall give written notice to the federal credit union and any other parties to the plan of its disapproval and a statement to them generally of the reasons for its decision.

(c) Upon the issuance of the certificate of conversion by the Secretary of State, in accordance with the requirements in Code Section 7-1-554, and the written approval of the department for conversions to credit unions and with the written approval of the National Credit Union Administration for conversions to federal credit unions, the converting credit union shall then become a credit union under the laws of this state or the United States, as the case may be; and thereupon all assets shall become the property of the new credit union or federal credit union, as the case may be, subject to all existing liabilities, and every person who was a member of the converting credit union shall be a member in the new credit union or federal credit union.

(d)(1) Conversions by state chartered credit unions to financial institutions other than credit unions or financial institutions other than credit unions to state chartered credit unions shall be effected by approval of the department and compliance with any other applicable law. The department may prescribe other requirements in order to protect the rights of members or the funds invested.

(2) In conversions by state chartered credit unions to financial institutions other than credit unions, procedures provided in subsection (b) of this Code section shall be followed for obtaining approval from the department and effecting such conversions, provided that two-thirds of the members voting shall be required to approve a proposed conversion.

(3) In conversions by financial institutions other than credit unions to state chartered credit unions, the department shall prescribe procedures for financial institutions to seek approval from the department to convert to a credit union. Such procedures shall include:

(A) The procedures provided in subsection (b) of this Code section;

(B) The submission of a conversion plan by the converting financial institution. A conversion plan shall include the following, where applicable:

(i) How the converting financial institution will comply with credit union membership requirements;

(ii) Plans for the divestment of its board of directors of stock options;

(iii) Plans for the divestment of capital stock;

(iv) Plans for the phase out of all impermissible investments;

(v) Plans for compliance with credit union business loan limitations; and

(vi) Any other such information as required by the department; and

(C) The converting financial institution shall perform a complete policy review to address appraisal restrictions, lending restrictions, investment restrictions, corporate structure restrictions, and power structure in order to ensure compliance with this article and regulations of the department.

(4) The department may authorize a credit union resulting from a charter conversion under this Code section to do the following:

(A) Complete any activities that the converting financial institution legally engaged in at the effective time of the charter conversion but that otherwise are not permitted for credit unions, provided that the transitional period during which such activities are carried out does not exceed five years after the effective date of the charter conversion; and

(B) Retain for the transitional period any assets that the converting financial institution legally held at the effective time of the charter conversion that otherwise may not be held by credit unions, provided that such transitional period during which such assets are retained does not exceed five years after the effective date of the charter conversion.

History.
Code 1933, § 41A-3119, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2005, p. 826, § 24/SB 82; Ga. L. 2015, p. 5, § 7/HB 90; Ga. L. 2015, p. 344, § 25/HB 184; Ga. L. 2017, p. 193, § 21/HB 143; Ga. L. 2021, p. 323, § 34/HB 111.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 235 et seq.
C.J.S.
12A C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions, §§ 240, 241.

7-1-669. Corporate credit union.

(a) As used in this Code section, the term "corporate credit union" means a credit union which is organized to serve a field of membership which consists primarily of other credit unions operating pursuant to this chapter, any other state credit union law, or the Federal Credit Union Act. A corporate credit union may be organized and operated under this chapter and subject to all provisions of this chapter which are not inconsistent with this Code section.

(b) The field of membership of a corporate credit union shall include credit unions organized and operating under this chapter, any other state credit union law, or under the Federal Credit Union Act. In addition, the field of membership may include:

(1) Members of credit unions which are members of the corporate credit union;

(2) Officials and employees of any organization or association of credit unions and of the corporate credit union;

(3) Except as limited in Article 1 of this chapter, employees of the department or of the National Credit Union Administration;

(4) Organizations and associations of persons or credit unions included in the foregoing;

(5) Persons who are:

(A) Members of a credit union that has entered into voluntary or involuntary dissolution;

(B) Indebted to a credit union which has entered into voluntary or involuntary dissolution;

(C) Nonmember depositors of a credit union which has entered into voluntary or involuntary dissolution; and

(6) Groups within a common bond which are determined by the commissioner to lack the potential membership required for approval of their own credit union.

(c) The corporate credit union may make loans to individuals who are members pursuant to paragraph (1) of subsection (b) of this Code section only upon approval of the credit committee of the member credit union of which the individual is a member and to individuals who are members pursuant to paragraph (3) of subsection (b) of this Code section only upon reporting such loan to the appropriate supervisory authority.

(d) The commissioner may, in his or her discretion, approve greater borrowings than provided in this chapter when required to enable the credit union to meet its obligations to its members and otherwise assist its members during any emergency or hardship.

(e) A corporate credit union may:

(1) Make loans to other credit unions, but loans to any one credit union shall not exceed:

(A) For unsecured loans and lines of credit, excluding pass-through and guaranteed loans from the Central Liquidity Facility and the National Credit Union Share Insurance Fund, more than 50 percent of its net worth; or

(B) For secured loans and lines of credit, excluding those secured by shares or marketable securities and member reverse repurchase transactions, more than 100 percent of its net worth.

The department may utilize definitions found in the National Credit Union Administration rules and regulations in interpreting this subsection;

(2) Make loans to other members as specified in Code Section 7-1-658;

(3) Purchase shares of and make deposits in other credit unions;

(4) Obtain or acquire the assets and liabilities of any credit union which enters into liquidation;

(5) Invest in and grant loans to associations of credit unions and to organizations chartered to provide service to credit unions; and

(6) Borrow money and accept deposits from any source.

(f) The commissioner may issue such special regulations as he or she may deem prudent or necessary to allow a corporate credit union to promote effectively the liquidity and sound financial management of its member credit unions without unduly endangering its own liquidity and sound financial condition. Such special regulations need not be applicable to all credit unions but may be applicable only to the corporate credit union. The corporate credit union shall maintain adequate allowances for credit losses in accordance with generally accepted accounting principles and such other reserves as may be required by the rules and regulations of the department.

(g) A corporate credit union shall have all the rights and powers of any other credit union organized under this chapter and the additional rights and powers specified in this Code section.

History.

Code 1933, § 41A-3120, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2002, p. 1220, § 9; Ga. L. 2005, p. 826, § 25/SB 82; Ga. L. 2010, p. 878, § 7/HB 1387; Ga. L. 2016, p. 390, § 3-4/HB 811; Ga. L. 2023, p. 651, § 17/HB 55, effective July 1, 2023; Ga. L. 2024, p. 1052, § 1(a)(20)/SB 448, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2023, substituted "corporate credit union" for "central credit union" throughout this Code section; in subsection (a), substituted "As used in this Code section, the term 'corporate credit union'" for "A 'central credit union'" at the beginning of the first sentence and deleted the last sentence, which read: "Such credit union shall use the word 'central' in its name."; inserted "or her" in subsection (d); in subsection (e), substituted "Central Liquidity Facility" for "Central Liquidity Fund" and "its net worth" for "capital" in subparagraph (e)(1)(A), substituted "its net worth" for "capital" in subparagraph (e)(1)(B), and, in the undesignated paragraph following subparagraph (e)(1)(B), deleted the former first sentence, which read: "For the purposes of this paragraph, the definition of capital shall be consistent with federal law and regulations." and deleted "other" following "utilize"; and, in subsection (f), substituted "maintain adequate allowances for credit losses" for "maintain an adequate allowance for loan and lease losses".

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, deleted "or" from the end of subparagraph (b)(5)(A).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2005, "no" was deleted preceding "more than" in subparagraphs (e)(1)(A) and (e)(1)(B).

U.S. Code.

The Federal Credit Union Act, referred to in subsections (a) and (b) of this Code section, is codified as 12 U.S.C. § 1751 et seq.

RESEARCH REFERENCES

ALR.

Construction and application of Federal Credit Union Act of 1934 (FCUA) (12 U.S.C.A. §§ 1751 to 1795k), 89 A.L.R. Fed. 2d 357.

7-1-670. [Reserved] Third-party payment services.

History.

Code 1933, § 41A-3121, enacted by Ga. L. 1979, p. 417, § 2; Ga. L. 1983, p. 602, § 19; Ga. L. 2001, p. 970, § 9; Ga. L. 2005,

p. 826, § 26/SB 82; Ga. L. 2007, p. 502, § 16/SB 70; Ga. L. 2016, p. 390, § 3-5/HB 811; repealed by Ga. L. 2022, p. 220, § 29/HB 891, effective July 1, 2022.

Editor's notes.

Ga. L. 2022, p. 220, § 29/HB 891 repealed and reserved this Code section, effective July 1, 2022.

7-1-671. Exercise of federal powers.

(a) For purposes of this Code section, the term "federal power" means any banking or corporate power, right, benefit, privilege, or immunity of a federal credit union, the deposits of which are federally insured, that may be exercised by a federal credit union doing business in this state pursuant to the Federal Credit Union Act, 12 U.S.C. Section 1751, et seq.; any other federal statute; or any regulation, ruling, circular, bulletin, order, or interpretation issued by the National Credit Union Administration. Such term shall include only the provisions set forth above which were effective on January 1, 2018.

(b) Notwithstanding any other provisions of law, a credit union may exercise any federal power while a federal credit union may also exercise such power subject to the same limitations and restrictions as are applicable to federal credit unions, provided that the requirements of subsection (d) of this Code section have been satisfied. Nothing in this subsection shall be construed as authorizing a credit union incorporated or organized in this state to exercise a federal power prior to compliance with subsection (d) of this Code section.

(c) Notwithstanding any other provisions of law, to the extent the Federal Credit Union Act, 12 U.S.C. Section 1751, et seq., or any other federal law or regulation in effect on January 1, 2018, precludes or preempts or has been determined to preclude or preempt the application of any provision of law, rule, or regulation of this state as to any federal credit union doing business in this state, a credit union may also exercise such power authorized by the preclusion or preemption subject to the same limitations and restrictions as are applicable to a federal credit union, provided that the requirements of subsection (d) of this Code section have been satisfied. Nothing in this subsection shall be construed as authorizing a credit union incorporated or organized in this state to exercise a federal power prior to compliance with subsection (d) of this Code section.

(d) In furtherance of the commissioner's statutory duties to regulate, supervise, and examine, a credit union shall notify the commissioner in writing by certified or registered mail that, pursuant to subsection (b) or (c) of this Code section, it intends to exercise a federal power or to avail itself of any federal preclusion or preemption of any provision of law, rule, or regulation of this state. Such notice shall include the specific federal authorization of the activity to be utilized, the proposed action to be undertaken by the credit union, documentation indicating

that the credit union satisfies the prescribed federal standards, if any, to engage in the activity, and such other information as may be required by the department. Upon receipt of such notice, the commissioner shall determine whether the exercise of any federal power or the availing of any federal preclusion or preemption, or any part thereof, by the credit union is inconsistent with the purposes of this chapter or presents undue risk to the safety and soundness of the banking system. In making such a determination, the commissioner shall consider the financial condition of the credit union, the regulatory safety and soundness ratings of the credit union, the ability of credit union management to administer and supervise the activity, and the overall impact on the safety and soundness to all other state chartered credit unions. Based on such a determination, the commissioner may object to the exercise of the federal power, in whole or in part, or to the federal preclusion or preemption of the law, rule, or regulation of this state, in whole or in part, including objecting to a level or quantity above which a credit union may be seeking to exercise a federal power or availing itself of any federal preclusion or preemption of law, rule, or regulation of this state. If the commissioner so objects, the commissioner shall deliver such objection in writing by certified or registered mail to the credit union within 45 days of receipt of the notice; provided, however, that the commissioner may extend such period of review for an additional 45 days by providing the credit union with written notice of such extension prior to the expiration of the initial notice period. If the commissioner sends such an objection, the federal power, preclusion, or preemption, or the part thereof, objected to by the commissioner shall not be exercised by the credit union pursuant to subsections (b) and (c) of this Code section. The objection by the commissioner of a credit union's intent to exercise a federal power or avail itself of any federal preclusion or preemption shall not preclude such credit union from providing notice to the department of its intent to exercise the same federal power or to avail itself of the same federal preclusion or preemption at a later date; provided, however, that the requirements of this subsection shall be applicable for any such additional notice. Further, in the event a credit union determines, after satisfying the notice provisions of this subsection, that it no longer wishes to exercise a federal power or avail itself of any federal preclusion or preemption, then such credit union shall provide written notice of such fact to the commissioner by certified or registered mail.

(e) Notwithstanding the provisions of Code Section 7-1-70, the department shall publish information stating the federal powers that are being exercised or federal preclusions or preemptions that are being utilized by each credit union. All other information related to the notices or objections provided under subsection (d) of this Code section are governed by Code Section 7-1-70.

(f) Notwithstanding any other provisions of law, a credit union may exercise any power that was granted through an order or ruling declared by the commissioner on or before January 1, 2018, pursuant to the current or former provisions of Code Section 7-1-61, 7-1-61.1, or 7-6A-12 and which has not been rescinded or withdrawn.

(g) Any federal power or activity authorized and exercised or conducted pursuant to this Code section shall be independent from, and in addition to, any other powers granted to credit unions under applicable laws of this state or rules or regulations promulgated thereunder. The express and incidental powers granted to credit unions under the Official Code of Georgia Annotated are not limited or otherwise restricted by this Code section.

(h) Nothing in this Code section shall be construed as limiting the commissioner's authority conferred by this chapter, including the powers granted under Code Sections 7-1-61 and 7-1-61.1.

(i) Nothing in this Code section shall be construed as authorizing the imposition of interest rates by a credit union in excess of those authorized by Chapter 4 of this title nor shall any provision of this Code section be construed as permitting a credit union to make loans in violation of Chapter 17 of Title 16.

History.
Code 1981, § 7-1-671, enacted by Ga. L. 2018, p. 214, § 17/HB 780.

Editor's notes.
Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

Administrative rules and regulations.
Notification of Intent to Utilize a Federal Power, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Banks, Application, Registrations and Notifications, Rule 80-1-1-.12 et seq.

ARTICLE 4

MONEY TRANSMISSION

Editor's notes.
Ga. L. 2014, p. 251, § 1/HB 982, effective July 1, 2014, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of Code Section 7-1-680 through 7-1-684, 7-1-684.1, 7-1-685 through 7-1-687, 7-1-687.1, 7-1-688, 7-1-689, 7-1-689.1, 7-1-689.2, 7-1-690 through 7-1-692, relating to sale of checks or money orders, and was based on Ga. L. 1965, p. 81, §§ 2-17; Code 1933, §§ 41A-3201 — 41A-3213, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, §§ 35-36; Ga. L. 1978, p. 1717, §§ 8-9; Ga. L. 1984, p. 22, § 7; Ga. L. 1985, p. 1131, § 1; Ga. L. 1986, p. 458, § 10; Ga. L. 1990, p. 362, § 1; Ga. L. 1994, p. 1780, § 3; Ga. L. 1997, p. 143, § 7; Ga. L. 1995, p. 673, §§ 26-28; Ga. L. 2000, p. 174, § 18; Ga. L. 2000, p. 1589, § 3; Ga. L. 2003, p. 843, §§ 10-15; Ga. L. 2004, p. 458, §§ 6-7; Ga. L. 2005, p. 826, § 27/SB 82; Ga. L. 2007, p. 502, §§ 17/SB 70 — 24/SB 70; Ga. L. 2009,

p. 86, §§ 8/HB 141—141/HB 141; Ga. L. 2010, p. 878, § 7/HB 1387; Ga. L. 2013, p. 30, § 2/SB 139.

Administrative rules and regulations. Disclosures, Locations, Authorized Agents, and Customer Information, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Money Transmission, Rule 80-3-1-.01 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions decided under former Ga. L. 1965, p. 81 are included in the annotations for this article.

Intent of provisions on sale of checks or money orders is to protect innocent members of public from financial injury resulting from default of check-issuing companies. 1977 Op. Att'y Gen. No. 77-12 (decided under former Ga. L. 1965, p. 81).

Definition of check includes traveler's checks. — While Ga. L. 1965, p. 81 (see now O.C.G.A. § 7-1-680 et seq.) makes no specific mention of traveler's checks, the definition of "check" would clearly include any arrangement such as traveler's checks. 1972 Op. Att'y Gen. No. 72-23 (decided under former Ga. L. 1965, p. 81).

Bank holding company wishing to issue traveler's checks in Georgia must comply with Ga. L. 1965, p. 81 (see now O.C.G.A. § 7-1-680 et seq.). 1972 Op. Att'y Gen. No. 72-23 (decided under former Ga. L. 1965, p. 81).

Money transfer companies not subject to article absent issuance of check or instrument to fund recipient. — Money transfer companies are not subject to Sale of Checks Act unless there is issuance of a check or other instrument to recipient of funds disbursed; mere transmission of an instrument by the money transfer company to its agent is not "issuance of check" within meaning of former Code 1933, § 41A-3202 (see now O.C.G.A. § 7-1-681). 1975 Op. Att'y Gen. No. 75-102 (decided under former Ga. L. 1965, p. 81).

Georgia cannot restrict sales by federal credit unions of checks and money orders. — Since federal credit unions are authorized by Congress, and their federal regulatory agency, the National Credit Union Administration, to sell negotiable checks and money orders to their members, it follows that Georgia may not restrict federal credit unions in their exercise of this power. 1978 Op. Att'y Gen. No. 78-56 (decided under former Ga. L. 1965, p. 81).

RESEARCH REFERENCES

ALR.

Discharge of drawer or endorser of check by holder's acceptance therefor of something other than money, 87 A.L.R. 442.

Lost or stolen travelers' checks, 110 A.L.R. 976.

7-1-680. Definitions.

As used in this article, the term:

(1) "Acting in concert" means knowingly acting together with a common goal of jointly acquiring control of a licensee whether or not pursuant to an express agreement.

(2) "Authorized agent" means a person designated by a licensee pursuant to Code Section 7-1-683.1 to engage in money transmission.

(3) "Average daily money transmission liability" means the amount of the licensee's outstanding money transmission obligations in this state at the end of each day in a given calendar quarter ending March 31, June 30, September 30, or December 31, added together and divided by the total number of days in the quarter.

(4) "Closed-loop transaction" means a transaction where the value or credit is primarily intended to be redeemed for a limited universe of goods, intangibles, services, or other items provided by the issuer of the payment instrument, its affiliates or agents, or others involved in the transaction functionally related to the issuer or its affiliates or agents.

(5) "Commissioner" means the commissioner of banking and finance.

(6) "Control" means the direct or indirect possession of power to direct or cause the direction of the management and policies of a person or the direct or indirect possession of power to elect or appoint a majority of executive officers or other persons exercising managerial authority of a person.

(7) "Covered employee" means any employee of a licensee or an authorized agent engaged in any function related to money transmission.

(8) "Department" means the Department of Banking and Finance.

(9) "Executive officer" means the chief executive officer, president, chief financial officer, chief operating officer, each officer with responsibility involving policy-making functions for a significant aspect of a person's business, or any other individual performing similar managerial or supervisory functions with respect to any organization, whether incorporated or unincorporated.

(10) "Individual" means a natural person.

(11) "Licensee" means a person duly licensed by the department pursuant to this article.

(12) "Misrepresent" means to make a false statement of a substantive fact. Such term may also mean to engage in any conduct which leads to a false belief which is material to the transaction.

(13) "Monetary value" means a medium of exchange, whether or not redeemable in money.

(14) "Money transmission," "transmit money," or "transmission of money" means engaging in the business of:

(A) Receiving money or monetary value for transmission or transmitting money or monetary value within the United States

or to locations abroad by any and all means, including, but not limited to:

(i) An order;

(ii) A wire;

(iii) A facsimile; and

(iv) An electronic transfer;

(B) Selling or issuing payment instruments, including the creation, issuance, or sale of a payment instrument that is redeemable in cash or monetary value; and

(C) Payroll processing services.

Such term shall not include closed-loop transactions.

(15) "Money transmitter" means a person licensed under this article to transmit money.

(16) "Multistate licensing process" means any licensing agreement entered into by and among state agencies that regulate money transmitters.

(17) "Nationwide Multistate Licensing System and Registry" means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of certain persons engaged in nondepository activities.

(18) "Open-loop transaction" means a transaction using a payment instrument to redeem for goods or services at any location that accepts such payment instrument.

(19) "Passive investor" means a person that:

(A) Owns, directly or indirectly, at least 10 percent but less than 25 percent interest in or voting shares of a licensee or person in control of a licensee;

(B) Does not have the power to elect a majority of the members of the board of directors of a licensee;

(C) Is not employed by and does not perform any managerial duties for the licensee or person in control of a licensee; and

(D) Does not have the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

(20) "Payment instrument" means any instrument, order, or device for the payment or transmission of money or monetary value,

whether or not it is a negotiable instrument under the terms of Article 3 of Title 11, relating to negotiable instruments. Such term includes, but is not limited to, checks, money orders, drafts, stored value, and open-loop transactions. Such term shall not include closed-loop transactions, credit card vouchers, letters of credit, or any instrument that is redeemable by the issuer only in specific goods or services of the issuer.

(21) "Payment instrument holder" means a person that has purchased a payment instrument from a money transmitter or who has had monetary value transmitted by a money transmitter.

(22) "Payroll processing services" means receiving money for transmission pursuant to a contract with a person to deliver wages or salaries, make payment of payroll taxes to state and federal agencies, make payments relating to employee benefit plans, or make distributions of other authorized deductions from wages or salaries. Such term shall not include an employer performing payroll processing services on its own behalf or on behalf of its affiliate.

(23) "Person" means any individual, sole proprietorship, corporation, limited liability company, partnership, trust, or any other group of individuals, however organized.

(24) "Sale" and "selling" mean the passing of title from the money transmitter or the money transmitter's agent to a payment instrument holder or remitter or an agreement to transfer money or monetary value.

(25) "Signed" shall have the same meaning as provided in Code Section 11-1-201.

(26) "Stored value" means monetary value that represents a claim against the issuer evidenced by an electronic or digital record and is intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services. Such term includes, but is not limited to, prepaid access as defined by 31 C.F.R. Section 1010.100. Such term shall not include closed-loop stored value that is not sold to the public but is issued and distributed as part of a loyalty, rewards, or promotional program.

(27) "Tangible net worth" means the aggregate assets of a person, excluding all intangible assets, less liabilities, as determined in accordance with generally accepted accounting principles in the United States.

(28) "Ultimate equitable owner" means a person that:

(A) Owns, directly or indirectly, a 10 percent or more interest in a corporation or any other form of business organization;

(B) Owns, directly or indirectly, 10 percent or more of the voting shares of any corporation or any other form of business organization; or

(C) Exerts control, directly or indirectly, over a corporation or any other form of business organization, regardless of whether such person owns or controls such interest through one or more natural persons or one or more proxies, powers of attorney, nominees, corporations, associations, limited liability companies, partnerships, trusts, joint stock companies, other entities or devices, or any combination thereof.

For purposes of determining ultimate equitable ownership by an individual, the individual's interest shall be aggregated with the interest of any other immediate family member, including the individual's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and any other individual who shares such individual's home.

(29) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Multistate Licensing System and Registry.

(30) "Virtual currency" means a digital representation of monetary value that does not have legal tender status as recognized by the United States government. Such term shall not include the software or protocols governing the transfer of the digital representation of monetary value; units of value that are issued in an affinity or rewards program and that cannot be redeemed for money or virtual currencies; or an affinity or rewards program tied to a credit, debit, or prepaid card that awards points for purchases or other transactions, which points can be redeemed for dollar denominated credit to a checking, credit card, or prepaid account, or for a gift card, goods, travel, or services.

History.

Code 1981, § 7-1-680, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2015, p. 996, § 3C-2/SB 65; Ga. L. 2016, p. 390, § 1-6/HB 811; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2022, p. 220, § 30/HB 891; Ga. L. 2023, p. 651, § 18/HB 55, effective July 1, 2023; Ga. L. 2024, p. 1052, § 1(a)(21)/SB 448, effective July 1, 2024.

Amendments.

The 2022 amendment, effective July 1, 2022, added "or the direct or indirect possession of power to elect or appoint a majority of executive officers or other persons exercising managerial authority of a person" at the end of paragraph (5), substituted "each officer" for "each vice president" and "or any other individual" for "secretary, treasurer, or any other person" in paragraph (8), added paragraphs (14.1) and (16.1), and added the last sentence in paragraph (24).

The 2023 amendment, effective July 1, 2023, rewrote this Code section.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (20).

Editor's notes.

Ga. L. 2015, p. 996, § 1-1/SB 65, not codified by the General Assembly, provides:

"(a) This Act shall be known and may be cited as the 'Debtor Creditor Uniform Law Modernization Act of 2015.'

"(b) To promote consistency among the states, it is the intent of the General Assembly to modernize certain existing uniform laws promulgated by the Uniform Law Commission affecting debtor and creditor rights, responsibilities, and relationships and other federally recognized laws affecting such rights, responsibilities, and relationships."

7-1-681. Licensing requirements.

(a) Pursuant to this article, the department may license a person to engage in money transmission.

(b) No person, regardless of the location of such person, its facilities, or its agents, shall engage in money transmission in this state without having first obtained a license authorizing such activity under this article. This prohibition applies whether or not a person utilizes a branch, subsidiary, affiliate, or agent in this state. A person is deemed to be engaged in money transmission if the person advertises that service, provides that service with or without compensation, solicits to provide that service, or holds itself out as providing that service to or from this state, even if the person has no physical presence in this state.

(c) Every person that directly or indirectly controls another that violates subsection (b) of this Code section, including, but not limited to, each general partner, executive officer, joint venture, ultimate equitable owner, or director of such person, and every person occupying a similar status or performing similar functions as such person violates with and to the same extent as such person. Any person that directly or indirectly controls a person that violates subsection (b) of this Code section may avoid liability if such person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of the existence of the facts by reason of which the original violation is alleged to exist.

History.
Code 1981, § 7-1-681, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2023, p. 651, § 19/HB 55, effective July 1, 2023.

Amendments.
The 2023 amendment, effective July 1, 2023, rewrote this Code section.

7-1-682. Exemption from licensing requirements.

The requirement for licensure set forth in this article shall not apply to:

(1) Any state or federally chartered bank, trust company, credit union, savings and loan association, savings bank, or industrial bank, provided that every such bank, trust company, credit union, savings and loan association, savings bank, or industrial bank has deposits that are federally insured;

(2) Any authorized agent of a licensee;

(3) The United States Postal Service or its agent;

(4) Any agency, division, or instrumentality of the federal government of the United States; the government of the State of Georgia or the government of any other state; or any county or municipal government in this state;

(5) Any foreign bank that establishes a federal branch pursuant to the International Banking Act, 12 U.S.C. Section 3102;

(6) A wholly owned subsidiary of a state or federally chartered bank, trust company, credit union, savings and loan association, savings bank, or industrial bank, provided that every such bank, trust company, credit union, savings and loan association, savings bank, or industrial bank has deposits that are federally insured;

(7) A registered futures commission merchant under the federal commodities laws to the extent of its operation as such a futures commission merchant;

(8) A person that provides clearance or settlement services pursuant to a registration as a clearing agency or an exemption from such registration granted under the federal securities laws to the extent of its operation as such a provider;

(9) An operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among licensees or persons exempted by this Code section, in connection with wire transfers, credit card transactions, debit card transactions, stored value transactions, automated clearing-house transfers, or similar fund transfers;

(10) A person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as such a broker-dealer;

(11) An individual employed by a licensee, an authorized agent, or any person exempted from the licensing requirements of this article when acting within the scope of employment and under the supervision of the licensee, authorized agent, or exempted person as an employee and not as an independent contractor;

(12) A person appointed as an agent of a payee to collect and process a payment from a payor to the payee for goods or services, other than money transmission itself, provided to the payor by the payee, provided that:

(A) There exists a written agreement between the payee and the agent directing the agent to collect and process payments from payors on the payee's behalf;

(B) The payee holds the agent out to the public as accepting payments for goods or services on the payee's behalf; and

(C) Payment for the goods and services is treated as received by the payee upon receipt by the agent so that the payor's obligation is extinguished and there is no risk of loss to the payor if the agent fails to remit the funds to the payee;

(13) A person that acts as an intermediary by processing payments between an entity that has directly incurred an outstanding money transmission obligation to a customer and the customer's designated recipient, provided that the entity:

(A) Is properly licensed or exempt from licensing requirements under this article;

(B) Provides a receipt, electronic record, or other written confirmation to the customer identifying the entity as the provider of money transmission in the transaction; and

(C) Bears sole responsibility to satisfy the outstanding money transmission obligation to the customer, including the obligation to make the customer whole in connection with any failure to transmit the funds to the customer's designated recipient;

(14) A bank holding company, office of an international banking corporation, or corporation organized pursuant to the Bank Service Corporation Act, 12 U.S.C. Section 1861, under the laws of a state or the United States;

(15) Electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or on behalf of a state or governmental subdivision, agency, or instrumentality thereof;

(16) A board of trade designated as a contract market under the federal Commodity Exchange Act, 7 U.S.C. Section 1, or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board; or

(17) A person expressly appointed as a third-party service provider to or agent of an entity exempt under paragraphs (1) and (14) of this Code section, solely to the extent that:

(A) Such service provider or agent is engaging in money transmission on behalf of and pursuant to a written agreement with the exempt entity that sets forth the specific functions that the service provider or agent is to perform; and

(B) The exempt entity assumes all risk of loss and all legal responsibility for satisfying the outstanding money transmission obligations owed to purchasers and holders of the outstanding money transmission obligations upon receipt of the payment instrument holder's money or monetary value by the service provider or agent.

History.

Code 1981, § 7-1-682, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2019, p. 828, § 27/HB 185; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2021, p. 323, § 35/HB 111; Ga. L. 2022, p. 352, § 7/HB 1428; Ga. L. 2023, p. 651, § 20/HB 55, effective July 1, 2023; Ga. L. 2023, p. 730, § 7(1)/HB 475, effective July 1, 2023.

Amendments.

The 2022 amendment, effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, substituted "clearing-house" for "clearing house" in paragraph (9).

The first 2023 amendment, effective July 1, 2023, substituted "association, savings bank, or industrial bank, provided that every such bank" for "association, or savings bank when such bank" and "association, savings bank, or industrial bank" for "association, or savings bank" in paragraph (1); added "or its agent" at the end of paragraph (3); rewrote paragraph (4), which read: "A state or federal governmental department, agency, authority, or instrumentality and its authorized agents;"; substituted "International Banking Act" for "International Bank Act" in paragraph (5); substituted "loan association, savings bank, or industrial bank, provided that every such bank, trust company, credit union, savings and loan association, savings bank, or industrial bank has" for "loan association, or savings bank when such bank, trust company, credit union, savings and loan association, or savings bank has" in paragraph (6); inserted "licensees or" in paragraph (9); deleted "or" at the end of paragraph (10); in paragraph (11), inserted ", an authorized agent,", inserted ", authorized agent," and substituted a semicolon for a period at the end; and added paragraphs (12) through (17).

The second 2023 amendment, effective July 1, 2023, part of an Act to revise, modernize, and correct the Code, substituted "International Banking Act" for "International Bank Act" in paragraph (5).

7-1-683. Requirements for licensure; fees; rules and regulations.

(a) Each applicant for a license under this article shall:

(1) Submit an application in writing, which is made under oath and in such form as the department may prescribe;

(2) Furnish to the Nationwide Multistate Licensing System and Registry the following information:

(A) The legal name and principal office address of the person applying for the license;

(B) The name, residence, and business address of each director, ultimate equitable owner, and executive officer;

(C) If the applicant has one or more branches or other locations, including, but not limited to, locations operated by an authorized agent, at or through which the applicant proposes to

engage in money transmission within this state, the complete address of each such location; and

(D) The location where its initial registered office will be located in this state, if any; and

(3) Submit such other data, financial statements, and pertinent information as the department may require with respect to the applicant, its directors, trustees, officers, members, ultimate equitable owners, subsidiaries, affiliates, or agents.

(b) The application for license shall be filed together with:

(1) An investigation and supervision fee established by the department through rule or regulation which shall not be refundable but which, if the license is granted, shall satisfy the fee requirement for the first licensed year or the remaining part thereof;

(2) Items required by other provisions of this article, including, but not limited to, Code Sections 7-1-683.2 and 7-1-684; and

(3) Other information as may be required by the department.

(c) The department shall pay all fees received from licensees and applicants related to applications, licenses, and renewals to the Office of the State Treasurer; provided, however, that the department may net such fees to recover the cost of participation in the Nationwide Multistate Licensing System and Registry.

(d) The department shall enact rules and regulations regarding the time frame by which all persons must submit an original or renewal application for licensure through the Nationwide Multistate Licensing System and Registry.

History.

Code 1981, § 7-1-683, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2023, p. 651, § 21/HB 55, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, in subparagraph (a)(2)(C), inserted a comma following "including" and "limited to" and deleted "the sale of payment instruments or" following "proposes to engage in"; in paragraph (b)(2), inserted a comma following "including" and "limited to"; deleted former subsection (c), which read: "Where a person engages only in the sale of payment instruments issued by another person which is primarily obligated for payment of the payment instrument and the seller is a wholly owned subsidiary of or is wholly owned by the sole shareholder of the issuer, the department may grant a single license naming both the seller and issuer as joint licensees. In such cases, only a single license fee shall be collected and only one corporate surety bond, pursuant to Code Section 7-1-683.2, shall be required where such bond names both the seller and issuer."; and redesignated former subsections (d) and (e) as present subsections (c) and (d), respectively.

7-1-683.1. Business locations; use of authorized agents.

(a) As authorized by this Code section, a licensee may conduct its business through designated authorized agents at one or more locations in this state, so long as such locations have been included in the licensee's application and reports as required by Code Section 7-1-683 and subsection (d) of Code Section 7-1-686. The department may refuse within 30 days after application, for cause, to approve a licensee's designation of an authorized agent. In such cases the authorized agent shall have the same procedural rights as are provided in this article for the denial of an application for a license. No additional license other than that obtained by the licensee shall be required of any authorized agent of a licensee. An authorized agent of a licensee shall transmit money only at the location designated in the written notice provided to the department.

(b) Licensees desiring to conduct licensed activities through authorized agents shall enter into a written contract with the authorized agent. The contract shall authorize the agent to operate only pursuant to the terms of the contract and shall specifically designate the authorized activities that the agent may engage in on behalf of the licensee. Upon request of the department, a licensee shall provide the department with a copy of the executed written contract between the licensee and its authorized agent.

(c) Upon the department receiving written notice from the licensee designating an authorized agent, the authorized agent shall be:

(1) Required to operate in full compliance with this article, the rules and regulations promulgated under this article, and any applicable order issued by the commissioner;

(2) Required to timely remit all money legally due to the licensee in accordance with the terms of the written contract between the licensee and the authorized agent;

(3) Prohibited from utilizing subagents to carry out its responsibilities;

(4) Subject to examination and investigation by the department as set forth in this article, including, but not limited to, the requirements of Code Section 7-1-689;

(5) Subject to administrative actions, including, but not limited to, the revocation or suspension of its authorization to act as an authorized agent, a cease and desist order, and the imposition of fines; and

(6) Required to comply with applicable state and federal law.

(d) If a license is suspended, revoked, surrendered, or expired, the

licensee shall, within five business days, provide documentation to the department demonstrating that the licensee has notified all applicable authorized agents whose names are on record with the department of the suspension, revocation, surrender, or expiration of the license. Upon suspension, revocation, surrender, or expiration of a license, applicable authorized agents shall immediately cease to provide money transmission in this state as an authorized agent of the licensee.

History.

Code 1981, § 7-1-683.1, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2015, p. 5, § 7/HB 90; Ga. L. 2023, p. 651, § 22/HB 55, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, deleted "sell payment instruments or" following "licensee shall" in the last sentence of subsection (a) and added subsection (d).

7-1-683.2. Minimum tangible net worth; bonding; permissible investments.

(a)(1) Each applicant and licensee shall maintain, as a continuing requirement of licensure, a minimum tangible net worth, which shall be the greater of $100,000.00 or the amount calculated pursuant to the following formula:

(A) Three percent of total assets for the first $100 million;

(B) Two percent of additional assets over $100 million up to $1 billion; and

(C) Half a percent of additional assets over $1 billion.

(2) The department may, pursuant to rules and regulations, establish a process for an applicant or licensee to obtain a waiver in whole or in part of the minimum tangible net worth requirement for good cause shown.

(b)(1) An applicant shall provide with its application a corporate surety bond issued by a bonding company or insurance company authorized to do business in this state and approved by the department. The bond for money transmitters shall be in the principal sum of $250,000.00.

(2) Notwithstanding paragraph (1) of this subsection, the department may require an applicant or a licensee to provide additional coverage for the adequate protection of payment instrument holders if the average daily money transmission liability of a licensee exceeds the current bond amount or the department determines that additional coverage is necessary in order to satisfy the department that the provisions of subsection (b) of Code Section 7-1-684 are fulfilled. A licensee's level of average daily money transmission liability shall

be determined by the portion of the licensee's financial reports dealing with transactions originating in Georgia which shall be submitted to the department as set forth in its rules and regulations. However, under no circumstances shall the additional bond coverage required by the department exceed $2 million.

(3) The bond shall be in a form satisfactory to the department and shall run to the State of Georgia for the benefit of the department or any payment instrument holders against the licensee or its agents. The condition of the bond shall require the licensee to pay any and all moneys for the benefit of any person damaged by noncompliance of a licensee or its agent with this article, with the rules and regulations enacted pursuant to this article, or with any condition of the bond or to pay any and all moneys that may become due and owing any creditor of or claimant against the licensee arising out of the licensee's money transmission in this state, whether through its own acts or the acts of an agent. Damage payments due under the bond include moneys owed to the department for fees, fines, or penalties. In no event shall the aggregate liability of the surety exceed the principal sum of the face amount of the bond. Claimants against the licensee may bring an action directly on the surety bond.

(c)(1) Each applicant and licensee shall maintain at all times permissible investments that have a market value computed in accordance with generally accepted accounting principles applicable in the United States of not less than the aggregate amount of all of its outstanding money transmission obligations.

(2) The types of investments that are permissible shall be established by the rules and regulations of the department. The department may limit the extent to which a specific investment maintained by a licensee within a class of permissible investments may be considered a permissible investment.

(3) Permissible investments, even if commingled with other assets of the licensee, shall be held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations in the event of insolvency, the filing of a petition by or against the licensee under the United States Bankruptcy Code, the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or in the event of an action by a creditor against the licensee who is not a beneficiary of this statutory trust. No permissible investment impressed with a trust pursuant to this paragraph shall be subject to attachment, levy of execution, or sequestration by order of any court, except for a beneficiary of this statutory trust.

(4) Permissible investments held in trust pursuant to paragraph

(3) of this subsection for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations are deemed held in trust for the benefit of such persons on a pro rata and equitable basis in accordance with statutes pursuant to which permissible investments are required to be held in this state, and other states, as applicable. Any statutory trust established pursuant to this Code section shall be terminated upon extinguishment of all of the licensee's outstanding money transmission obligations.

History.
Code 1981, § 7-1-683.2, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2023, p. 651, § 23/HB 55, effective July 1, 2023.

Amendments.
The 2023 amendment, effective July 1, 2023, rewrote this Code section.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 344 et seq.

7-1-683.3. Use of Nationwide Multistate Licensing System and Registry.

(a) The department is authorized to:

(1) Participate in the Nationwide Multistate Licensing System and Registry in order to facilitate the sharing of information and standardization of the licensing and application processes for persons subject to this article;

(2) Enter into operating agreements, information sharing agreements, interstate cooperative agreements, and other contracts necessary for the department's participation in the Nationwide Multistate Licensing System and Registry;

(3) Disclose or cause to be disclosed without liability, via the Nationwide Multistate Licensing System and Registry, applicant and licensee information, including, but not limited to, violations of this article and enforcement actions, to facilitate regulatory oversight across state jurisdictional lines;

(4) Request that the Nationwide Multistate Licensing System and Registry adopt an appropriate privacy, data security, and security breach notification policy that is in full compliance with existing state and federal law; and

(5) Establish and adopt, by rule or regulation, requirements for participation by applicants and licensees in the Nationwide Multistate Licensing System and Registry upon the department's determination that each requirement is consistent with both the public interest and the purposes of this article.

(b) The department shall enact rules and regulations establishing a process whereby licensees may challenge information entered by the department on the Nationwide Multistate Licensing System and Registry.

(c) Irrespective of its participation in the Nationwide Multistate Licensing System and Registry, the department shall retain full and exclusive authority over determinations of whether to grant, renew, suspend, or revoke licenses issued under this article. Nothing in this Code section shall be construed to reduce or otherwise limit such authority.

(d) Information disclosed through the Nationwide Multistate Licensing System and Registry is deemed to be disclosed directly to the department and subject to Code Section 7-1-70. Such information shall not be disclosed to the public and shall remain privileged and confidential pursuant to Code Section 7-1-70.

History. Code 1981, § 7-1-683.3, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2020, p. 493, § 7/SB 429.

7-1-684. Investigation of applicants for licensure; background checks on employees and others.

(a) As used in this Code section, the term "conviction data" means a record of a finding, verdict, or plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(b) The department shall conduct an investigation of every applicant for licensure to determine the financial responsibility, experience, character, and general fitness of such applicant. The department may issue the applicant a license to transmit money if the department determines to its general satisfaction that:

(1) The applicant is financially sound and responsible and able to transmit money in an honest, fair, and efficient manner and with the confidence and trust of the community; and

(2) All conditions for licensure set forth in this article or the rules and regulations of the department have been satisfied.

(c) The department shall not issue a license or may revoke a license if it finds that the applicant, licensee, or authorized agent; any person who is a director, officer, partner, covered employee, or ultimate equitable owner of the applicant, licensee, or authorized agent; or any individual who directs the affairs of or controls or establishes policy for the applicant, licensee, or authorized agent has been convicted of a felony in any jurisdiction or of a crime which, if committed within this state, would constitute a felony under the laws of this state. For the

purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty or nolo contendere to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered or an adjudication or sentence was otherwise withheld or not entered on that charge, unless and until such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction occurred.

(d) The department shall be authorized to obtain conviction data with respect to any applicant, licensee, or authorized agent; any person who is a director, officer, partner, covered employee, or ultimate equitable owner of the applicant, licensee, or authorized agent; or any individual who directs the affairs of or controls or establishes policy for the applicant, licensee, or authorized agent. Criminal history record checks may be requested by the department through the Georgia Crime Information Center and the Federal Bureau of Investigation. The department shall have the authority to receive the results of such checks. In connection with an application under this article, the department may use the Nationwide Multistate Licensing System and Registry as a channeling agent for the submission of fingerprints to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check and the receipt of such checks by the department. Fees required for a criminal history record check by the Georgia Crime Information Center or the Federal Bureau of Investigation shall be paid by the applicant or licensee.

(e) Upon request by the department, each applicant, licensee, or authorized agent; any person who is a director, officer, partner, covered employee, or ultimate equitable owner of the applicant, licensee, or authorized agent; or any individual who directs the affairs of or controls or establishes policy for the applicant, licensee, or authorized agent shall submit to the department fingerprints, the required records search fees, and such other information as may be required. Fees for background checks that the department administers shall be submitted to the department by applicants, licensees, and authorized agents together with fingerprints, and the department is authorized to net such fees to recover any costs incurred by the department related to

running the background checks. Upon receipt of fingerprints, fees, and other required information from the department, the Georgia Crime Information Center shall promptly transmit fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding. All conviction data received by the department shall be used by the department for the exclusive purpose of carrying out the responsibilities of this article, shall not be a public record, shall be confidential, and shall not be disclosed to any other person or agency except to any person or agency which otherwise has a legal right to inspect such data. All such records shall be maintained by the department pursuant to laws regarding such records and the rules and regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable.

(f) Every applicant and licensee shall be authorized and required to obtain and maintain the results of criminal background checks on covered employees. Such criminal background checks shall be commercial background checks. Applicants and licensees shall be responsible for any applicable fees charged by the company performing the criminal background check. An applicant or licensee may only employ a person whose background data has been checked and has been found to be in compliance with all lawful requirements prior to the initial date of hire. This provision does not apply to directors, officers, partners, or ultimate equitable owners of applicants or licensees or to persons who direct the affairs of or control or establish policy for applicants or licensees, whose background shall have been investigated through the department before taking office, beginning employment, or securing ownership. The department shall be entitled to review the files of any applicant or licensee to determine whether the required commercial background checks have been conducted and whether all covered employees are qualified. Notwithstanding the requirement that applicants and licensees conduct such commercial background checks, the department shall retain the right to obtain conviction data on covered employees of applicants, licensees, and authorized agents pursuant to subsection (d) of this Code section.

(g) Upon request by the department, an applicant, licensee, or authorized agent shall take all steps necessary to have an international criminal history background check performed on any directors, officers, partners, covered employees, or ultimate equitable owners of applicants, licensees, or authorized agents or persons who direct the affairs of or control or establish policy for applicants, licensees, or authorized agents. The results of such international criminal history background check shall be provided to the department.

History.
Code 1981, § 7-1-684, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2015, p. 344, § 26/HB 184; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2023, p. 651, § 24/HB 55, effective July 1, 2023.

Amendments.
The 2023 amendment, effective July 1, 2023, rewrote this Code section.

7-1-684.1. Reporting to Nationwide Multistate Licensing System and Registry.

Each licensee shall submit to the Nationwide Multistate Licensing System and Registry timely reports of condition, which shall be in such form and contain such information as the department and the Nationwide Multistate Licensing System and Registry may require.

History.
Code 1981, § 7-1-684.1, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2020, p. 493, § 7/SB 429.

7-1-684.2. Use of unique identifier of licensee.

The unique identifier of any licensee shall be clearly labeled on all advertisements and any other documents required by rule or regulation of the department.

History.
Code 1981, § 7-1-684.2, enacted by Ga. L. 2014, p. 251 § 1/HB 982.

7-1-685. Expiration and renewal of licenses.

Except as otherwise specifically provided in this article, all licenses issued pursuant to this article shall expire on December 31 of each year, and each application for renewal shall be made annually on or before December 1 of each year. A license may be renewed by the filing of an application substantially conforming to the requirements of Code Section 7-1-683 as specifically modified in the department's rules and regulations. No investigation fee shall be payable in connection with such renewal application. However, an annual license fee established by rule or regulation of the department to defray the cost of supervision shall be paid with each renewal application and shall not be refunded or prorated.

History.
Code 1981, § 7-1-685, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2015, p. 5, § 7/HB 90.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 177 et seq. 11 Am. Jur. 2d, Banks and Financial Institutions, § 1196.

7-1-686. Display of license; license nontransferable and nonassignable; notification of additional locations.

(a) A license issued pursuant to this article shall be kept in the place of business of the licensee, and a copy of such license shall be displayed prominently in every physical location in this state where money transmission is conducted. If the licensee has no physical location in this state, then the licensee's unique identifier shall be clearly posted and accessible through whichever medium the licensee engages in money transmission in this state.

(b) Such license shall not be transferable or assignable.

(c) No licensee shall engage in money transmissions under any name or names other than those authorized by the department in writing.

(d) A licensee shall give written notice to the department of any new or additional locations, including, but not limited to, locations operated by an authorized agent, not reported in either its original or renewal application. The required notice shall be in such form and contain such information as required by the department.

History.

Code 1981, § 7-1-686, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2015, p. 344, § 27/HB 184; Ga. L. 2023, p. 651, § 25/HB 55, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, rewrote subsection (a), which read: "A license issued pursuant to this article shall be kept conspicuously posted in the place of business of the licensee. If the licensee has no physical location in this state, then a copy of such license and the licensee's unique identifier shall be clearly posted and accessible through whichever medium the licensee engages in the sale of payment instruments or money transmission in this state."; deleted "the sale of payment instruments or" following "shall engage in" in subsection (c); and deleted "its intent to operate" following "to the department of" in the first sentence of subsection (d).

7-1-687. Notice of action against licensee by creditor or claimant; other notification requirements.

(a) A licensee shall give written notice to the department of any action which may be brought against it by any creditor or claimant where such action relates to the activities authorized under this article or involves a claim against the bond filed with the department under Code Section 7-1-683.2. The notice shall provide details sufficient to identify the action and shall be sent within 30 days after the commencement of any such action. The licensee shall also give written notice to the department within 30 days of the entry of any judgment entered against the licensee.

(b) The corporate surety shall, within ten days after it pays any claim to any creditor or claimant, give notice to the department by registered or certified mail of such payment with details sufficient to identify the

claimant or creditor and the claim or judgment so paid. Whenever the principal sum of such bond is reduced by one or more recoveries or payments thereon, the licensee shall furnish a new or additional bond so that the total or aggregate principal sum of such bond or bonds shall equal the sum required under Code Section 7-1-683.2 or shall furnish an endorsement duly executed by the corporate surety reinstating the bond to the required principal sum thereof.

(c) A bond filed with the department for the purpose of compliance with Code Section 7-1-683.2 shall not be canceled by either the licensee or the corporate surety except upon notice to the department electronically through the Nationwide Multistate Licensing System and Registry, and such cancellation shall be effective no sooner than 30 days after receipt by the department of such notice and only with respect to any breach of condition occurring after the effective date of such cancellation.

(d) A licensee shall give written notice to the department within ten days of the following:

(1) Any knowledge or discovery of an act prohibited by Code Section 7-1-684 or 7-1-691 or subsection (a) of Code Section 7-1-692;

(2) The discharge of any employee for actual or suspected misrepresentations, dishonest acts, or fraudulent acts;

(3) Any knowledge or discovery of the discharge of a covered employee or an authorized agent for actual or suspected misrepresentations, dishonest acts, or fraudulent acts;

(4) Any knowledge or discovery of an administrative, civil, or criminal action initiated by any government entity against the licensee or an authorized agent; any director, officer, partner, or ultimate equitable owner of the licensee or authorized agent; or any individual who directs the affairs of or controls or establishes policy for the licensee or authorized agent; or

(5) The filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Sections 101 through 110, for bankruptcy reorganization or the filing of a petition by or against the licensee for receivership or the making of a general assignment for the benefit of its creditors.

(e) Unless prior approval of a change in executive officer is required under Code Section 7-1-688 and notwithstanding subsection (f) of Code Section 7-1-684 requiring a criminal background check prior to the initial date of hire, a licensee shall notify the department in writing of any change of executive officer in such a manner that the notice is received by the department no later than ten business days after the effective date of the change. In the event of such change, the licensee

shall initiate a criminal background check no later than ten business days after the effective date of the change. If the department determines that an executive officer does not meet the requirements of subsection (b) or (c) of Code Section 7-1-684, the department may disapprove the notice of change, and the licensee shall remove the individual from the executive officer position upon receipt of the disapproval.

History.

Code 1981, § 7-1-687, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2017, p. 193, § 22/HB 143; Ga. L. 2018, p. 214, § 18/HB 780; Ga. L. 2020, p. 320, § 14/HB 781; Ga. L. 2022, p. 220, § 31/HB 891; Ga. L. 2023, p. 651, § 26/HB 55, effective July 1, 2023.

Amendments.

The 2022 amendment, effective July 1, 2022, deleted "by registered or certified mail" following "to the department" in the first and third sentences of subsection (a) and in the beginning of subsection (d); inserted "written" in the last sentence in subsection (a); revised punctuation in paragraph (d)(4); and added the last sentence in subsection (e).

The 2023 amendment, effective July 1, 2023, in subsection (e), substituted "subsection (f)" for "subsection (e)" in the first sentence and substituted "requirements of subsection (b) or (c)" for "requirements of subsections (a) or (b)" in the third sentence.

Editor's notes.

Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

7-1-688. Approval required of new ultimate equitable owner, other change of control, or executive officer of licensee; denial of application; application of statute.

(a) Except as provided in this Code section, no person or group of persons acting in concert shall become an ultimate equitable owner of any licensee through acquisition or other change in control or become an executive officer of a licensee as a result of such acquisition or other change in control unless the person or group of persons acting in concert has first received written approval for such acquisition, change in control, or designation as an executive officer from the department. In order to obtain such approval, such person or group of persons acting in concert shall:

(1) File an application with the department in such form as the department may prescribe from time to time;

(2) Provide such other information as the department may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors and executive officers, if a corporation, and its members, if applicable, and of any proposed new directors, executive officers, members, or ultimate equitable owners of the licensee; and

(3) Pay such application fee as the department may prescribe.

(b) The department may prescribe additional requirements for approval of such acquisition, change in control, or designation as an executive officer as a result of such acquisition or other change in control through rules and regulations.

(c) If the application is denied, the department shall notify the applicant of the denial and the reasons for the denial.

(d) The application provisions of this Code section shall not apply to:

(1) An acquisition by a passive investor, provided that such person submits documentation to the department, in a form prescribed by the department, establishing that such person meets the criteria for a passive investor prior to such acquisition. The failure to provide acceptable documentation establishing that the person qualifies as a passive investor or to continuously satisfy the passive investor requirements shall require the filing of a change of control application;

(2) An acquisition of a licensee by a person licensed by the department under this article, provided that:

(A) The person has not had a license revoked or suspended in any jurisdiction;

(B) The person is well-managed and has received at least a satisfactory rating for compliance and supervision at its most recent examination by the department or a state agency whose money transmitter regulatory program has been accredited by the appropriate governing authority;

(C) The resulting entity or entities are projected to meet the financial condition requirements established by this article;

(D) Neither the person nor the licensee to be acquired will implement any material changes to their respective business plans as a result of the acquisition; and

(E) The person provides the department with prior notice of the acquisition and attests to the requirements provided in this paragraph in a form prescribed by the department. If the department does not approve such notice of acquisition within 30 days of the date on which the notice was determined by the department to be complete, the notice is deemed approved. If the department disapproves such notice of acquisition, the acquiring person shall be required to file a change of control application; or

(3) A change of control of a licensee under any of the following circumstances, provided that the licensee provides written notice to the department no later than ten business days after the effective date of the change:

(A) A designation of a person to act as a proxy for the sole purpose of voting at a designated meeting of the shareholders or holders of voter shares or voting interests of a licensee or person in control of a licensee;

(B) An acquisition of an interest in a licensee by a person by bequest, descent, or survivorship;

(C) An acquisition of an interest in a licensee by a person as a personal representative, custodian, guardian, conservator, or trustee, as an officer appointed by a court of competent jurisdiction, or by operation of law;

(D) An acquisition of an interest in a licensee by a person that is exempt from licensure pursuant to Code Section 7-1-682;

(E) A public offering of securities of a licensee or person in control of a licensee; or

(F) An internal reorganization of a person in control of a licensee where the person in control of the licensee remains the same.

(e) If the department determines that any person acquiring control of a licensee pursuant to subparagraph (d)(3)(A), (d)(3)(B), or (d)(3)(C) of this Code section does not meet the requirements of subsection (b) or (c) of Code Section 7-1-684, the department may require the filing of a change in control application as provided in this Code section.

History.

Code 1981, § 7-1-688, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2018, p. 214, § 19/HB 780; Ga. L. 2022, p. 220, § 32/HB 891; Ga. L. 2023, p. 651, § 27/HB 55, effective July 1, 2023.

Amendments.

The 2022 amendment, effective July 1, 2022, added subsection (d).

The 2023 amendment, effective July 1, 2023, inserted "or group of persons acting in concert" three times in subsection (a); in subsection (d), deleted "or" at the end of paragraph (d)(1), substituted "; or" for a period at the end of subparagraph (d)(2)(E), and added paragraph (d)(3); and added subsection (e).

Editor's notes.

Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

7-1-689. Record keeping; investigation and examination requirements and powers; limitations on civil liability.

(a) Each licensee shall make, keep, and use in its business such books, accounts, and records as the department may require to enforce the provisions of this article and the rules and regulations promulgated under it. Each licensee shall preserve such books, accounts, and records for five years or such greater period of time as prescribed in the department's rules and regulations.

(b) Records required to be made, kept, and preserved pursuant to subsection (a) of this Code section may be maintained in a photographic, electronic, or other similar form.

(c) Records required to be made, kept, and preserved pursuant to subsection (a) of this Code section may be maintained at a location outside of this state so long as such records are produced to the commissioner at the department's main office within ten days of the date of a written request by the department to the licensee.

(d) The department shall investigate and examine the affairs, business, premises, and records of any licensee or authorized agent pertaining to money transmission. The department may conduct such investigations or examinations at least once every 60 months. The department may accept examination reports performed and produced by other state or federal agencies in satisfaction of this requirement unless the department determines that the examinations are not available or do not provide information necessary to fulfill the responsibilities of the department under this article.

(e) Notwithstanding subsection (d) of this Code section, the department may alter the frequency or scope of investigations or examinations through rules or regulations prescribed by the department. In addition, if the department determines that based on the records submitted to the department and past history of operations of the licensee in the state such investigations or examinations are unnecessary, then the department may waive such investigations and examinations.

(f) In addition to any other authority set forth under this article, the department shall be authorized to conduct investigations and examinations of applicants, licensees, and authorized agents as follows:

(1) The department shall have the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to:

(A) Criminal, civil, and administrative history information, including nonconviction data;

(B) Personal history and experience information, including, but not limited to, independent credit reports obtained from a consumer reporting agency described in the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681a;

(C) For an individual who has resided outside of the United States, an international investigative background report prepared by a competent independent search firm, which shall include, at a minimum, comprehensive credit, criminal, employment, media, and financial services regulatory history information; and

(D) Any other documents, information, or evidence the department deems relevant to the inquiry, examination, or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence;

(2) The department may review, investigate, or examine any licensee or person subject to this article as often as necessary in order to carry out the purposes of this article;

(3) Each licensee or person subject to this article shall make available to the department, upon request, any books and records relating to the transmission of money;

(4) No licensee or person subject to investigation or examination under this article shall knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, documents, files, computer records, evidence, or other information; and

(5) In order to carry out the purposes of this Code section, the department may:

(A) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, documents, records, information, or evidence or by utilizing standardized or uniform methods or procedures;

(B) Accept and rely on examination or investigation reports made by other government officials within or outside this state, including, but not limited to, investigations pursuant to a multistate licensing process;

(C) Accept audit reports or portions of audit reports made by an independent certified public accountant on behalf of the licensee or person subject to this article covering the same general subject matter as the audit and may incorporate the audit report in the report of examination, report of investigation, or other writing of the department; and

(D) Use, hire, contract, or employ analytical systems, methods, or software.

(g) Each licensee shall pay an examination fee as established by the rules and regulations of the department to cover the cost of an examination or investigation.

(h) The department, in its discretion, may:

(1) Make such public or private examination or investigation within or outside of this state as it deems necessary to determine whether any person has violated this article, any rule or regulation,

or order issued under this article, to aid in the enforcement of this article, or to assist in the prescribing of rules and regulations pursuant to this article;

(2) Require or permit any person to file a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be investigated;

(3) Request any financial data from an applicant or licensee;

(4) Conduct an on-site examination of a licensee or authorized agent at any location of the licensee or authorized agent without prior notice to the licensee or authorized agent. The licensee shall pay all reasonably incurred costs of the examination when the department examines the operations of its authorized agent. The department is authorized to net its out-of-state travel expenses incurred as a result of an examination or investigation of a licensee or authorized agent against the payment from the licensee; and

(5) Investigate any person asserting to be exempt from licensure for the purpose of determining whether such person satisfies an exemption set forth in Code Section 7-1-682.

(i) For the purpose of conducting any examination or investigation as provided in this Code section, the department shall have the power to administer oaths, to call any party to testify under oath in the course of such examinations or investigations, to require the attendance of witnesses, to require the production of books, accounts, records, documents, and papers, and to take the depositions of witnesses; and for such purposes the department is authorized to issue a subpoena for any witness or for the production of documentary evidence. Such subpoenas may be served by certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or by examiners appointed by the department or shall be directed for service to the sheriff of the county where such witness resides or is found or where the person in custody of any books, accounts, records, documents, or papers resides or is found.

(j) The department may issue and apply to enforce subpoenas in this state at the request of any government agency, department, organization, or entity regulating money transmission in another state if the activities constituting the alleged violation for which the information is sought would be a violation of this article if the alleged activities had occurred in this state.

(k) In case of refusal to obey a subpoena issued under this article to any person, a superior court of appropriate jurisdiction, upon application by the department, may issue to the person an order requiring him or her to appear before the court to show cause why he or she should not

be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished as contempt by the court.

(l) Examinations and investigations conducted under this article and information obtained by the department in the course of its duties under this article are confidential, except as provided in this subsection, pursuant to the provisions of Code Section 7-1-70. In addition to the exceptions set forth in subsection (b) of Code Section 7-1-70, the department is authorized to share information obtained under this article with other state and federal regulatory agencies or law enforcement authorities. In the case of such sharing, the safeguards to confidentiality already in place within such agencies or authorities shall be deemed adequate. The commissioner or an examiner specifically designated may disclose such information as is necessary to conduct a civil or administrative investigation or proceeding. Information contained in the records of the department that is not confidential and may be made available to the public either on the department's website, upon receipt by the department of a written request, or in the Nationwide Multistate Licensing System and Registry shall include:

(1) The name, business address, and telephone, facsimile, and unique identifier of a licensee;

(2) The names and titles of the principal officers;

(3) The name of the owner or owners thereof;

(4) The business address of a licensee's registered agent for service;

(5) The name, business address, telephone number, and facsimile number of all locations of a licensee;

(6) The name, business address, telephone number, and facsimile number of all authorized agents;

(7) The terms of or a copy of any bond filed by a licensee;

(8) Information concerning any violation of this article, any rule or regulation, or order issued under this article, provided that the information is derived from a final order of the department; and

(9) Imposition of an administrative fine or penalty under this article.

(m) The authority to conduct an examination or investigation as provided for in this Code section shall remain in effect whether such licensee or person acts or claims to act under any licensing or registration law of this state or claims to act without such authority.

(n) In the absence of malice, fraud, or bad faith, a person is not subject to civil liability arising out of furnishing the department with

information required by this article or required by the department under the authority granted in this article. No civil cause of action of any nature shall arise against such person:

(1) For any information relating to suspected prohibited conduct furnished to or received from law enforcement officials, their agents, or employees or to or from other regulatory or licensing authorities;

(2) For any such information furnished to or received from other persons subject to the provisions of this article; or

(3) For any information furnished in complaints filed with the department.

(o) The commissioner or any employee or agent of the department shall not be subject to civil liability, and no civil cause of action of any nature shall exist against such persons arising out of the performance of activities or duties under this article or by publication of any report of activities under this Code section.

History.

Code 1981, § 7-1-689, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2015, p. 5, § 7/HB 90; Ga. L. 2018, p. 214, § 20/HB 780; Ga. L. 2019, p. 828, § 28/HB 185; Ga. L. 2020, p. 320, § 15/HB 781; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2022, p. 220, § 33/HB 891; Ga. L. 2023, p. 651, § 28/HB 55, effective July 1, 2023.

Amendments.

The 2022 amendment, effective July 1, 2022, deleted "and" from the end of subparagraph (f)(1)(B), added subparagraph (f)(1)(C), redesignated former subparagraph (f)(1)(C) as subparagraph (f)(1)(D), substituted "state, including, but not limited to, investigations pursuant to a multistate licensing process;" for "state; and" at the end of subparagraph (f)(5)(B), added "; and" at the end of subparagraph (f)(5)(C), and added subparagraph (f)(5)(D).

The 2023 amendment, effective July 1, 2023, deleted "the sale of payment instruments or" following "agent pertaining to" in the first sentence of subsection (d); deleted "the activities of selling payment instruments or" following "records relating to" in paragraph (f)(3); in subsection (h), deleted "and" at the end of paragraph (h)(3), substituted "; and" for a period at the end of paragraph (h)(4), and added paragraph (h)(5); and deleted "the sale of payment instruments or" following "entity regulating" in subsection (j).

Editor's notes.

Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 443 et seq.

7-1-690. Rules and regulations.

(a) Without limiting the power conferred by Article 1 of this chapter, the department may make reasonable rules and regulations, not

inconsistent with law, for the interpretation and enforcement of this article.

(b) The department is authorized to enact rules and regulations that apply solely to persons engaged in money transmission involving virtual currency. The department shall enact such rules and regulations it finds necessary to:

(1) Foster the growth of businesses engaged in money transmission involving virtual currency in Georgia and spur state economic development;

(2) Ensure the continued solvency, safety, soundness, and prudent conduct of persons engaged in money transmission involving virtual currency;

(3) Ensure fair, timely, and equitable fulfillment of the financial obligations of such persons;

(4) Protect customers of businesses engaged in money transmission involving virtual currency from financially impaired or insolvent providers of such services;

(5) Encourage high standards of honesty, transparency, fair business practices, and public responsibility;

(6) Eliminate financial fraud, other criminal abuse, and unethical conduct in the industry; and

(7) Ensure businesses engaged in money transmission involving virtual currency provide customers with timely and understandable information in order that customers may make informed decisions about virtual currency products and services.

History.
Code 1981, § 7-1-690, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2016, p. 390, § 1-7/HB 811; Ga. L. 2023, p. 651, § 29/HB 55, effective July 1, 2023.

Amendments.
The 2023 amendment, effective July 1, 2023, in subsection (b), deleted "or the sale of payment instruments" following "money transmission" in the beginning and in paragraphs (b)(1), (b)(2), (b)(4), and (b)(7).

7-1-691. Prohibited activities while engaged in money transmission.

It shall be prohibited for any person engaged in money transmission in this state, including any person required to be licensed under this article, to:

(1) Engage in money transmission as an agent of a principal who is not exempt from the licensure requirements under Code Section 7-1-682 and has not obtained a license hereunder, and any person

who does so shall be deemed to be the principal seller or issuer of the payment instrument and not merely an agent and shall be liable to the payment instrument holder or remitter as the principal seller;

(2) Receive, transmit, or handle monetary value on behalf of another or issue a payment instrument and not be exempt from licensure under Code Section 7-1-682, and any person who does so shall be liable to the payment instrument holder for the payment thereof to the same extent as a drawer of a negotiable instrument, whether or not the payment instrument is a negotiable instrument under Article 3 of Title 11;

(3) Fail to transmit money received within ten days of receiving such money, unless the agreement between the licensee and the customer instructs the licensee to forward the money at a time that is beyond ten days of the date on which the money was received for transmission;

(4) Engage in any activity that would subject a licensee to suspension or revocation of its license under this article or any activity that the department may prohibit pursuant to rule or regulation, whether or not the person has a license;

(5) Fail to honor a valid payment instrument issued by a money transmitter that has been properly presented by the payee to a third party; or

(6) Fail to issue a refund to the customer within ten days of receipt of the customer's written request for a refund of money received for transmission, unless any of the following occurs:

(A) The money has already been transmitted;

(B) Instructions have already been given committing an equivalent amount of money to the person designated by the customer within ten days of the date on which the money was received for transmission;

(C) The agreement between the licensee and the customer instructs the licensee to forward the money at a time that is beyond ten days of the date on which the money was received for transmission. If funds have not yet been forwarded in accordance with the terms of the agreement between the licensee and the customer, the licensee shall issue a refund;

(D) The refund is requested for a transaction that the licensee has not completed based on a reasonable belief that a crime or violation of law, rule, or regulation has occurred, is occurring, or may occur;

(E) The refund request does not enable the licensee to identify the customer, the customer's contact information, and the par-

ticular transaction to be refunded if the customer has multiple transactions pending;

(F) The money was received for transmission pursuant to a written agreement between the licensee and payee to process payments for goods or services provided by the payee; or

(G) The money was received for transmission subject to the Federal Remittance Rule, 12 C.F.R. Part 1005, Subpart B.

History.
Code 1981, § 7-1-691, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2023, p. 651, § 30/HB 55, effective July 1, 2023.
Amendments.
The 2023 amendment, effective July 1, 2023, deleted "the sale of checks or" following "person engaged in" in the introductory language; in paragraph (1), substituted "Engage in money transmission" for "Sell payment instruments" at the beginning, deleted "seller" following "principal", and substituted "principal seller or issuer of the payment instrument" for "principal seller thereof"; rewrote paragraph (3), which read: "Fail to transmit moneys received within five business days of receiving such moneys; or"; substituted a semicolon for a period at the end of paragraph (4); and added paragraphs (5) and (6).

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 872 et seq.

7-1-692. Denial, suspension, or revocation of license or authorization; procedure.

(a) The department may suspend or revoke an original or renewal license issued pursuant to this article or rescind the authorization to act as an authorized agent of a licensee if it finds that any ground or grounds exist which would require or warrant the refusal of an application for the issuance or renewal of a license or the authorization to act as an authorized agent of a licensee if such an application or notification were then before it. The department may also deny an application, suspend or revoke an original or renewal license issued pursuant to this article, or rescind the authorization to act as an authorized agent of a licensee if it finds that the licensee or the authorized agent has:

(1) Committed any fraud, engaged in any dishonest activities, or made any misrepresentation;

(2) Violated any provisions of this article, any rule or regulation issued pursuant thereto, any order issued by the department, or any other law in the course of its dealings as a licensee or authorized agent;

(3) Made a false statement in an original or renewal application

for licensure or failed to give a true reply to a question in an original or renewal application;

(4) Demonstrated incompetency or untrustworthiness to act as a licensee or authorized agent;

(5) Failed to pay, within 30 days after it becomes final, a judgment recovered in any court by a claimant or creditor in an action arising out of the licensee's business in this state of engaging in money transmission;

(6) Purposely withheld, deleted, destroyed, or altered information requested by an examiner of the department or made false statements or misrepresentations to the department;

(7) Operated in an unsafe or unsound manner; or

(8) Made a general assignment for the benefit of its creditors, suspended payment of its obligations, or is insolvent.

(b) The department shall not issue a license to an applicant, may rescind the authorization to act as an authorized agent of a licensee, and may revoke a license if such applicant, licensee, or authorized agent is subject to or employs any person subject to a final cease and desist order that has been issued within the preceding five years if such order was based on a violation of this article. Each applicant or licensee shall, before hiring a covered employee, examine the department's public records to determine that such covered employee is not subject to a cease and desist order.

(c) The department shall not issue a license to an applicant, may rescind the authorization to act as an authorized agent of a licensee, and may revoke a license if such applicant, licensee, or authorized agent is subject to or employs any person whose license issued pursuant to this article was revoked within the preceding five years. Each applicant or licensee shall, before hiring a covered employee, examine the department's public records to determine that such covered employee's license was not revoked.

(d) The department shall not issue a license to an applicant, may rescind the authorization to act as an authorized agent of a licensee, and may revoke a license if it finds that any person who is a director, officer, partner, ultimate equitable owner of the applicant, licensee, or authorized agent or any individual who directs the affairs of or controls or establishes policy for the applicant, licensee, or authorized agent has been in one or more of those roles as a licensee whose application has been denied or license revoked or suspended within five years of the date of the application.

(e) Notice of the department's intention to enter an order denying an application for a license, rescinding the authorization to act as an

authorized agent of a licensee, or suspending or revoking a license shall be given to the applicant, authorized agent, or licensee in writing, sent by registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant, authorized agent, or licensee. If a person refuses to accept service of the notice by registered or certified mail or statutory overnight delivery, the notice or order shall be served by the commissioner or the commissioner's authorized representative under any other method of lawful service, and the person shall be personally liable to the commissioner for a sum equal to the actual costs incurred to serve the notice or order. This liability shall be paid upon notice and demand by the commissioner or the commissioner's representative and shall be assessed and collected in the same manner as other fees or fines administered by the commissioner. Within 20 days of the date of the notice of intention to enter an order of denial, suspension, revocation, or rescission under this article, the applicant, authorized agent, or licensee may request in writing a hearing to contest the order. If a hearing is not requested in writing within 20 days of the date of such notice of intention, the department shall enter a final order regarding the denial, suspension, or revocation. Any final order of the department denying an application, suspending or revoking a license, or rescinding authorization to act as an authorized agent shall state the grounds upon which it is based and shall be effective on the date of issuance. A copy thereof shall be forwarded promptly by mail addressed to the principal place of business of such applicant, authorized agent, or licensee.

(f) A decision by the department denying an application for license or of an order suspending or revoking a license shall be subject to review in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(g) Whenever the department initiates an administrative action against a current licensee or an applicant, the department may pursue such action to its conclusion despite the fact that a licensee may withdraw or fail to renew its license or an applicant may withdraw its application.

(h) The suspension or revocation of a license under this Code section does not alter, ameliorate, or void a licensee's duties or liabilities under any existing contract entered into by the licensee prior to such suspension or revocation.

(i) The provisions of this Code section shall not apply when an application for a license is denied or a license is suspended as provided in Code Section 7-1-693.

History. Code 1981, § 7-1-692, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2023, p. 651, § 31/HB 55, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, in subsection (a), deleted "the sale of payment instruments or" following "engaging in" in paragraph (a)(5), deleted "or" at the end of pargraph (a)(6), substituted "; or" for a period at the end of paragraph (a)(7), and added paragraph (a)(8).

7-1-693. Permissible and impermissible grounds for refusal or suspension.

(a) Where an applicant or licensee has been certified by any entity of the federal government for nonpayment or default or breach of a repayment or service obligation under any federal educational loan, loan repayment, or service conditional scholarship program, such action shall not be grounds for refusal of a license or suspension of a license.

(b) Where an applicant or licensee has been found not in compliance with an order for child support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action shall be sufficient grounds for refusal of a license or suspension of a license. In such actions, the hearing and appeal procedures provided for in Code Section 19-6-28.1 or 19-11-9.3 shall be the only such procedures required under this article. The department shall be permitted to share, without liability, information on its applications or other forms with appropriate state agencies to assist them in recovering child support when required by law.

History.

Code 1981, § 7-1-693, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2019, p. 462, § 1-2/SB 214; Ga. L. 2024, p. 120, § 2-2/HB 985, effective June 30, 2024.

Amendments.

The 2024 amendment, effective June 30, 2024, deleted "has been found to be a borrower in default under the Georgia Higher Education Loan Program as determined by the Georgia Higher Education Assistance Corporation or" following "or licensee" near the beginning of subsection (a).

7-1-694. Cease and desist orders; civil penalties; judicial review; administrative fines.

(a) The department may issue an order requiring a person to cease and desist immediately from unauthorized activities whenever it shall appear to the department that:

(1) Except as provided in paragraphs (2) and (3) of this subsection, a person has violated any law of this state or any order or regulation of the department, and such cease and desist order shall be final 20 days after it is issued unless the person to whom it is issued makes a written request within such 20 day period for a hearing;

(2) A person not licensed under this article is engaging in or has engaged in activities requiring licensure under this article, which such cease and desist order shall be final 30 days from the date of

issuance, and there shall be no opportunity for an administrative hearing. If the proper license or evidence of exemption is obtained within the 30 day period, the order shall be rescinded by the department; or

(3) A person licensed under this article has received a notice of bond cancellation under Code Section 7-1-687, which such cease and desist order shall be final 20 days from the date of issuance, and there shall be no opportunity for an administrative hearing. In the event the cease and desist order becomes final, the license shall expire, and if a new license is desired, the licensee shall be required to make a new application for a license and pay all applicable fees as if it had never been licensed. If the required surety bond is reinstated or replaced and such documentation is delivered to the department within the 20 day period following the date of issuance of the order, the order shall be rescinded.

(b) The cease and desist order shall be in writing, sent by registered or certified mail or statutory overnight delivery, and addressed to the person's business address and, if the person is an individual, to the individual's personal address. Any cease and desist order sent to a person at its business address and, if an individual, his or her personal address that is returned to the department as "refused" or "unclaimed" shall be deemed as received and lawfully served.

(c) Any hearing authorized under paragraph (1) of subsection (a) of this Code section shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(d) Whenever a person shall fail to comply with the terms of a final order or decision of the department issued pursuant to this article, the department may, through the Attorney General and upon notice of three days to such person, petition the principal court for an order directing such person to obey the order of the department within the period of time as shall be fixed by the court. Upon the filing of such petition, the court shall allow a motion to show cause why it should not be granted. After a hearing upon the merits or after failure of such person to appear when ordered, the court shall grant the petition of the department upon a finding that the order of the department was properly issued.

(e) Any person who violates the terms of any final order or decision issued pursuant to this article shall be liable for a civil penalty not to exceed $1,000.00. Each day the violation continues shall constitute a separate offense. In determining the amount of penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of such person, the good faith efforts of such person to comply with the order, the gravity of the violation, the

history of previous violations by such person, and such other factors or circumstances as shall have contributed to the violation. The department may at its discretion compromise, modify, or refund any penalty which is subject to imposition or has been imposed pursuant to this Code section. Any person assessed as provided in this subsection shall have the right to request a hearing into the matter within ten days after notification of the assessment has been served upon the licensee involved; otherwise, such penalty shall be final except as to judicial review as provided in Code Section 7-1-90.

(f) Judicial review of any final order or decision of the department entered pursuant to this article shall be available solely in the superior court of the county of domicile of the department.

(g) In addition to any other administrative penalties authorized by this article, the department may, by rule or regulation, prescribe administrative fines for violations of this article and any rules and regulations promulgated by the department pursuant to this article.

History.
Code 1981, § 7-1-694, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2020, p. 320, § 16/HB 781.

7-1-695. Liability for payment.

Every payment instrument issued in the conduct of the business regulated by this article shall be signed by the licensee or its authorized agent, and the licensee shall be liable for the payment thereof to the same extent as a drawer of a negotiable instrument, whether or not the payment instrument is a negotiable instrument under Article 3 of Title 11.

History.
Code 1981, § 7-1-695, enacted by Ga. L. 2014, p. 251, § 1/HB 982.

7-1-696. Penalties for violations.

Any person, partnership, association, or corporation and the several members, officers, directors, agents, ultimate equitable owners, and employees thereof that shall violate any of the provisions of this article shall be guilty of a misdemeanor, which shall be punishable by imprisonment for not more than one year or by a fine of not more than $500.00, or by both such fine and imprisonment.

History.
Code 1981, § 7-1-696, enacted by Ga. L. 2014, p. 251, § 1/HB 982.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Pursuant to authority granted to the Attorney General in O.C.G.A. § 35-3-33(a)(1)(A)(v), any misdemeanor offenses arising under O.C.G.A. §§ 7-1-696 and 7-1-709, are not at this time designated as ones for which those charged are to be fingerprinted. 2014 Op. Att'y Gen. No. 2014-2.

7-1-697. No limitation on common law liability or state prosecution.

Nothing in this article shall limit any statutory or common law right of any person to bring any action in any court for any act involved in the transmission of money or the right of the state to punish any person for any violation of any law.

History.
Code 1981, § 7-1-697, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2015, p. 344, § 28/HB 184; Ga. L. 2023, p. 651, § 32/HB 55, effective July 1, 2023.

Amendments.
The 2023 amendment, effective July 1, 2023, deleted "or selling of payment instruments" following "transmission of money".

7-1-698. Continuing effectiveness of existing licenses.

Any person previously approved by the department as either a money transmitter licensee or a seller of payment instruments licensee who holds such license in an active status as of July 1, 2023, shall be deemed to be a money transmitter licensee as of that date and authorized to engage in all activities included within the definition of money transmission as of that date. Any license application pending as of July 1, 2023, for a seller of payment instruments license shall be deemed to be an application for a money transmitter license as of that date.

History.
Code 1981, § 7-1-698, enacted by Ga. L. 2014, p. 251, § 1/HB 982; Ga. L. 2015, p. 5, § 7/HB 90; Ga. L. 2023, p. 651, § 33/HB 55, effective July 1, 2023.

Amendments.
The 2023 amendment, effective July 1, 2023, rewrote this Code section, which read: "Every license in force and effect under the former provisions of this article, relating to sale of checks and money orders, on July 1, 2014, shall remain in full force and effect on July 1, 2014, and all such existing licensees shall be required to renew their licenses pursuant to Code Section 7-1-685."

ARTICLE 4A

CASHING OF PAYMENT INSTRUMENTS

Editor's notes.
Ga. L. 2014, p. 251, § 1/HB 982, effective July 1, 2014, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of Code Section 7-1-700 through 7-1-707, 7-1-707.1 through 7-1-707.3, 7-1-708 through 7-1-709, relating to cashing checks, drafts, or money orders for consideration, and was based on Ga. L. 1990, p. 739, § 1; Ga. L. 1991, p. 94, § 7; Ga. L. 1991, p. 720,

§ 1; Ga. L. 1991, p. 784, § 1; Ga. L. 1994, p. 1780, §§ 4-5; Ga. L. 1995, p. 673, §§ 29-30; Ga. L. 1997, p. 485, §§ 25-27; Ga. L. 1998, p. 1094, §§ 2-3; Ga. L. 1999, p. 674, § 27; Ga. L. 2000, p. 174, §§ 19-21; Ga. L. 2000, p. 1589, § 3; Ga. L. 2002, p. 1220, § 10; Ga. L. 2003, p. 643, § 1; Ga. L. 2004, p. 458, § 8; Ga. L. 2007, p. 502, § 25/SB 70 — 32/SB 70; Ga. L. 2009, p. 86, §§ 15/HB 141 — 17/HB 141; Ga. L. 2010, p. 878, § 7/HB 1387.

Administrative rules and regulations. Disclosures, Locations, Authorized Agents, and Customer Information, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Money Transmission, Rule 80-3-1-.01 et seq.

7-1-700. Definitions.

As used in this article, the term:

(1) "Cash payment instruments" or "cashing payment instruments" means to accept a payment instrument from a person in exchange for monetary value less a fee.

(2) "Check" means any check, money order, draft, or negotiable demand instrument.

(3) "Check casher" means an individual, partnership, association, or corporation engaged in cashing payment instruments for a fee.

(4) "Closed-loop transaction" means a transaction where the value or credit is primarily intended to be redeemed for a limited universe of goods, intangibles, services, or other items provided by the issuer of the payment instrument, its affiliates or agents, or others involved in the transaction functionally related to the issuer or its affiliates or agents.

(5) "Commissioner" means the commissioner of banking and finance.

(6) "Control," "controlling," "controlled by," and "under common control with" means the direct or indirect possession of power to direct or cause the direction of management and policies of a person.

(7) "Covered employee" means any employee of a licensee engaged in any function related to cashing payment instruments.

(8) "Department" means the Department of Banking and Finance.

(9) "Executive officer" means the chief executive officer, president, chief financial officer, chief operating officer, each vice president with responsibility involving policy-making functions for a significant aspect of a person's business, secretary, treasurer, or any other person performing similar managerial or supervisory functions with respect to any organization, whether incorporated or unincorporated.

(10) "Fee" means a service charge, benefit, or other consideration,

which includes, but is not limited to, cash, the exchange of value in excess of regular retail value, mandatory purchase of goods or services by patrons, or the purchase of catalogue items or coupons or other items indicating the ability to receive goods, services, or catalogue items.

(11) "Individual" means a natural person.

(12) "Licensee" means a person, including, but not limited to, a check casher, duly licensed under this article to accept payment instruments and exchange them for monetary value for a fee.

(13) "Misrepresent" means to make a false statement of a substantive fact. The term may also mean to engage in any conduct which leads to a false belief which is material to the transaction.

(14) "Monetary value" means a medium of exchange, whether or not redeemable in money.

(15) "Nationwide Multistate Licensing System and Registry" means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of certain persons engaged in nondepository activities.

(16) "Open-loop transaction" means a transaction using a payment instrument with stored value to redeem for goods or services at any location that accepts such payment instrument.

(17) "Payment instrument" means any instrument, order, or device for the payment or transmission of money or monetary value, whether or not it is a negotiable instrument under the terms of Article 3 of Title 11, relating to negotiable instruments. The term includes, but is not limited to, checks, money orders, drafts, stored value cards, and open-loop transactions. The term does not include closed-loop transactions, credit card vouchers, letters of credit, or any instrument that is redeemable by the issuer only in specific goods or services of the issuer.

(18) "Person" means any individual, sole proprietorship, corporation, limited liability company, partnership, trust, or any other group of individuals, however organized.

(19) "Stored value" means monetary value that is evidenced by an electronic record.

(20) "Ultimate equitable owner" means a person that:

(A) Owns, directly or indirectly, a 10 percent or more interest in a corporation or any other form of business organization;

(B) Owns, directly or indirectly, 10 percent or more of the

voting shares of any corporation or any other form of business organization; or

(C) Exerts control, directly or indirectly, over a corporation or any other form of business organization, regardless of whether such person owns or controls such interest through one or more natural persons or one or more proxies, powers of attorney, nominees, corporations, associations, limited liability companies, partnerships, trusts, joint stock companies, other entities or devices, or any combination thereof.

(21) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Multistate Licensing System and Registry.

History.
Code 1981, § 7-1-700, enacted by Ga. L. 2014, p. 251, § 2/HB 982; Ga. L. 2020, p. 493, § 7/SB 429.

RESEARCH REFERENCES

C.J.S.
9 C.J.S., Banks and Banking, §§ 326 et seq., 480 et seq.

7-1-701. Licensing requirements.

(a) Pursuant to this article, the department may license a person to cash payment instruments.

(b) No person shall cash payment instruments without first obtaining a license under this article.

(c) Every person that directly or indirectly controls another person that violates subsection (b) of this Code section, each general partner, executive officer, joint venture, ultimate equitable owner, or director of such person, and every person occupying a similar status or performing similar functions as such person violates with and to the same extent as such person. Any person who directly or indirectly controls a person who violates subsection (b) of this Code section may avoid liability if such person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of the existence of the facts by reason of which the original violation is alleged to exist.

History.
Code 1981, § 7-1-701, enacted by Ga. L. 2014, p. 251, § 2/HB 982.

7-1-701.1. Exemption from licensing requirements.

The requirement for licensure set forth in this article shall not apply to:

(1) Any state or federally chartered bank, trust company, credit union, savings and loan association, or savings bank with deposits that are federally insured;

(2) The United States Postal Service;

(3) A state or federal governmental department, agency, authority, or instrumentality and its agents;

(4) Any foreign bank that establishes a federal branch pursuant to the International Banking Act, 12 U.S.C. Section 3102;

(5) Any person who accepts a payment instrument from a person in exchange for monetary value but does not charge a fee; or

(6) An individual employed by a licensee or any person exempted from the licensing requirements of this article when acting within the scope of employment and under the supervision of the licensee or exempted person as an employee and not as an independent contractor.

History.
Code 1981, § 7-1-701.1, enacted by Ga. L. 2014, p. 251, § 2/HB 982; Ga. L. 2023, p. 730, § 7(2)/HB 475, effective July 1, 2023.

Amendments.
The 2023 amendment, effective July 1, 2023, part of an Act to revise, modernize, and correct the Code, substituted "International Banking Act" for "International Bank Act" in paragraph (4).

7-1-702. Requirements for licensure.

(a) Each applicant for a license under this article shall:

(1) Submit an application in writing, which is made under oath and in such form as the department may prescribe;

(2) Furnish to the Nationwide Multistate Licensing System and Registry the following information:

(A) The legal name and principal office address of the person applying for the license;

(B) The name, residence, and business address of each director, ultimate equitable owner, and executive officer;

(C) If the applicant has one or more branches or other locations at or through which the applicant proposes to cash payment

instruments within this state, the complete address of each such location; and

(D) The location where the initial registered office will be located in this state; and

(3) Submit such other data, financial statements, and pertinent information as the department may require with respect to the applicant, its directors, trustees, officers, members, ultimate equitable owners, or agents.

(b) The application for license shall be filed together with:

(1) An investigation and supervision fee established by rule or regulation which shall not be refundable but which, if the license is granted, shall satisfy the fee requirement for the first licensed year or the remaining part thereof;

(2) Items required by other provisions of this article, including but not limited to Code Section 7-1-703 and subsection (c) of Code Section 7-1-707; and

(3) Other information as may be required by the department.

(c) The department shall pay all fees received from licensees and applicants related to applications, licenses, and renewals to the Office of the State Treasurer; provided, however, that the department may net such fees to recover the cost of participation in the Nationwide Multistate Licensing System and Registry.

(d) The department shall enact rules and regulations regarding the time frame by which all persons must submit an original or renewal application for licensure through the Nationwide Multistate Licensing System and Registry.

History.
Code 1981, § 7-1-702, enacted by Ga. L. 2014, p. 251, § 2/HB 982; Ga. L. 2020, p. 493, § 7/SB 429.

7-1-702.1. Operation of mobile payment instrument cashing facility.

A mobile payment instrument cashing facility operated by a licensee shall be treated as a branch location and the operations of the facility shall be conducted in accordance with the rules and regulations of the department.

History.
Code 1981, § 7-1-702.1, enacted by Ga. L. 2014, p. 251, § 2/HB 982.

7-1-702.2. Use of Nationwide Multistate Licensing System and Registry.

(a) The department is authorized to:

(1) Participate in the Nationwide Multistate Licensing System and Registry in order to facilitate the sharing of information and standardization of the licensing and application processes for persons subject to this article;

(2) Enter into operating agreements, information sharing agreements, interstate cooperative agreements, and other contracts necessary for the department's participation in the Nationwide Multistate Licensing System and Registry;

(3) Disclose or cause to be disclosed without liability, via the Nationwide Multistate Licensing System and Registry, applicant and licensee information, including, but not limited to, violations of this article and enforcement actions, to facilitate regulatory oversight;

(4) Request that the Nationwide Multistate Licensing System and Registry adopt an appropriate privacy, data security, and security breach notification policy that is in full compliance with existing state and federal law; and

(5) Establish and adopt, by rule and regulation, requirements for participation by applicants and licensees in the Nationwide Multistate Licensing System and Registry, upon the department's determination that each requirement is consistent with both the public interest and purposes of this article.

(b) The department shall enact rules and regulations establishing a process whereby licensees may challenge information entered by the department into the Nationwide Multistate Licensing System and Registry.

(c) Irrespective of its participation in the Nationwide Multistate Licensing System and Registry, the department shall retain full and exclusive authority over determinations of whether to grant, renew, suspend, or revoke licenses issued under this article. Nothing in this Code section shall be construed to reduce or otherwise limit such authority.

(d) Information disclosed through the Nationwide Multistate Licensing System and Registry is deemed to be disclosed directly to the department and subject to Code Section 7-1-70. Such information shall not be disclosed to the public and shall remain privileged and confidential pursuant to Code Section 7-1-70.

History. Code 1981, § 7-1-702.2, enacted by Ga. L. 2014, p. 251, § 2/HB 982; Ga. L. 2020, p. 493, § 7/SB 429.

7-1-703. Investigation of applicants; background checks of employees and others.

(a) As used in this Code section, the term "conviction data" means a record of a finding, verdict, or plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(b) The department shall conduct an investigation of every applicant for licensure to determine the financial responsibility, experience, character, and general fitness of such applicant. The department may issue the applicant a license to cash payment instruments if the department determines to its general satisfaction that:

(1) The applicant is financially sound and responsible and able to cash payment instruments in an honest, fair, and efficient manner and with the confidence and trust of the community; and

(2) All conditions for licensure set forth in this article or the rules and regulations of the department have been satisfied.

(c) The department shall not issue a license or may revoke a license if it finds that the applicant or licensee; any person who is a director, officer, partner, covered employee, or ultimate equitable owner of the applicant or licensee; or any individual who directs the affairs of or controls or establishes policy for the applicant or licensee has been convicted of a felony in any jurisdiction or of a crime which, if committed within this state, would constitute a felony under the laws of this state. For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty or nolo contendere to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered or an adjudication or sentence was otherwise withheld or not entered on that charge, unless and until such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction occurred.

(d) The department shall be authorized to obtain conviction data with respect to any applicant or licensee; any person who is a director, officer, partner, covered employee, or ultimate equitable owner of the applicant or licensee; or any individual who directs the affairs of or controls or establishes policy for the applicant or licensee. Criminal history record checks may be requested by the department through the Georgia Crime Information Center and the Federal Bureau of Investigation. The department shall have the authority to receive the results of such checks. In connection with an application under this article, the department may use the Nationwide Multistate Licensing System and Registry as a channeling agent for the submission of fingerprints to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check and the receipt of such checks by the department. Fees required for a criminal history record check by the Georgia Crime Information Center or the Federal Bureau of Investigation shall be paid by the applicant or licensee.

(e) Upon request by the department, each applicant; each licensee; any person who is a director, officer, partner, covered employee, or ultimate equitable owner of the applicant or licensee; or any individual who directs the affairs of or controls or establishes policy for the applicant or licensee shall submit to the department fingerprints, the required records search fees, and such other information as may be required. Fees for background checks that the department administers shall be submitted to the department by applicants or licensees together with fingerprints, and the department is authorized to net such fees to recover any costs incurred by the department related to running the background checks. Upon receipt of fingerprints, fees, and other required information from the department, the Georgia Crime Information Center shall promptly transmit fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding. All conviction data received by the department shall be used by the department for the exclusive purpose of carrying out the responsibilities of this article, shall not be a public record, shall be confidential, and shall not be disclosed to any other person or agency except to any person or agency which otherwise has a legal right to inspect such data. All such records shall be maintained by the department pursuant to laws regarding such records and the rules and regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable.

(f) Every applicant and licensee shall be authorized and required to obtain and maintain the results of criminal background checks on

covered employees. Such criminal background checks shall be commercial background checks. Applicants and licensees shall be responsible for any applicable fees charged by the company performing the criminal background checks. An applicant or licensee may only employ a person whose background data has been checked and has been found to be in compliance with all lawful requirements prior to the initial date of hire. This provision does not apply to directors, officers, partners, or ultimate equitable owners of applicants or licensees or to persons who direct the affairs of or control or establish policy for applicants or licensees, whose background shall have been investigated through the department before taking office, beginning employment, or securing ownership. The department shall be entitled to review the files of any applicant or licensee to determine whether the required commercial background checks have been conducted and whether all covered employees are qualified. Notwithstanding the requirement that applicants and licensees conduct such commercial background checks, the department shall retain the right to obtain conviction data on covered employees of applicants and licensees pursuant to subsection (d) of this Code section.

History.
Code 1981, § 7-1-703, enacted by Ga. L. 2014, p. 251, § 2/HB 982; Ga. L. 2015, p. 344, § 29/HB 184; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2023, p. 651, § 34/HB 55, effective July 1, 2023; Ga. L. 2024, p. 1052, § 1(a)(22)/SB 448, effective July 1, 2024.

Amendments.
The 2023 amendment, effective July 1, 2023, rewrote this Code section.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, inserted "each" preceding "licensee;" in subsection (e).

7-1-703.1. Reporting on condition to Nationwide Multistate Licensing System and Registry.

Each licensee shall submit to the Nationwide Multistate Licensing System and Registry timely reports of condition, which shall be in such form and shall contain such information as the department and the Nationwide Multistate Licensing System and Registry may require.

History.
Code 1981, § 7-1-703.1, enacted by Ga. L. 2014, p. 251, § 2/HB 982; Ga. L. 2020, p. 493, § 7/SB 429.

7-1-703.2. Use of unique identifier of licensee.

The unique identifier of any licensee shall be clearly labeled on all advertisements and any other documents required by rule or regulation of the department.

History.
Code 1981, § 7-1-703.2, enacted by Ga. L. 2014, p. 251, § 2/HB 982.

7-1-704. Renewal of licenses.

Except as otherwise specifically provided in this article, all licenses issued pursuant to this article shall expire on December 31 of each year, and each application for renewal shall be made annually on or before December 1 of each year. A license may be renewed by the filing of an application substantially conforming to the requirements of Code Section 7-1-702 and the department's rules and regulations. No investigation fee shall be payable in connection with such renewal application. However, an annual license fee established by rule or regulation of the department to defray the cost of supervision shall be paid with each renewal application and shall not be refunded or prorated.

History.
Code 1981, § 7-1-704, enacted by Ga. L. 2014, p. 251, § 2/HB 982.

7-1-704.1. Posting of license; license is nontransferable and nonassignable; notification of new facilities.

(a) A license issued pursuant to this article shall be kept conspicuously posted in the place of business of the licensee.

(b) Such license shall not be transferable or assignable.

(c) No licensee shall cash payment instruments under any name or names other than those authorized by the department in writing.

(d) A licensee shall give written notice to the department prior to the operation of any new or additional locations not reported in either its original or renewal application which notice shall be in such form and contain such information as required by the department.

History.
Code 1981, § 7-1-704.1, enacted by Ga. L. 2014, p. 251, § 2/HB 982; Ga. L. 2015, p. 344, § 30/HB 184.

7-1-705. Written notice of claims against licensee, judgments, or other misconduct by employees, directors, or others; written notice of change of executive officer.

(a) A licensee shall give written notice to the department of any action which may be brought against it by any creditor or claimant where such action relates to activities authorized under this article or involves a claim against the bond filed with the department under subsection (c) of Code Section 7-1-707. The notice shall provide details sufficient to identify the action and shall be sent within 30 days after the commencement of any such action. The licensee shall also give written notice to the department within 30 days of the entry of any judgment against the licensee.

(b) A licensee shall give written notice to the department within ten days of the following:

(1) Any knowledge or discovery of an act prohibited by Code Section 7-1-703 or 7-1-707 or subsection (a) of Code Section 7-1-708;

(2) The discharge of any employee for actual or suspected misrepresentations, dishonest acts, or fraudulent acts; or

(3) Any knowledge or discovery of an administrative, civil, or criminal action initiated by any government entity against the licensee or any of the licensee's directors, officers, partners, ultimate equitable owners, or any individual who directs the affairs of or controls or establishes policy for the licensee.

(c) Unless prior approval of a change in executive officer is required under Code Section 7-1-705.1 and notwithstanding subsection (f) of Code Section 7-1-703 requiring a criminal background check prior to the initial date of hire, a licensee shall notify the department in writing of any change of executive officer in such a manner that the notice is received by the department no later than ten business days after the effective date of the change. In the event of such change, the licensee shall initiate a criminal background check no later than ten business days after the effective date of the change.

History.

Code 1981, § 7-1-705, enacted by Ga. L. 2014, p. 251, § 2/HB 982; Ga. L. 2018, p. 214, § 21/HB 780; Ga. L. 2022, p. 220, § 34/HB 891; Ga. L. 2023, p. 651, § 35/HB 55, effective July 1, 2023.

Amendments.

The 2022 amendment, effective July 1, 2022, deleted "by registered or certified mail" following "to the department" in the first and third sentences of subsection (a) and in the beginning of subsection (b); inserted "written" in the last sentence in subsection (a); and substituted "against the licensee or any" for "against the licensee, any" in paragraph (b)(3).

The 2023 amendment, effective July 1, 2023, substituted "subsection (f)" for "subsection (e)" in the first sentence of subsection (c).

Editor's notes.

Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

7-1-705.1. Approval required for change of control or ultimate equitable owner; additional requirements; denial and notification of reasons.

(a) Except as provided in this Code section, no person shall become an ultimate equitable owner of any licensee through acquisition or other change in control or become an executive officer of a licensee as a result of such acquisition or other change in control unless the person has first received written approval for such acquisition, change in control, or designation as an executive officer from the department. In order to obtain such approval, such person shall:

(1) File an application with the department in such form as the department may prescribe from time to time;

(2) Provide such other information as the department may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors and executive officers, if a corporation, and its members, if applicable, and of any proposed new directors, executive officers, members, or ultimate equitable owners of the licensee; and

(3) Pay such application fee as the department may prescribe.

(b) The department may prescribe additional requirements for approval of such acquisition, change in control, or designation as an executive officer as a result of such acquisition or other change in control through rules and regulations.

(c) If the application is denied, the department shall notify the applicant of the denial and the reasons for the denial.

History.
Code 1981, § 7-1-705.1, enacted by Ga. L. 2014, p. 251, § 2/HB 982; Ga. L. 2018, p. 214, § 22/HB 780.
Editor's notes.
Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

7-1-706. Record keeping; investigation and examination requirements and powers; limitation on civil liability.

(a) Each licensee shall make, keep, and use in its business such books, accounts, and records as the department may require to enforce the provisions of this article and the rules and regulations promulgated under it. Each licensee shall preserve such books, accounts, and records for five years or such greater period of time as prescribed in the department's rules and regulations.

(b) Records required to be made, kept, and preserved pursuant to subsection (a) of this Code section may be maintained in a photographic, electronic, or other similar form.

(c) Records required to be made, kept, and preserved pursuant to subsection (a) of this Code section may be maintained at a location outside of this state so long as such records are produced to the commissioner at the department's main office within ten days of the date of a written request by the department to the licensee.

(d) The department shall investigate and examine the affairs, business, premises, and records of any licensee pertaining to cashing payment instruments. The department may conduct such investigations or examinations at least once every 60 months. The department

may accept examination reports performed and produced by other state or federal agencies in satisfaction of this requirement unless the department determines that the examinations are not available or do not provide information necessary to fulfill the responsibilities of the department under this article.

(e) Notwithstanding subsection (d) of this Code section, the department may alter the frequency or scope of investigations or examinations through rules or regulations prescribed by the department. In addition, if the department determines that based on the records submitted to the department and past history of operations of the licensee in the state such investigations or examinations are unnecessary, then the department may waive such investigations and examinations.

(f) In addition to any other authority set forth under this article, the department shall be authorized to conduct investigations and examinations of applicants and licensees as follows:

(1) The department shall have the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to:

(A) Criminal, civil, and administrative history information, including nonconviction data;

(B) Personal history and experience information, including, but not limited to, independent credit reports obtained from a consumer reporting agency described in the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681a; and

(C) Any other documents, information, or evidence the department deems relevant to the inquiry, examination, or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence;

(2) The department may review, investigate, or examine any licensee or person subject to this article as often as necessary in order to carry out the purposes of this article;

(3) Each licensee or person subject to this article shall make available to the department, upon request, any books and records relating to the activities of cashing payment instruments;

(4) No licensee or person subject to investigation or examination under this article shall knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, documents, files, computer records, evidence, or other information; and

(5) In order to carry out the purposes of this Code section, the department may:

(A) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, documents, records, information, or evidence or by utilizing standardized or uniform methods or procedures;

(B) Accept and rely on examination or investigation reports made by other government officials within or outside this state; and

(C) Accept audit reports or portions of audit reports made by an independent certified public accountant on behalf of the licensee or person subject to this article covering the same general subject matter as the audit and may incorporate the audit report in the report of examination, report of investigation, or other writing of the department.

(g) Each licensee shall pay an examination fee as established by the rules and regulations of the department to cover the cost of an examination or investigation.

(h) The department, in its discretion, may:

(1) Make such public or private examination or investigation within or outside of this state as it deems necessary to determine whether any person has violated this article, any rule or regulation, or order issued under this article, to aid in the enforcement of this article, or to assist in the prescribing of rules and regulations pursuant to this article;

(2) Require or permit any person to file a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be investigated;

(3) Request any financial data from an applicant or licensee; and

(4) Conduct an on-site examination of a licensee at any location of the licensee without prior notice to the licensee.

(i) For the purpose of conducting any examination or investigation as provided in this Code section, the department shall have the power to administer oaths, to call any party to testify under oath in the course of such examinations or investigations, to require the attendance of witnesses, to require the production of books, accounts, records, documents, and papers, and to take the depositions of witnesses; and for such purposes the department is authorized to issue a subpoena for any witness or for the production of documentary evidence. Such subpoenas may be served by certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or by examiners appointed by the department or shall be directed for service

to the sheriff of the county where such witness resides or is found or where the person in custody of any books, accounts, records, documents, or papers resides or is found.

(j) The department may issue and apply to enforce subpoenas in this state at the request of any government agency, department, organization, or entity regulating cashing payment instruments in another state if the activities constituting the alleged violation for which the information is sought would be a violation of this article if the alleged activities had occurred in this state.

(k) In case of refusal to obey a subpoena issued under this article to any person, a superior court of appropriate jurisdiction, upon application by the department, may issue to the person an order requiring him or her to appear before the court to show cause why he or she should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished as contempt by the court.

(l) Examinations and investigations conducted under this article and information obtained by the department in the course of its duties under this article are confidential, except as provided in this subsection, pursuant to the provisions of Code Section 7-1-70. In addition to the exceptions set forth in subsection (b) of Code Section 7-1-70, the department is authorized to share information obtained under this article with other state and federal regulatory agencies or law enforcement authorities. In the case of such sharing, the safeguards to confidentiality already in place within such agencies or authorities shall be deemed adequate. The commissioner or an examiner specifically designated may disclose such information as is necessary to conduct a civil or administrative investigation or proceeding. Information contained in the records of the department that is not confidential and may be made available to the public either on the department's website, upon receipt by the department of a written request, or in the Nationwide Multistate Licensing System and Registry shall include:

(1) The name, business address, and telephone, facsimile, and unique identifier of a licensee;

(2) The names and titles of the principal officers;

(3) The name of the owner or owners thereof;

(4) The business address of a licensee's registered agent for service;

(5) The name, business address, telephone number, and facsimile number of all locations of a licensee;

(6) The terms of or a copy of any bond filed by a licensee;

(7) Information concerning any violation of this article, any rule or regulation, or order issued under this article, provided that the information is derived from a final order of the department; and

(8) Imposition of an administrative fine or penalty under this article.

(m) The authority to conduct an examination or investigation as provided for in this Code section shall remain in effect whether such licensee or person acts or claims to act under any licensing or registration law of this state or claims to act without such authority.

(n) In the absence of malice, fraud, or bad faith, a person is not subject to civil liability arising out of furnishing the department with information required by this article or required by the department under the authority granted in this article. No civil cause of action of any nature shall arise against such person:

(1) For any information relating to suspected prohibited conduct furnished to or received from law enforcement officials, their agents, or employees or to or from other regulatory or licensing authorities;

(2) For any such information furnished to or received from other persons subject to the provisions of this article; or

(3) For any information furnished in complaints filed with the department.

(o) The commissioner or any employee or agent of the department shall not be subject to civil liability, and no civil cause of action of any nature shall exist against such persons arising out of the performance of activities or duties under this article or by publication of any report of activities under this Code section.

History.
Code 1981, § 7-1-706, enacted by Ga. L. 2014, p. 251, § 2/HB 982; Ga. L. 2015, p. 5, § 7/HB 90; Ga. L. 2018, p. 214, § 23/HB 780; Ga. L. 2019, p. 828, § 29/HB 185; Ga. L. 2020, p. 320, § 17/HB 781; Ga. L. 2020, p. 493, § 7/SB 429.

Editor's notes.
Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

7-1-706.1. Regulatory interpretation and enforcement.

Without limiting the power conferred by Article 1 of this chapter, the department may make reasonable rules and regulations, not inconsistent with law, for the interpretation and enforcement of this article.

History.
Code 1981, § 7-1-706.1, enacted by Ga. L. 2014, p. 251, § 2/HB 982.

7-1-707. Required endorsement by licensee; immediate payments; deferment of payment; identification requirements; acceptable fee for services.

(a) No licensee shall deposit with any financial institution a payment instrument it has accepted and exchanged for monetary value unless such payment instrument is endorsed by the licensee.

(b) No licensee shall receive any payment instrument with payment deferred pending collection. Payment shall be made immediately in cash for every payment instrument accepted by the licensee and exchanged for monetary value for a fee.

(c) Notwithstanding the provisions of subsection (b) of this Code section, checks may be accepted for collection with payment deferred where the licensee has posted a surety bond in the same manner as prescribed for licensed money transmitters under Code Section 7-1-683.2 and under the same conditions as set forth under Code Section 7-1-687. The surety bond shall be in the aggregate amount of $10,000.00 for each location operated by the licensee, if the licensee operates three or fewer locations, plus $5,000.00 per location for the fourth and fifth locations operated by the licensee, plus $1,000.00 for each location operated by the licensee in excess of the fifth location. The bond shall be in a form satisfactory to the department and shall run to the State of Georgia for the benefit of any claimant against the licensee arising out of the licensee's business of cashing payment instruments with payment deferred in this state. The bond shall not be canceled by either the licensee or the corporate surety except upon notice to the department by registered or certified mail, statutory overnight delivery with return receipt requested, or electronically through the Nationwide Multistate Licensing System and Registry, and such cancellation shall be effective no sooner than 30 days after receipt by the department of such notice. In no event shall payment of a check be deferred past the time the licensee has collected on the check. Upon collection, payment shall be made immediately to the party from whom the licensee accepted the check.

(d) No licensee shall cash payment instruments made payable to a payee other than an individual unless such licensee has previously obtained appropriate documentation from the authorized executive officer of such payee clearly indicating the authority of the individual to cash the payment instrument on behalf of the payee.

(e) No licensee shall cash payment instruments without identification of the bearer of such instrument, and any person seeking to cash payment instruments shall be required to submit such reasonable identification as shall be prescribed by the department; provided, however, that the provisions of this subsection shall not prohibit a

licensee from cashing payment instruments simultaneously with the verification and establishment of the identity of the presenter by means other than the presentation of identification.

(f) No licensee shall:

(1) Charge a fee for cashing payment instruments in excess of 5 percent of the face amount of the payment instrument or $5.00, whichever is greater;

(2) Charge a fee for cashing payment instruments in excess of 3 percent of the face amount of the payment instrument or $5.00, whichever is greater, if such payment instrument is state public assistance or a federal social security benefit made payable to the bearer of such payment instrument; or

(3) Charge a fee for cashing payment instruments in excess of 10 percent of the face amount of the payment instrument or $5.00, whichever is greater, if such payment instrument is a personal check or money order. For purposes of this subsection, the term "personal check or money order" means a payment instrument drawn against the account of an individual.

(g) No licensee shall engage in any activity that would subject the licensee to suspension or revocation of its license pursuant to this article or any activity that the department may prohibit by rule or regulation.

History.
Code 1981, § 7-1-707, enacted by Ga. L. 2014, p. 251, § 2/HB 982; Ga. L. 2017, p. 193, § 23/HB 143; Ga. L. 2023, p. 651, § 36/HB 55, effective July 1, 2023; Ga. L. 2024, p. 1052, § 1(a)(23)/SB 448, effective July 1, 2024.

Amendments.
The 2023 amendment, effective July 1, 2023, deleted "or licensed payment instrument sellers" following "licensed money transmitters" in the first sentence of subsection (c).

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, inserted "the term" following "this subsection," in paragraph (f)(3).

7-1-707.1. Posting of fees for cashing payment instruments.

In every location operated by a licensee, there shall be conspicuously posted and at all times displayed a notice stating the charges for cashing payment instruments.

History.
Code 1981, § 7-1-707.1, enacted by Ga. L. 2014, p. 251, § 2/HB 982.

7-1-708. Grounds for denial, suspension, or revocation of license; procedure.

(a) The department may suspend or revoke an original or renewal license issued pursuant to this article if it finds that any ground or grounds exist which would require or warrant the refusal of an application for the issuance or renewal of a license if such an application were then before it. The department may also deny an application or suspend or revoke an original or renewal license issued pursuant to this article if it finds that the licensee has:

(1) Committed any fraud, engaged in any dishonest activities, or made any misrepresentation;

(2) Violated any provisions of this article, any rule or regulation issued pursuant thereto, any order issued by the department, or any other law in the course of its dealings as a licensee;

(3) Made a false statement in an original or renewal application for licensure or failed to give a true reply to a question in an original or renewal application;

(4) Demonstrated incompetency or untrustworthiness to act as a licensee;

(5) Failed to pay, within 30 days after it becomes final, a judgment recovered in any court by a claimant or creditor in an action arising out of the licensee's business of cashing payment instruments;

(6) Purposely withheld, deleted, destroyed, or altered information requested by an examiner of the department or made false statements or misrepresentations to the department; or

(7) Operated in an unsafe or unsound manner.

(b) The department shall not issue a license to an applicant and may revoke a license if such applicant or licensee is subject to or employs any person subject to a final cease and desist order that has been issued within the preceding five years if such order was based on a violation of this article. Each applicant or licensee shall, before hiring a covered employee, examine the department's public records to determine that such covered employee is not subject to a cease and desist order.

(c) The department shall not issue a license to an applicant and may revoke a license if such applicant or licensee is subject to or employs any person whose license issued pursuant to this article was revoked within the preceding five years. Each applicant or licensee shall, before hiring a covered employee, examine the department's public records to determine that such covered employee's license was not revoked.

(d) The department shall not issue a license to an applicant and may revoke a license if it finds that any person who is a director, officer,

partner, ultimate equitable owner of the applicant or licensee or any individual who directs the affairs of or controls or establishes policy for the applicant or licensee has been in one or more of those roles as a licensee whose application has been denied or license revoked or suspended within five years of the date of the application.

(e) Notice of the department's intention to enter an order denying an application for a license or suspending or revoking a license shall be given to the applicant or licensee in writing, sent by registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant or licensee. If a person refuses to accept service of the notice by registered or certified mail or statutory overnight delivery, the notice or order shall be served by the commissioner or the commissioner's authorized representative under any other method of lawful service, and the person shall be personally liable to the commissioner for a sum equal to the actual costs incurred to serve the notice or order. This liability shall be paid upon notice and demand by the commissioner or the commissioner's representative and shall be assessed and collected in the same manner as other fees or fines administered by the commissioner. Within 20 days of the date of the notice of intention to enter an order of denial, suspension, or revocation under this article, the applicant or licensee may request in writing a hearing to contest the order. If a hearing is not requested in writing within 20 days of the date of such notice of intention, the department shall enter a final order regarding the denial, suspension, or revocation. Any final order of the department denying, suspending, or revoking a license shall state the grounds upon which it is based and shall be effective on the date of issuance. A copy thereof shall be forwarded promptly by mail addressed to the principal place of business of such applicant or licensee.

(f) A decision by the department denying an application for license or of an order suspending or revoking a license shall be subject to review in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(g) Whenever the department initiates an administrative action against a current licensee or an applicant, the department may pursue such action to its conclusion despite the fact that a licensee may withdraw or fail to renew its license or an applicant may withdraw its application.

(h) The suspension or revocation of a license under this Code section does not alter, ameliorate, or void a licensee's duties or liabilities under any existing contract entered into by the licensee prior to such suspension or revocation.

(i) The provisions of this Code section shall not apply when an

application for a license is denied or a license is suspended as provided in Code Section 7-1-708.1.

History.
Code 1981, § 7-1-708, enacted by Ga. L. 2014, p. 251, § 2/HB 982.

7-1-708.1. Permissible and impermissible grounds for denial or suspension.

(a) Where an applicant or licensee has been certified by any entity of the federal government for nonpayment or default or breach of a repayment or service obligation under any federal educational loan, loan repayment, or service conditional scholarship program, such action shall not be grounds for denial of an application or suspension of a license.

(b) Where an applicant or licensee has been found not in compliance with an order for child support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action shall be sufficient grounds for denial of an application or suspension of a license. In such actions, the hearing and appeal procedures provided for in Code Section 19-6-28.1 or 19-11-9.3 shall be the only such procedures required under this article. The department shall be permitted to share, without liability, information on its applications or other forms with appropriate state agencies to assist them in recovering child support.

History.
Code 1981, § 7-1-708.1, enacted by Ga. L. 2014, p. 251, § 2/HB 982; Ga. L. 2019, p. 462, § 1-3/SB 214; Ga. L. 2024, p. 120, § 2-3/HB 985, effective June 30, 2024.
Amendments.
The 2024 amendment, effective June 30, 2024, deleted "has been found to be a borrower in default under the Georgia Higher Education Loan Program as determined by the Georgia Higher Education Assistance Corporation or" following "or licensee" near the beginning of subsection (a).

7-1-708.2. Issuance of cease and desist orders; administrative and judicial enforcement; penalty for noncompliance.

(a) The department may issue an order requiring a person to cease and desist immediately from unauthorized activities whenever it shall appear to the department that:

(1) Except as provided in paragraph (2) of this subsection, a person has violated any law of this state or any order or regulation of the department, and such cease and desist order shall be final 20 days after it is issued unless the person to whom it is issued makes a written request within such 20 day period for a hearing; or

(2) A person not licensed under this article is engaging in or has

engaged in activities requiring licensure under this article, which such cease and desist order shall be final 30 days from the date of issuance, and there shall be no opportunity for an administrative hearing. If the proper license or evidence of exemption is obtained within the 30 day period, the order shall be rescinded by the department.

(b) The cease and desist order shall be in writing, sent by registered or certified mail or statutory overnight delivery and addressed to the person's business address and, if the person is an individual, to the individual's personal address. Any cease and desist order sent to a person at its business address and, if an individual, his or her personal address that is returned to the department as "refused" or "unclaimed" shall be deemed as received and lawfully served.

(c) Any hearing authorized under paragraph (1) of subsection (a) of this Code section shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(d) Whenever a person shall fail to comply with the terms of a final order or decision of the department issued pursuant to this article, the department may, through the Attorney General and upon notice of three days to such person, petition the principal court for an order directing such person to obey the order of the department within the period of time as shall be fixed by the court. Upon the filing of such petition, the court shall allow a motion to show cause why it should not be granted. After a hearing upon the merits or after failure of such person to appear when ordered, the court shall grant the petition of the department upon a finding that the order of the department was properly issued.

(e) Any person who violates the terms of any final order or decision issued pursuant to this article shall be liable for a civil penalty not to exceed $1,000.00. Each day the violation continues shall constitute a separate offense. In determining the amount of penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of such person, the good faith efforts of such person to comply with the order, the gravity of the violation, the history of previous violations by such person, and such other factors or circumstances as shall have contributed to the violation. The department may at its discretion compromise, modify, or refund any penalty which is subject to imposition or has been imposed pursuant to this Code section. Any person assessed as provided in this subsection shall have the right to request a hearing into the matter within ten days after notification of the assessment has been served upon the licensee involved; otherwise, such penalty shall be final except as to judicial review as provided in Code Section 7-1-90.

(f) Judicial review of any final order or decision of the department

entered pursuant to this article shall be available solely in the superior court of the county of domicile of the department.

(g) In addition to any other administrative penalties authorized by this article, the department may, by rule or regulation, prescribe administrative fines for violations of this article and any rules and regulations promulgated by the department pursuant to this article.

History.
Code 1981, § 7-1-708.2, enacted by Ga. L. 2014, p. 251, § 2/HB 982.

7-1-709. Penalty for violation of article.

Any person, partnership, association, or corporation and the several members, officers, directors, agents, ultimate equitable owners, and employees thereof that shall violate any of the provisions of this article shall be guilty of a misdemeanor, which shall be punishable by imprisonment for not more than one year or by a fine of not more than $500.00, or by both such fine and imprisonment.

History.
Code 1981, § 7-1-709, enacted by Ga. L. 2014, p. 251, § 2/HB 982.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Pursuant to authority granted to the Attorney General in O.C.G.A. § 35-3-33(a)(1)(A)(v), any misdemeanor offenses arising under O.C.G.A. §§ 7-1-696 and 7-1-709, are not at this time designated as ones for which those charged are to be fingerprinted. 2014 Op. Att'y Gen. No. 2014-2.

7-1-709.1. No limitation on common law liability or state prosecution.

Nothing in this article shall limit any statutory or common law right of any person to bring any action in any court for any act involved in cashing payment instruments or the right of the state to punish any person for any violation of any law.

History.
Code 1981, § 7-1-709.1, enacted by Ga. L. 2014, p. 251, § 2/HB 982.

7-1-709.2. Continuing effectiveness of existing licenses.

Every license in force and effect under the former provisions of this article, relating to cashing checks, drafts, or money orders for consideration, on July 1, 2014, shall remain in full force and effect on July 1,

2014, and all such existing licensees shall be required to renew their licenses pursuant to Code Section 7-1-704.

History.
Code 1981, § 7-1-709.2, enacted by Ga. L. 2014, p. 251, § 2/HB 982; Ga. L. 2015, p. 5, § 7/HB 90; Ga. L. 2016, p. 864, § 7/HB 737.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2014, "July 1, 2014," was substituted for "the date of enactment of this article" and "July 1, 2014" was substituted for "the effective date of this article" in this Code section.
Editor's notes.
Ga. L. 2015, p. 5, § 7/HB 90, incorrectly referenced the language near the beginning of this Code section as "Article 4 of Chapter 1 of this title."

ARTICLE 5

INTERNATIONAL BANKING CORPORATIONS AND BANK AGENCIES

7-1-710 through 7-1-721. [Reserved].

History.
Ga. L. 1972, p. 1140, §§ 2–11; Ga. L. 1974, p. 705, § 1; Ga. L. 1976, p. 201, § 1; Ga. L. 1978, p. 1712, § 2; Ga. L. 1989, p. 946, § 70; Ga. L. 1989, p. 1257, § 24; Ga. L. 1995, p. 673, §§ 31, 32; Ga. L. 2000, p. 1589, § 3; Ga. L. 2004, p. 508, § 70; Ga. L. 2015, p. 344, § 31/HB 184; repealed by Ga. L. 2023, p. 651, § 37/HB 55, effective July 1, 2023.
Editor's notes.
Ga. L. 2023, p. 651, § 37/HB 55 repealed and reserved this article, effective July 1, 2023.

ARTICLE 5A

DOMESTIC INTERNATIONAL BANKING FACILITIES

7-1-730. Short title.

This article shall be known and may be cited as the "Domestic International Banking Facility Act."

History.
Ga. L. 1981, p. 770, § 1; Ga. L. 2024, p. 1052, § 1(a)(24)/SB 448, effective July 1, 2024.
Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "known and may be cited as" for "known as" in this Code section.

7-1-731. Domestic international banking facility.

As used in this article, the term "domestic international banking facility" means the location within this state of any banking office, other than a foreign bank branch or foreign bank agency as defined in Code Section 7-1-1100, which derives its funds (1) from sources outside of the United States, (2) from another domestic international banking facility, or (3) from temporary advances from its parent organization and

employs those funds for banking purposes outside of the United States or through its parent organization, but does not accept deposits subject to check or draft. A domestic international banking facility, when properly established pursuant to this article, shall not be considered to be a "branch office" or "main office" as defined in Code Section 7-1-600.

History.
Ga. L. 1981, p. 770, § 2; Ga. L. 1999, p. 674, § 28; Ga. L. 2023, p. 651, § 38/HB 55, effective July 1, 2023.
Amendments.
The 2023 amendment, effective July 1, 2023, substituted "other than a foreign bank branch or foreign bank agency as defined in Code Section 7-1-1100" for "other than an 'international bank agency,' as defined in Code Section 7-1-710".

7-1-732. Eligibility to operate domestic international banks; registration required; records; exemption from taxes and license fees.

(a) Any bank, whether domiciled within this state or elsewhere and having total capital funds of $25 million or more, as reported to its chartering authority as of December 31 of each year, may establish and operate a domestic international banking facility in this state upon compliance with this article. Any bank having total capital funds of $25 million or less may establish such facility upon compliance with this article and upon further obtaining the approval of the department. The department shall grant such approval only after it has satisfied itself that the registrant is financially sound, is operating in substantial conformity with all applicable laws and regulations, and is, along with its principals, of good character and reputation.

(b) Prior to establishing a domestic international banking facility and annually thereafter for so long as the facility shall continue in this state, the bank shall register with the department on such forms as the department shall prescribe and pay a registration fee as determined by the department. Such registration shall include:

(1) The name and main office address of the registrant;

(2) The address at which the facility is to be located;

(3) The names of the individuals responsible for administering the business affairs of the facility in this state;

(4) The name and address of the chartering authority for the registrant;

(5) A resolution from the board of directors or other governing body of the registrant authorizing the establishment of the facility;

(6) A statement of the registrant that it has the legal capacity under the laws pursuant to which it is organized to establish the

facility and that its chartering authority (and regulatory authority if different) interposes no objection to the establishment of such facility; and

(7) Such other information as the department may require.

Information required in paragraphs (5) and (6) of this subsection need not be resubmitted upon renewal of a registration. The facility shall promptly notify the department of any change in the management or location of the facility.

(c) The domestic international banking facility shall maintain records of its business activities separate from records of the domestic banking activities of its parent or head office.

(d) The domestic international banking facility shall not be subject to any tax or license fee in this state by virtue of its business location in this state or its business activities outside of this state.

History.
Ga. L. 1981, p. 770, § 3.

7-1-733. Rejection or revocation of registration as a domestic international banking facility.

(a) The department may revoke any registration or reject any application to register or renew a registration for a domestic international banking facility upon a finding that:

(1) The facility no longer qualifies to register under this article;

(2) The scope of the business conducted by the facility exceeds that authorized by this article;

(3) The chartering authority of the parent bank of the facility requests such action in writing; or

(4) The department determines, on its own initiative or otherwise, that representations made by the registrant, including, but not limited to, representations under paragraph (6) of subsection (b) of Code Section 7-1-732, are inaccurate.

(b) No facility whose registration has been rejected by the department may establish an international banking facility in this state.

History.
Ga. L. 1981, p. 770, § 4.

7-1-734. Examination and supervision by the department; agreements with other bank regulatory authorities.

(a) The department may examine the operations of any domestic

international banking facility for the purpose of determining that the scope of its activities does not exceed that allowed pursuant to this article and that the facility is otherwise operating in compliance with the applicable laws of this state. The department may by regulation establish minimum requirements for the maintenance of books and records in sufficient form to enable the department to carry out its responsibilities under this Code section.

(b) The department may enter into cooperative and reciprocal agreements with the bank regulatory authority of any government for the periodic examination of banking offices and facilities of any kind, including domestic international banking facilities, located within this state and may accept records from such authorities in lieu of conducting its own examination for compliance with laws of this state.

History.
Ga. L. 1981, p. 770, § 5.

ARTICLE 6

BUSINESS DEVELOPMENT CORPORATIONS

Law reviews.
For article, "Keynote Address to the Atlas Conference 'International Business Disputes in an Era of Receding Globalism,'" see 34 Ga. St. U.L. Rev. 765 (2018).

7-1-740. Definitions.

As used in this article, the term:

(1) "Board of directors" means any board of directors of a corporation created under this article.

(2) "Corporation" means a Georgia business development corporation created under this article or existing on April 1, 1975, pursuant to the former "Georgia Business Development Corporation Act of 1972," approved April 3, 1972 (Ga. L. 1972, p. 798).

(3) "Lending institution" means any bank or trust company, savings and loan association, insurance company or related corporation, partnership, foundation, pension fund, or other institution engaged primarily in lending or investing funds.

(4) "Loan limit" means, for any member, the maximum amount permitted to be outstanding at any one time on member loans made by such member to the corporation, as determined under this article.

(5) "Member" means any lending institution authorized to do business in this state which shall undertake to make member loans to a corporation created under this article, upon its call, and in accordance with this article.

(6) "Member loan" means a loan made by a member upon the call of the corporation pursuant to Code Section 7-1-747.

History.
Ga. L. 1972, p. 798, § 2; Code 1933, § 41A-3401, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 37; Ga. L. 1981, p. 965, § 1; Ga. L. 1982, p. 3, § 7; Ga. L. 2016, p. 390, § 7-4/HB 811.

Editor's notes.
The Georgia Business Development Corporation Act of 1972 (Ga. L. 1972, p. 798), referred to in paragraph (2) of this Code section, was repealed by Ga. L. 1974, p. 705, § 3(k).

7-1-741. Contents, execution, and presentation of articles.

(a) Five or more persons competent to contract, a majority of whom shall be residents of this state, who may desire to create a business development corporation under this article, for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the State of Georgia and, to that end, to exercise the powers and privileges provided in this article, may be incorporated by presenting articles to the Secretary of State, as provided in this Code section and Code Section 7-1-742. The articles shall contain:

(1) The name of the corporation, which shall include the words "Business Development Corporation of Georgia," and a recitation that the corporation is organized under this article;

(2) The location of its initial registered office, but such corporation may have branch offices in such other places within the state as may be fixed by the board of directors;

(3) The purposes for which the corporation is founded, which shall include: to promote, stimulate, develop, and advance the business prosperity and economic welfare of the State of Georgia and its citizens; to encourage and assist, through loans, investments, or other business transactions, in the location of the business and industry in this state and to rehabilitate and assist existing business and industry; to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of this state; to provide maximum opportunities for employment, encourage thrift, and improve the standard of living of the citizens of this state; similarly to cooperate and act in conjunction with other organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of business activity in this state;

(4) The names and post office addresses of the members of the first board of directors, who, unless otherwise provided by the articles or the bylaws, shall hold office for the first year of existence of the corporation or until their successors are elected and have qualified;

(5) Any provisions which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, dividing, limiting, and regulating the powers of the corporation, the directors, shareholders, or any class of the shareholders, including, but not limited to, a list of the officers, and provisions governing the issuance of stock certificates to replace lost or destroyed certificates, provided that no provision shall be contained for cumulative voting for directors; and

(6) The amount and number of authorized shares, the par value of each share, and the minimum amount of capital with which it shall do business and, if there is more than one class of stock, a description of the different classes, the names and post office addresses of the subscribers of stock, and the number of shares subscribed by each. The aggregate of the subscription shall be the minimum amount of capital with which the corporation shall commence business, which shall not be less than $100,000.00.

The articles may also contain any provisions consistent with the laws of this state for the regulation of the affairs of the corporation.

(b) The articles shall be in writing, subscribed by the incorporators, and acknowledged by each of them before an officer authorized to take acknowledgments. A copy of the articles so subscribed and acknowledged shall be filed with the department for approval.

History. Ga. L. 1972, p. 798, § 3; Code 1933, § 41A-3402, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 965, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
18A Am. Jur. 2d, Corporations, § 194 et seq.

C.J.S.
18 C.J.S., Corporations, § 47 et seq.

7-1-742. Action on articles by department; preconditions to doing business.

The department shall not approve the articles until at least 15 lending institutions authorized to do business in this state have agreed in writing to become members of said corporation; and said written agreement shall be filed with the department with the articles, and the filing of same shall be a condition precedent to the approval of the articles by the department. Whenever the articles shall have been filed in the office of the Secretary of State and approved by the department and all filing fees and taxes prescribed by law have been paid, the subscribers, their successors, and assigns shall constitute a corporation. Said corporation shall not be authorized to commence business until its articles are approved by the department. Upon such approval

by the department, authorized stock of the corporation may thereafter be issued.

History.
Ga. L. 1972, p. 798, § 4; Ga. L. 1973, p. 536, § 1; Code 1933, § 41A-3403, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 25.

RESEARCH REFERENCES

Am. Jur. 2d.
18A Am. Jur. 2d, Corporations, §§ 209, 210.

C.J.S.
18 C.J.S., Corporations, § 63 et seq.

7-1-743. Approval or disapproval of department.

(a) Upon receipt of an application for approval of articles from a corporation organized pursuant to this article, the department shall exercise its discretion in its consideration of the application; but the department shall not approve the application until it has ascertained to its satisfaction:

(1) That the public need and advantage will be promoted by the establishment of the corporation;

(2) That conditions in the locality in which the corporation will transact business afford reasonable promise of a successful operation;

(3) That the applicants may legally invest in the stock of the corporation and that such investment would not be to the detriment of the applicants;

(4) That the proposed members are in good standing with their respective supervisory authorities; and

(5) That the proposed officers and directors have sufficient experience, ability, and standing to afford reasonable promise of a successful operation.

(b) Within 90 days after receipt of an application for approval of the articles, the department shall issue a certificate either granting or denying permission for the corporation to commence business, provided that in no instance shall the department grant such permission until it has ascertained to its satisfaction that the above conditions and circumstances have been met and that the articles are in accordance with this article.

History.
Ga. L. 1973, p. 536, § 2; Code 1933, § 41A-3404, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
18A Am. Jur. 2d, Corporations, § 208.

C.J.S.
18 C.J.S., Corporations, § 63 et seq.

7-1-744. Filing of articles.

Upon receiving the approval of the department, the incorporators shall file the same together with the fee specified by Code Section 7-1-862 with the Secretary of State.

History.
Code 1933, § 41A-3405, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 946, § 71; Ga. L. 1989, p. 1257, § 26.

Editor's notes.
The amendment to this Code section by Ga. L. 1989, p. 946, § 71, was superseded by the amendment by Ga. L. 1989, p. 1257, § 26.

RESEARCH REFERENCES

Am. Jur. 2d.
18A Am. Jur. 2d, Corporations, § 208.

C.J.S.
18 C.J.S., Corporations, § 56 et seq.

7-1-745. Powers of corporation.

In furtherance of its purposes and in addition to the powers now or hereafter conferred on business corporations by the laws of this state, the corporation shall, subject to the restrictions and limitations contained in this Code section, have the following powers:

(1) To elect, appoint, and employ officers, agents, and employees;

(2) To make contracts and incur liabilities for any of the purposes of the corporation provided that the corporation shall not incur any secondary liability by way of the guaranty or endorsement of the obligations of any person or corporation or in any other manner unless the corporation has a substantial interest in the performance of the transaction;

(3) To borrow money and to do all things necessary or desirable to secure aid, assistance, loans, and other financing from its members (whether as member loans or otherwise), from any lending institution, or from any agency established under the Small Business Investment Act of 1958, as amended, or other similar federal or state legislation for any of the purposes of the corporation and to issue therefor its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchise, rights, and privileges of every kind and nature or any part thereof or interest therein without securing shareholder or member approval;

(4) To make loans to any person or corporation and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and services connected therewith;

(5) To purchase, receive, hold, lease, or otherwise acquire and to sell, convey, transfer, lease, or otherwise dispose of commercial or historical real and personal property and residential projects referred to the corporation by its shareholders or members, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations;

(6) To acquire the good will, business rights, real and personal property, and other assets or any part thereof or interest therein of any persons or corporations and to assume, undertake, or pay the obligations, debts, and liabilities of any such person or corporation; to acquire improved or unimproved real estate for the purpose of constructing residential buildings, industrial plants or business establishments thereon or for the purposes of disposing of such real estate to others for the construction of residential buildings, industrial plants, industrial parks, or business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of residential buildings, industrial plants, industrial parks, or business establishments;

(7) To acquire, subscribe for, own, sell, hold, assign, transfer, mortgage, pledge, or otherwise dispose of a partnership interest in any partnership or other entity or the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in or indebtedness of any person or corporation and, while the owner or holder thereof, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon;

(8) To mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in paragraph (5), (6), or (7) of this Code section, as security for the payment of any part of the purchase price therefor;

(9) To cooperate with and avail itself of the facilities of the United States Department of Commerce, the Department of Economic Development, and any other similar state or federal governmental agencies and to cooperate with and assist and otherwise encourage organizations in the various communities of this state in the promotion, assistance, and development of the business prosperity and economic well-being of such communities or of this state or any political subdivision thereof;

(10) To redeem or otherwise reacquire its shares under the

circumstances and subject to the restrictions now or hereafter set forth for business corporations by the laws of this state;

(11) To make, amend, and repeal bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation, which bylaws may establish internal governance procedures and standards, including, but not limited to, procedures for voting by proxy at and for giving notice of meetings of directors and of shareholders and members, procedures and standards for the payment of dividends, and the delegation by the board of directors of its authority under the articles of incorporation and this article to one or more committees of the board or to officers of the corporation, and which bylaws may give the board of directors or committees thereof the power to pass resolutions necessary or convenient to carry out the purposes of the corporation; and

(12) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article.

History.

Ga. L. 1972, p. 798, § 5; Code 1933, § 41A-3406, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 965, § 3; Ga. L. 1989, p. 1641, § 2; Ga. L. 1991, p. 1100, § 1; Ga. L. 2001, p. 967, § 1; Ga. L. 2004, p. 690, § 1.

Editor's notes.

Ga. L. 1989, p. 1641, § 18, not codified by the General Assembly, provides: "In the event of any substantive conflict between this Act and any other Act of the 1989 General Assembly, such other Act shall control over this Act."

Ga. L. 1991, p. 1100, § 2, not codified by the General Assembly, provides: "This Act shall apply to all loan applications received on or after July 1, 1991, by a business development corporation organized pursuant to Article 6 of Chapter 1 of Title 7 of the Official Code of Georgia Annotated."

U.S. Code.

The Small Business Investment Act of 1958, referred to in paragraph (3) of this Code section, is codified as 15 U.S.C. §§ 77c, 77ddd, 80a-18, 633, 636, 661 et seq. and 18 U.S.C. §§ 212, 213, 216, 657, 1006, 1014.

Law reviews.

For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001).

RESEARCH REFERENCES

Am. Jur. 2d.

19 Am. Jur. 2d, Corporations, § 1979 et seq.

C.J.S.

19 C.J.S., Corporations, § 638 et seq.

7-1-746. Right to deal in corporation's stock or obligations.

Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization, or trust indentures:

(1) Any person, including all domestic corporations organized for the purpose of carrying on business within this state and further including, without implied limitation, public utility companies and

insurance companies and foreign corporations licensed to do business within this state and all lending institutions as defined in paragraph (3) of Code Section 7-1-740 and all trusts are authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by or the shares of the corporation and, while owners of said shares, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state, except as otherwise provided in this article;

(2) All lending institutions are authorized to become members of the corporation and to make loans to the corporation as provided in this article;

(3) Each lending institution which becomes a member of the corporation is authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by or the shares of the capital stock of the corporation and, while owners of said stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the State of Georgia, provided that the amount of the capital of the corporation which may be acquired by any member pursuant to the authority granted in this Code section shall not exceed 5 percent of the capital base of such member; and

(4) The amount of shares of the corporation which any member is authorized to acquire pursuant to the authority granted in this Code section is in addition to the amount of shares in the corporation which such member may otherwise be authorized to acquire.

History.
Ga. L. 1972, p. 798, § 6; Code 1933, § 41A-3407, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 38; Ga. L. 1989, p. 14, § 7.

RESEARCH REFERENCES

Am. Jur. 2d.
19 Am. Jur. 2d, Corporations, §§ 2047 et seq., 2058 et seq.

C.J.S.
19 C.J.S., Corporations, § 737 et seq.

7-1-747. Applying for membership; loans by members.

(a) Any lending institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by said board.

(b) Each member of the corporation shall make member loans to the corporation when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits for member loans may, at the option of the board of directors, be established at the $1,000.00 amount nearest the amount computed in accordance with this Code section; and

(2) No member loan to the corporation shall be made if immediately thereafter the total amount of the obligations (whether under member loans or otherwise) of the corporation would exceed 50 times the amount then paid in on the capital of the corporation.

(c) The total amount outstanding on member loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital of the corporation then held by such member, shall not exceed the lesser of:

(1) Twenty percent of the aggregate of the capital of the corporation then outstanding plus the total amount then outstanding on all member loans to the corporation, including in said total amount outstanding amounts validly called as member loans but not yet loaned; or

(2) The following limit, to be determined each calendar year of membership on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding or, in the case of an insurance company, its last annual statement to the Commissioner of Insurance:

(A) Five percent of the statutory capital base of a bank or trust company;

(B) One-half of 1 percent of the total outstanding loans made by savings and loan associations;

(C) Two and one-half percent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies;

(D) Two and one-half percent of the unassigned surplus of mutual insurance companies, except fire insurance companies;

(E) One-tenth of 1 percent of the assets of fire insurance companies; and

(F) Such limits as may be approved by the board of directors of the corporation for other lending institutions; or

(3) Three million dollars.

(d) Subject to paragraphs (1) and (3) of subsection (c) of this Code section, each call for member loans made by the corporation shall be apportioned among the members of the corporation in such manner that, to the extent feasible, all members shall, after making such member loans, have adjusted loan limits constituting an equal percentage of their respective loan limits. The adjusted loan limit of a member shall be the amount of such member's loan limit, as determined by reference to subsection (c) of this Code section, reduced by the balance of outstanding member loans made by such member to the corporation and the investment in capital of the corporation held by such member at the time of such call.

(e) All member loans to the corporation shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times and which shall bear interest at a rate of interest determined by the board of directors to be the prime rate prevailing at the date of issuance thereof on unsecured commercial loans plus one-fourth of 1 percent or less.

History.
Ga. L. 1972, p. 798, § 7; Code 1933, § 41A-3408, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 39; Ga. L. 1981, p. 965, § 4; Ga. L. 1987, p. 1059, § 1; Ga. L. 1996, p. 732, § 1; Ga. L. 2001, p. 967, § 2; Ga. L. 2016, p. 390, § 7-4/HB 811.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1987, "Commissioner of Insurance" was substituted for "Insurance Commissioner" in paragraph (c)(2).

Pursuant to Code Section 28-9-5, in 1988, "limits" was substituted for "limit" near the beginning of paragraph (b)(1).

7-1-748. Duration of membership; withdrawal.

(a) Membership in the corporation shall be for the duration of the corporation, provided that, upon written notice given to the corporation two years in advance, a member may withdraw from membership in the corporation at the expiration of such notice.

(b) A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to notice of the intended withdrawal of said member.

History.
Ga. L. 1972, p. 798, § 8; Code 1933, § 41A-3409, enacted by Ga. L. 1974, p. 705, § 1.

7-1-749. Powers of shareholders and members; voting.

(a) The shareholders and the members of the corporation shall have the following powers of the corporation:

(1) To determine the number of and elect directors as provided in Code Section 7-1-751;

(2) To amend its articles as provided in Code Section 7-1-750;

(3) To dissolve the corporation as provided in Code Section 7-1-756; and

(4) To exercise such other of the powers of the corporation, consistent with this article, as may be conferred on the shareholders and the members by the bylaws.

(b) As to all matters requiring action by the shareholders and the members of the corporation, said shareholders and said members shall vote separately thereon by classes; and, except as otherwise provided in this article, such matters shall require the affirmative vote of a majority of the votes to which the shareholders present or represented at the meeting shall be entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled.

(c) Each shareholder shall have one vote, in person or by proxy, for each share of stock held by him; and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than $1,000.00 shall have one additional vote, in person or by proxy, for each additional $1,000.00 which such member is authorized to have outstanding on loans to the corporation at any one time, as determined under subsection (c) of Code Section 7-1-747.

(d) A holder of or subscriber to shares of the corporation or a member of the corporation shall be under no obligation to the corporation or its creditors with respect to such shares, subscriptions, or membership except in the circumstances set forth in Code Section 14-2-620, except that this subsection does not affect the obligation of a member to lend funds to the corporation pursuant to valid call.

History. Ga. L. 1972, p. 798, § 9; Code 1933, § 41A-3410, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 965, § 5; Ga. L. 1989, p. 946, § 72.

7-1-750. Amendment of articles.

(a) Except as provided in subsections (b) and (c) of this Code section and subject to the approval of the department, the articles may be amended by the votes of the shareholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two-thirds of the votes to which the members shall be entitled.

(b) No amendment shall be adopted which is inconsistent with the general purposes expressed in paragraph (3) of subsection (a) of Code Section 7-1-741 or which authorizes any additional class of stock to be issued or which would tend to impair the ability of the department to examine and supervise the corporation.

(c) No amendment of the articles which increases the obligation of a member to make loans to the corporation or makes any change in the principal amount, interest rate, or maturity date or in the security or credit position of any outstanding loan of a member to the corporation or affects a member's right to withdraw from membership as provided in Code Section 7-1-748 or affects a member's voting rights as provided in this article shall be made without the consent of each member affected by such amendment.

(d) Within 30 days after any meeting at which an amendment to the articles is approved, it shall be submitted to the department together with such information as the department shall require. If the department finds in its discretion that the proposed amendment is in conformity with the objectives and requirements of this article, it shall issue its certificate approving the amendment. If the amendment is disapproved, the department shall briefly state its reasons for such action to the corporation. The decision of the department shall be conclusive, except as it may be subject to judicial review as provided in Code Section 7-1-90.

(e) Upon the approval of the department, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth such amendment and due adoption thereof, shall, together with the department's certificate of approval, be submitted to the Secretary of State, who shall examine them and, if he finds that they conform to the requirements of this article, shall so certify and endorse his approval thereon.

History.
Ga. L. 1972, p. 798, § 10; Code 1933, § 41A-3411, enacted by Ga. L. 1974, p. 705, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
18 Am. Jur. 2d, Corporations, §§ 85, 86.

C.J.S.
18 C.J.S., Corporations, §§ 57, 58.

7-1-751. Board of directors; officers and agents.

The business affairs of the corporation shall be managed and controlled by a board of directors, a president, a vice-president, a secretary, a treasurer, and such other officers and such agents as the corporation shall authorize by its bylaws. The board of directors shall consist of such number, not less than 15 nor more than 21, as shall be determined in the first instance by the incorporators and thereafter annually by the members and the shareholders of the corporation. The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the shareholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies except vacancies in the

office of director, which shall be filled as provided in this Code section. The annual meeting shall be held prior to May 1 or, if no annual meeting shall be held in the year of incorporation, then within 90 days after the approval of the articles at a special meeting as provided in this Code section. At such annual meeting or at each special meeting held as provided in this Code section, the members of the corporation shall elect two-thirds of the board of directors and the shareholders shall elect the remaining directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after the election and until their successors are elected and qualified, unless sooner removed in accordance with provisions of the bylaws. Any vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the shareholders shall be filled by the directors elected by the shareholders. Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the willful misconduct of such directors and officers.

History.
Ga. L. 1972, p. 798, § 11; Code 1933, § 41A-3412, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 40; Ga. L. 1981, p. 965, § 6.

RESEARCH REFERENCES

Am. Jur. 2d.
18B Am. Jur. 2d, Corporations, § 1317 et seq.

7-1-752. Earned surplus; fiscal year.

(a) Each year the corporation shall set apart as earned surplus not less than 10 percent of its net earnings for all the preceding fiscal year until such surplus shall be equal in value to one-half of the amount paid in on the capital then outstanding. Whenever the amount of surplus established in this Code section shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors after providing for such reserves as said directors deem desirable, and the determination of the directors made in good faith shall be conclusive on all persons.

(b) Corporations organized under this article shall adopt the calendar year as their fiscal year.

History.
Ga. L. 1972, p. 798, §§ 12, 21; Code 1933, § 41A-3413, enacted by Ga. L. 1974, p. 705, § 1.

7-1-753. Deposit of corporate funds; corporation not to accept deposits.

The corporation shall not deposit any of its funds in any bank or other financial institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated. The corporation shall not receive money on deposit.

History. Ga. L. 1972, p. 798, § 13; Code 1933, § 41A-3414, enacted by Ga. L. 1974, p. 705, § 1.

7-1-754. Supervision.

The department shall exercise the same power and authority over corporations organized under this article as is now or hereafter exercised over banks and trust companies by Articles 1 and 2 of this chapter where such law is not in conflict with this chapter.

History. Ga. L. 1972, p. 798, § 14; Ga. L. 1973, p. 536, § 3; Code 1933, § 41A-3415, enacted by Ga. L. 1974, p. 705, § 1.

7-1-755. First meeting and organization.

(a) The first meeting of the corporation shall be called by a notice signed by three or more of the incorporators, stating the time, place, and purpose of the meeting, a copy of which notice shall be mailed or delivered to each incorporator at least five days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

(b) At such first meeting the incorporators shall organize by the choice, by ballot, of a temporary clerk; by the adoption of bylaws; by the election, by ballot, of directors; and by action upon such other matters within the powers of the corporation as the incorporators may see fit. The temporary clerk shall be sworn and shall make and attest a record of the proceedings. Four of the incorporators shall be a quorum for the transaction of business.

History. Ga. L. 1972, p. 798, § 15; Code 1933, § 41A-3416, enacted by Ga. L. 1974, p. 705, § 1.

7-1-756. Duration and dissolution of corporation.

(a) The period of duration of a corporation organized under this

article shall be 35 years, subject, however, to the right of its shareholders and the members to dissolve the corporation prior to the expiration of said period as provided in subsection (b) of this Code section, and further subject to any longer period of duration as may be specified in the articles of incorporation as originally filed and approved or as thereafter amended pursuant to Code Section 7-1-750.

(b) The corporation may, upon the votes of the shareholders and the members of the corporation, voting separately by classes, dissolve said corporation; and such dissolution shall require approval by the affirmative vote of two-thirds of the votes to which the shareholders shall be entitled. Upon any dissolution of the corporation, none of the corporation's assets shall be distributed to the shareholders until all sums due the members of the corporation as creditors thereof have been paid in full.

History.
Ga. L. 1972, p. 798, §§ 16, 17; Code 1933, § 41A-3417, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1987, p. 1059, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
19 Am. Jur. 2d, Corporations, § 59 et seq.
C.J.S.
19 C.J.S., Corporations, § 904 et seq.
ALR.
Propriety of applying minority discount to value of shares purchased by corporation or its shareholders from minority shareholders, 13 A.L.R.5th 840.

7-1-757. State credit not pledged.

Under no circumstances shall the credit of the State of Georgia be pledged to any corporation organized under this article nor shall acts of such corporation in any manner constitute or result in the creation of any indebtedness of the State of Georgia or any county or municipal corporation therein.

History.
Ga. L. 1972, p. 798, § 18; Code 1933, § 41A-3418, enacted by Ga. L. 1974, p. 705, § 1.

7-1-758. Tax exemptions; state and local occupational license taxes.

(a) Any tax exemptions, tax credits, or tax privileges granted to banks or trust companies and other financial institutions by any general laws of this state are granted to corporations organized pursuant to this article.

(b) Every corporation organized and engaged in business under this article shall pay an annual state occupational license tax of $50.00. Counties and municipalities are authorized, in addition, to levy the occupational license taxes as prescribed; provided, however, that no

county or municipality shall levy any such occupational license tax in a greater amount than those prescribed.

History.
Ga. L. 1972, p. 798, §§ 19, 20; Code 1933, § 41A-3419, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2016, p. 390, § 7-4/HB 811; Ga. L. 2017, p. 774, § 7/HB 323.

ARTICLE 7

BUILDING AND LOAN ASSOCIATIONS AND SAVINGS AND LOAN ASSOCIATIONS

Cross references.
Authority of building and loan associations and savings and loan associations to invest in projects involving redevelopment of blighted areas, § 8-4-12.

Appointment of building and loan associations and federal savings and loan associations as state depositories of state funds, § 50-17-50 et seq.

Administrative rules and regulations.
Check Cashers, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Check Cashers, Rule 80-4-1-.01 et seq.

Law reviews.
For article, "Small Loans Under Georgia Laws," see 3 Mercer L. Rev. 227 (1952).

For article discussing the consolidation of laws dealing with various types of financial organizations into the Financial Institutions Code of Georgia, see 11 Ga. St. B.J. 225 (1975).

RESEARCH REFERENCES

ALR.
Construction of savings bank by-law expressly assented to by depositor, relieving bank from liability for payment to unauthorized person, 52 A.L.R. 760.

Constitutionality, construction, and effect of statutes relating to inspection, dissolution and liquidation of building and loan associations, 78 A.L.R. 1090.

Right of borrowing member of building and loan association to tender matured stock purchased from nonborrowing members, 85 A.L.R. 968.

Power of building and loan association to borrow money to pay withdrawing members holding either matured or partially matured stock, 87 A.L.R. 1156.

Basis of settlement between building and loan association and borrowing member during solvency of association, 98 A.L.R. 6.

Constitutionality of statute changing rights of withdrawing members of building and loan association, 98 A.L.R. 82; 133 A.L.R. 1493.

Status of holder of withdrawn, matured, prepaid, and preferred stock in building and loan association and resulting rights and liabilities, 98 A.L.R. 89.

Determination of "withdrawal value" of unmatured shares in building and loan association, 98 A.L.R. 142.

Right of building and loan association to transfer to third person loan made to borrowing member, 112 A.L.R. 459.

Purchase or retirement of stock by building and loan association at a price less than its withdrawal value, 134 A.L.R. 1212.

Uniform Stock Transfer Act as applicable to shares in savings and loan associations or building and loan associations, 143 A.L.R. 1152.

7-1-770. Definitions.

As used in this article:

(1) An association is "local" if the greater portion of its investment

in real estate loans is limited to loans on the security of a first lien or security title on real estate. Any such association may purchase real estate loans or interests in real estate loans which are made and owned by any savings and loan association to the extent authorized by the regulations of the department, provided that such regulations shall not permit the purchase of loans or interests in loans of any type or in any amounts (per individual loan or in the aggregate) which are not permitted by law to be purchased by savings and loan associations with principal offices in this state.

(2) An association is "mutual" if all depositors in such association participate in the income of such association and if all borrowers are privileged to vote at least one vote at any meeting of members, it being unnecessary that any borrower should subscribe to or purchase any shares or be entitled to participate in any way in the income of such association.

History.
Ga. L. 1937-38, Ex. Sess., p. 307, § 2; Ga. L. 1945, p. 263, § 2; Ga. L. 1965, p. 473, § 1; Code 1933, § 41A-3501, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 16; Ga. L. 1982, p. 3, § 7; Ga. L. 2016, p. 390, § 7-15/HB 811.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 5 et seq.

C.J.S.
12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions, § 1 et seq.

ALR.
Power of savings bank or similar institution to provide checking facilities or negotiable orders of withdrawal (NOW) to customers, 64 A.L.R.3d 1314.

Promissory estoppel of lending institution based on promise to lend money, 18 A.L.R.5th 307.

7-1-771. [Reserved] Members of building and loan association; voting.

History.
Ga. L. 1945, p. 263, § 1; Code 1933, § 41A-3502, enacted by Ga. L. 1974, p. 705, § 1; repealed by Ga. L. 2016, p. 390, § 7-16/HB 811, effective July 1, 2016.

Editor's notes.
Ga. L. 2016, p. 390, § 7-16/HB 811 repealed and reserved this Code section, effective July 1, 2016.

7-1-772. [Reserved] Presentation, contents, and execution of articles of building and loan association.

History.
Code 1933, § 41A-3503, enacted by Ga. L. 1974, p. 705, § 1; repealed by Ga. L. 2016, p. 390, § 7-16/HB 811, effective July 1, 2016.

Editor's notes.
Ga. L. 2016, p. 390, § 7-16/HB 811 repealed and reserved this Code section, effective July 1, 2016.

7-1-773. [Reserved] Approval or disapproval of articles of building and loan association by department.

History.
Ga. L. 1937-38, Ex. Sess., p. 307, § 6; Ga. L. 1973, p. 533, § 1; Code 1933, § 41A-3504, enacted by Ga. L. 1974, p. 705, § 1; repealed by Ga. L. 1989, p. 1257, § 27, effective July 1, 1989.

Editor's notes.
Ga. L. 1989, p. 1257, § 27 repealed and reserved this Code section, effective July 1, 1989.

7-1-774. [Reserved] Approval of articles of building and loan association; renewals or amendments to existing charters.

History.
Ga. L. 1937-38, Ex. Sess., p. 307, § 6; Ga. L. 1973, p. 533, § 1; Code 1933, § 41A-3505, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 41; repealed by Ga. L. 1989, p. 1257, § 28, effective July 1, 1989.

Editor's notes.
Ga. L. 1989, p. 1257, § 28 repealed and reserved this Code section, effective July 1, 1989.

7-1-775. [Reserved] Filing and processing articles of incorporation and amendments for building and loan association.

History.
Code 1933, § 41A-3506, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 41; Ga. L. 1989, p. 1257, § 29; repealed by Ga. L. 2016, p. 390, § 7-16/HB 811, effective July 1, 2016.

Editor's notes.
Ga. L. 2016, p. 390, § 7-16/HB 811 repealed and reserved this Code section, effective July 1, 2016.

7-1-776. [Reserved] Certificate of incorporation or amendment issued by Secretary of State.

History.
Code 1933, § 41A-3507, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1257, § 30; repealed by Ga. L. 2016, p. 390, § 7-16/HB 811, effective July 1, 2016.

Editor's notes.
Ga. L. 2016, p. 390, § 7-16/HB 811 repealed and reserved this Code section, effective July 1, 2016.

7-1-777. Principal and branch offices.

No savings and loan association or similar corporation existing under the laws of this state or of the United States shall accept deposits in this state except on the premises of an established principal office or branch office operated pursuant to this article. For the purposes of this Code section, the term "branch office" means any office of such association or corporation which is intended to be permanently established in a fixed

location and to be operated at such location on substantially a full-time basis.

History.
Ga. L. 1973, p. 653, § 1; Code 1933, § 41A-3508, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2016, p. 390, § 7-4/HB 811; Ga. L. 2024, p. 1052, § 1(a)(25)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "means" for "shall be construed to mean" in this Code section.

7-1-778. [Reserved] Rules and regulations governing building and loan associations.

History.
Ga. L. 1937-38, Ex. Sess., p. 307, § 8; Code 1933, § 41A-3509, enacted by Ga. L. 1974, p. 705, § 1; repealed by Ga. L. 2016, p. 390, § 7-16/HB 811, effective July 1, 2016.

Editor's notes.
Ga. L. 2016, p. 390, § 7-16/HB 811 repealed and reserved this Code section, effective July 1, 2016.

7-1-779. Use of "savings and loan" or other terms likely to mislead public as to nature of business.

No person or corporation, except a savings and loan association actually engaged in carrying on a savings and loan business as contemplated by this article or the laws of the United States, shall transact business under any name or title which contains the term "savings and loan" or combination of the words used in said phrase or use any sign or any letterhead or billhead, circular, or paper of any kind or advertise in any manner which indicates that his or its business is the character or kind of business carried on or transacted by a savings and loan association or which is likely to lead the public to believe that his or its business is that of a savings and loan association.

History.
Ga. L. 1937-38, Ex. Sess., p. 307, § 10; Code 1933, § 41A-3510, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2016, p. 390, § 7-4/HB 811; Ga. L. 2017, p. 774, § 7/HB 323.

Cross references.
Regulations pertaining to use of names by financial institutions generally, § 7-1-130.

OPINIONS OF THE ATTORNEY GENERAL

Foreign state building and loan associations. — Since building and loan associations are defined as local mutual associations under former Code 1933, § 41A-3501 (see now O.C.G.A. § 7-1-770), foreign state building and loan associations are prohibited from directly or indirectly establishing loan production offices in Georgia under former Code 1933, § 41A-3510 (see now O.C.G.A. § 7-1-779). 1978 Op. Att'y Gen. No. 78-70.

Foreign state savings and loan association may not transact business in Georgia under any name containing the terms "savings and loan," nor may it advertise in any manner which indicates

that its business is the kind carried on by a savings and loan association. 1983 Op. Att'y Gen. No. 83-23.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 188.
C.J.S.
12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions, § 17.

7-1-780. Lien on deposits to secure loans.

To secure loans, savings and loan associations shall have a lien without further agreement or pledge upon all deposits with it by a borrower; and, upon default upon any loan, any such association may, without notice to or consent of the borrower, cancel on its books part or all of the amount outstanding to the credit of the borrower not exceeding his obligations to the association and apply such amount in payment of the obligations.

History.
Ga. L. 1937-38, Ex. Sess., p. 307, § 11; Code 1933, § 41A-3511, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2016, p. 390, § 7-4/HB 811.

JUDICIAL DECISIONS

"Freeze" on checking account funds did not violate the automatic stay provisions of the Bankruptcy Code. Georgia Fed. Bank v. Owens-Peterson, 39 B.R. 186, 1984 Bankr. LEXIS 5820 (Bankr. N.D. Ga. 1984).

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 780.
C.J.S.
12 C.J.S., Building and Loan Associations, Savings and Loan Associations, and Credit Unions, § 69.
ALR.
Bank's right of setoff, based on debit of one depositor, against funds in account standing in names of debtor and another, 68 A.L.R.3d 192.
Acts in Violation of Bankruptcy Stay as Void or Voidable Under Federal Law — Federal Appellate Cases, 81 A.L.R. Fed. 3d 6.

7-1-781. Conversion into savings and loan association.

Any other financial institution existing under the laws of this state doing a home financing business may convert itself into a savings and loan association in accordance with Section 5 of the Home Owners' Loan Act, 12 U.S.C. Section 1464, upon a vote of 51 percent or more of the votes of the members cast at an annual meeting or at any special meeting called to consider such action.

History.
Ga. L. 1937-38, Ex. Sess., p. 307, § 12; Code 1933, § 41A-3512, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2016, p. 390, § 7-17/HB 811.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 235 et seq.

7-1-782. [Reserved] Effect of conversion into savings and loan association.

History.
Ga. L. 1937-38, Ex. Sess., p. 307, § 12; Code 1933, § 41A-3513, enacted by Ga. L. 1974, p. 705, § 1; repealed by Ga. L. 2016, p. 390, § 7-16/HB 811, effective July 1, 2016.

Editor's notes.
Ga. L. 2016, p. 390, § 7-16/HB 811 repealed and reserved this Code section, effective July 1, 2016.

7-1-783. Previous conversions into savings and loan associations ratified.

Any corporation which has converted itself prior to April 1, 1975, into a savings and loan association under the Home Owners' Loan Act and has received a charter from the Federal Home Loan Bank Board shall be recognized as a savings and loan association, and its federal charter shall be given full credence by the courts of this state to the same extent as if such conversion had taken place under this article.

History.
Ga. L. 1937-38, Ex. Sess., p. 307, § 12; Code 1933, § 41A-3514, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2016, p. 390, § 7-18/HB 811.

U.S. Code.
The Home Owners' Loan Act of 1933, referred to in this Code section, is codified as 12 U.S.C. § 1461 et seq.

7-1-784. [Reserved] Conversion into building and loan association.

History.
Ga. L. 1937-38, Ex. Sess., p. 307, § 12; Code 1933, § 41A-3515, enacted by Ga. L. 1974, p. 705, § 1; repealed by Ga. L. 2016, p. 390, § 7-16/HB 811, effective July 1, 2016.

Editor's notes.
Ga. L. 2016, p. 390, § 7-16/HB 811 repealed and reserved this Code section, effective July 1, 2016.

7-1-785. [Reserved] Effect of conversion into building and loan association.

History.
Ga. L. 1937-38, Ex. Sess., p. 307, § 12; Code 1933, § 41A-3516, enacted by Ga. L. 1974, p. 705, § 1; repealed by Ga. L. 2016, p. 390, § 7-16/HB 811, effective July 1, 2016.

Editor's notes.
Ga. L. 2016, p. 390, § 7-16/HB 811 repealed and reserved this Code section, effective July 1, 2016.

7-1-786. Taxation.

No savings and loan association with a home office in this state shall be assessed or subjected to taxation by the state or any county, municipality, or other political subdivision taxing authority on its franchise, capital, reserves, surplus, loans, shares, or accounts; except that any real property and any tangible personal property not hereinbefore specifically mentioned, which may be owned by it, shall be subject to taxation to the same extent, according to its value, as all other real and tangible personal property is taxed.

History.
Ga. L. 1937-38, Ex. Sess., p. 307, § 13; Code 1933, § 41A-3517, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2016, p. 390, § 7-4/HB 811.

JUDICIAL DECISIONS

Discussion of meaning of term franchise. — See City of Griffin v. First Fed. Sav. & Loan Ass'n, 80 Ga. App. 217, 55 S.E.2d 771, 1949 Ga. App. LEXIS 808 (1949).

Savings and loan association is exempt from any license or occupation tax or fee for doing business in a city; and city ordinance, insofar as the ordinance attempts or purports to impose a license fee upon such association is invalid and prohibited. City of Griffin v. First Fed. Sav. & Loan Ass'n, 80 Ga. App. 217, 55 S.E.2d 771, 1949 Ga. App. LEXIS 808 (1949). But see City of Atlanta v. First Fed. Sav. & Loan Ass'n, 209 Ga. 517, 74 S.E.2d 243, 1953 Ga. LEXIS 303 (1953).

Exemption from taxation is not exemption from license or occupation fees. — To properly construe meaning of the word franchise, it must be considered in connection with the other property for which an exemption from taxation was given. Franchises are property and former Code 1933, § 92-2302 (see now O.C.G.A. § 48-5-421) made provision for taxation of franchises. When the word franchise is considered in connection with other items exempted from taxation, it must be taken as meaning powers conferred by a sovereignty, and that exemption granted is from taxation of property right in powers so conferred, and not exemption from license or occupation fee required by municipality in order to do business. City of Atlanta v. First Fed. Sav. & Loan Ass'n, 209 Ga. 517, 74 S.E.2d 243, 1953 Ga. LEXIS 303 (1953).

7-1-787. Exemption from securities regulations.

The opening and transfer of deposits in a savings and loan association are exempted from all provisions of law of this state which provide for the supervision and the regulation of the sale of securities, even if the word "shares" or similar terminology is used in connection therewith; and the sale of any such deposits shall be legal without any action or approval whatsoever on the part of any official authorized to license, regulate, and supervise the sale of securities.

History.
Ga. L. 1937-38, Ex. Sess., p. 307, § 14; Code 1933, § 41A-3518, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2016, p. 390, § 7-4/HB 811.

Cross references.
Exemption from securities-registration requirements of securities issued by federal savings and loan associations, or building and loan associations, § 10-5-10.

RESEARCH REFERENCES

ALR.
Purchase or retirement of stock by building and loan association at a price less than its withdrawal value, 134 A.L.R. 1212.

7-1-788. Notaries and other officers not disqualified by interest in association; validation of prior instruments.

No notary public or other public officer shall be disqualified from taking the acknowledgment of or witnessing any instrument, in writing, in which a savings and loan association is interested, by reason of his holding an office in or being a member of or being pecuniarily interested in or employed by such association so interested; and any such acknowledgments or attestations taken prior to April 1, 1975, are validated.

History.
Ga. L. 1937-38, Ex. Sess., p. 307, § 15; Code 1933, § 41A-3519, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2016, p. 390, § 7-4/HB 811.

7-1-789. Minors' deposits, safe-deposit boxes, and third-party payment accounts; validity of releases.

(a) A minor shall be allowed to have deposits in a savings and loan association in his own name, and the deposits made by the minor shall not be subject to the control of his parent, guardian, or trustee. A minor may have third-party payment accounts. A receipt or acquittance signed by such a minor depositor shall be a valid and sufficient release and discharge of such association for any payment of any deposit to such minor. In the transactions involving payments to third parties out of the minor's account, the payment of an order of the minor shall be a valid and sufficient release and discharge of the savings and loan association for any payment of such funds from the minor's account.

(b) Subsection (a) of this Code section shall continue to include, without limitation:

(1) Deposits in such associations by a minor with one or more adults or other minors, as party to and with the same effect as a multiple-party account under Article 8 of this chapter;

(2) The rental to a minor by said associations of a safe-deposit box or other receptacle for the safe deposit of property from such minor

(and the receipt of any such property), individually or jointly with one or more adults; and

(3) The dealing with a minor by said associations with respect to such a deposit account, third-party payment account, or safe-deposit agreement without the consent of a parent or guardian and with the same effect as though the minor were an adult.

Any action of the minor with respect to such deposit account, third-party payment account, or safe-deposit agreement shall be binding on the minor with the same effect as though the minor were an adult.

History.
Ga. L. 1937-38, Ex. Sess., p. 307, § 16; Code 1933, § 41A-3520, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1981, p. 1366, § 17; Ga. L. 1982, p. 1085, §§ 1, 2; Ga. L. 2016, p. 390, § 7-4/HB 811.

7-1-790. Deposits of fiduciaries.

A savings and loan association may receive deposits in the name of an administrator, executor, guardian, trustee, or other fiduciary in trust for a named or an unnamed beneficiary or beneficiaries. Such a deposit and dividends or interest thereon or other rights relating thereto may be paid or delivered, in whole or in part, to such fiduciary or may be exercised by such fiduciary without regard to any notice to the contrary so long as such fiduciary is living and until the association has received notice of the death of such fiduciary. The payment or delivery to any such fiduciary or a receipt or acquittance signed by any such fiduciary, to whom any such payment or any such delivery of rights is made, shall be a valid and sufficient release and discharge of such association for the payment or delivery so made.

History.
Ga. L. 1937-38, Ex. Sess., p. 307, § 16; Code 1933, § 41A-3522, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2016, p. 390, § 7-4/HB 811.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2016, "a" was deleted preceding "savings and loan association" in the first sentence.

JUDICIAL DECISIONS

Legislative intent. — See Bank S. v. Grand Lodge of Free & Accepted Masons, 174 Ga. App. 777, 331 S.E.2d 629, 1985 Ga. App. LEXIS 1953 (1985).

Applicability to banks. — In an action by children against a bank for accepting custodial certificates of deposit as collateral for their custodian's personal loan, the provision of O.C.G.A. § 7-1-790 creating a presumption that a fiduciary was acting in a lawful manner consistent with the fiduciary's duties applied to shield the bank from liability. Grogan v. Lanier Bank & Trust Co., 219 Ga. App. 313, 464 S.E.2d 892, 1995 Ga. App. LEXIS 1037 (1995), cert. denied, No. S96C0553, 1996 Ga. LEXIS 415 (Ga. Mar. 8, 1996).

Bank challenge of trustee's withdrawals. — Bank is under no duty to challenge a trustee's withdrawal of trust funds merely because the amount withdrawn is large or for cash. Bank S. v.

Grand Lodge of Free & Accepted Masons, 174 Ga. App. 777, 331 S.E.2d 629, 1985 Ga. App. LEXIS 1953 (1985).

Summary judgment in suit for mishandling trust. — Although there was a genuine issue of fact whether a savings and loan association had knowledge of the court order requiring court permission before encroaching upon the corpus of a trust, it was not a material fact because, even if the association had such knowledge, it was permitted by O.C.G.A. § 7-1-790 to pay out the funds on the order of the trustee under the presumption that the trustee was acting in compliance with duties as a fiduciary; therefore, summary judgment was properly granted in favor of the association in the beneficiaries' suit for mishandling of the trust. Chelena v. Georgia Fed. Sav. & Loan Ass'n, 256 Ga. 336, 349 S.E.2d 180, 1986 Ga. LEXIS 868 (1986).

RESEARCH REFERENCES

ALR.

Liability of bank where funds deposited in account of trustee, agent, or other fiduciary, as such, are transferred to his personal account and misappropriated, 145 A.L.R. 445.

7-1-791. Payment on death of depositor.

Except as provided in Article 8 of this chapter, upon the death of a depositor of a savings and loan association, such association may pay the amount of his deposit or any portion thereof to an executor, administrator, or other fiduciary duly appointed and qualified pursuant to the last will and testament of the depositor or by any court of competent jurisdiction in this state or any other state.

History.

Ga. L. 1937-38, Ex. Sess., p. 307, § 16; Ga. L. 1958, p. 620, § 1; Code 1933, § 41A-3523, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 43; Ga. L. 1976, p. 1388, § 6; Ga. L. 1983, p. 661, § 2; Ga. L. 2016, p. 390, § 7-4/HB 811.

Cross references.

Payment of deposits of deceased depositors, § 7-1-239.

RESEARCH REFERENCES

Am. Jur. 2d.

23 Am. Jur. 2d, Descent and Distribution, § 106 et seq.

7-1-792. Deposits applied to funeral expenses.

Except as provided in Article 8 of this chapter, if no application for the deposit is made by any person named in Code Section 7-1-791 within 90 days from the death of a depositor, a savings and loan association shall be authorized to apply not more than $1,000.00 of the deposit of such deceased depositor in payment of the funeral expenses of such deceased depositor upon receipt of an itemized statement of such expenses and the affidavit of the undertaker conducting the funeral that said statement was true and correct and had not been paid.

History.
Ga. L. 1937-38, Ex. Sess., p. 307, § 16; Code 1933, § 41A-3524, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1976, p. 1388, § 7; Ga. L. 2016, p. 390, § 7-4/HB 811.

7-1-793. Investment of funds in insured deposits.

Administrators, executors, guardians, trustees, and other fiduciaries of every kind and nature; insurance companies; charitable, educational, eleemosynary, and public corporations and organizations; municipalities and other public corporations and bodies; and public officials are authorized to invest funds held by them, without any order of any court, in deposits in savings and loan associations which are insured under a federal deposit insurance program; and, to the extent of such insurance, such investments shall be deemed and held to be legal investments for such funds.

History.
Ga. L. 1937-38, Ex. Sess., p. 322, § 1; Ga. L. 1951, p. 756, § 1; Ga. L. 1952, p. 305, § 2; Ga. L. 1964, p. 194, § 1; Code 1933, § 41A-3525, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1980, p. 972, § 8; Ga. L. 1993, p. 917, § 7; Ga. L. 2016, p. 390, § 7-4/HB 811.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2016, "associations or" was deleted preceding "savings and loan associations" in the middle of this Code section.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 16-437 are included in the annotations for this Code section.

Former Code Section 53-13-54 (see now O.C.G.A. § 53-12-280) provides legal investments which can be made by trustees. 1971 Op. Att'y Gen. No. 71-20 (decided under former Code 1933, § 16-437).

7-1-794. Deposits as security or in lieu of bond.

Whenever, under the laws of this state or otherwise, a deposit of securities is required for any purpose, the deposits made legal investments by Code Section 7-1-793 shall be acceptable as such security; and, whenever, under the law of this state or otherwise, a bond is required with security, such bond may be furnished and the deposits made legal investments by Code Section 7-1-793 in the amount of such bond shall be acceptable to secure said bond without other security. This Code section and Code Section 7-1-793 are supplemental to any and all other laws relating to and declaring what shall be legal investments for the persons, corporations, organizations, and officials referred to in these Code sections and the laws relating to the deposit of securities and the making and filing of bonds for any purpose.

History.
Ga. L. 1937-38, Ex. Sess., p. 322, § 2; Ga. L. 1952, p. 305, § 3; Ga. L. 1964, p. 194, § 2; Code 1933, § 41A-3526, enacted by Ga. L. 1974, p. 705, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Former Code Section 53-13-54 (see now O.C.G.A. § 53-12-280) provides legal investments which can be made by trustees. 1971 Op. Att'y Gen. No. 71-20.

7-1-795. Savings account books and certificates.

The original record of deposits in savings and loan associations is the record on the books of the association, and the depositor shall be entitled to a savings account book or certificate which is a duplicate of such record. Those dealing with such savings account books and certificates shall be bound by the record on the books of the association. In the event of the loss or destruction of any such savings account book or certificate, any association may, upon receipt of an affidavit of such loss or destruction, issue a duplicate thereof and remain liable only to the holder or holders as shown on the records of the association. The only way an effective transfer or pledge may be accomplished so as to affect the rights of the association is by transfer on the books of the association in the case of transfer or written notice of a pledge entered on the books of the association and acknowledged in writing in the case of a pledge; and the association shall be protected in paying any part of a deposit to the holder thereof as shown on the books of the association unless it has received written notice of a pledge or transfer thereof.

History.
Code 1933, § 16-439, enacted by Ga. L. 1952, p. 305, § 4; Code 1933, § 41A-3527, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2016, p. 390, § 7-4/HB 811.

RESEARCH REFERENCES

ALR.
Right of member of savings and loan association to inspect books and records, 134 A.L.R. 699.

7-1-796. Insanity, incompetency, bankruptcy, or death of depositor.

A savings and loan association paying deposits to an insane or otherwise incompetent depositor or bankrupt depositor or acting upon the release and discharge or authorization of such depositor or acting upon the power of attorney of an insane, deceased, or bankrupt depositor in good faith and without actual knowledge of the insanity or other incompetency, bankruptcy, or death of such depositor shall be protected in so doing and may lawfully charge such payment to the depositor's account.

History.
Code 1933, § 16-440, enacted by Ga. L. 1956, p. 628, § 1; Code 1933, § 41A-3528, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2016, p. 390, § 7-4/HB 811.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2016, "a" was deleted preceding "savings and loan association" at the beginning of this Code section.

ARTICLE 8

MULTIPLE-PARTY ACCOUNTS

Law reviews.
For article discussing joint tenancy arrangements as a means of avoiding probate, see 6 Ga. L. Rev. 74 (1971).

For article discussing Georgia commercial law in 1976 to 1977, see 29 Mercer L. Rev. 41 (1977).

For article discussing developments in the law of wills, trusts and administration of estates in Georgia in 1976 to 1977, see 29 Mercer L. Rev. 291 (1977).

For article, "Joint Bank Accounts: A Different Form of Joint Tenancy," see 17 Ga. St. B.J. 184 (1981).

For article, "Transfer-on-Death Securities Registration: A New Title Form," see 21 Ga. L. Rev. 789 (1987).

JUDICIAL DECISIONS

Deposits made in joint form for convenience only. — When a deposit is made in joint form for convenience only and not for the purpose of making a gift to the other party, the party making the deposit may recover. The presumption of joint ownership is a rebuttable one and when the joint account was created as a matter of convenience with no intention of conferring a beneficial interest upon the codepositor the presumption is rebutted. Davidson v. Walsh, 158 Ga. App. 845, 282 S.E.2d 366, 1981 Ga. App. LEXIS 2440 (1981).

RESEARCH REFERENCES

ALR.
Power of one party to joint bank account to terminate the interests of the other, 161 A.L.R. 71.

Effect of incompetency of joint depositor upon status and ownership of bank account, 62 A.L.R.2d 1091.

Liability of bank to joint depositor of savings account for amounts withdrawn by other joint depositor without presentation of passbook, 35 A.L.R.4th 1094.

Liability of bank to joint depositor for removal of name from account at request of other joint depositor, 39 A.L.R.4th 1112.

Nondrawing cosigner's liability for joint checking account overdraft, 48 A.L.R.4th 1136.

Payable-on-death savings account or certificate of deposit as will, 50 A.L.R.4th 272.

7-1-810. Definitions.

As used in this article, the term:

(1) "Account" means a contract of deposit of funds between a depositor and a financial institution and includes a checking account, savings account, certificate of deposit, share account, and other like arrangements.

(2) "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

(3) "Financial institution" means a savings and loan association as defined in paragraph (31) of Code Section 7-1-4 or any financial institution as defined in paragraph (21) of Code Section 7-1-4.

(4) "Joint account" means an account payable on request to one or more of two or more parties, whether or not mention is made of any right of survivorship.

(5) "Multiple-party account" means any of the following types of account:

(A) A joint account;

(B) A P.O.D. account; or

(C) A trust account.

It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes; accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, or charitable or civic organization; or a regular fiduciary or trust account where the relationship is established other than by deposit agreement.

(6) "Net contribution" of a party to a multiple-party account as of any given time means the sum of all deposits thereto made by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason of the death of the party whose net contribution is in question.

(7) "Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original payee or trustee. Unless the context otherwise requires, it includes a guardian, conservator, personal representative, or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another, whether or not a beneficiary is named; but it does not include any named beneficiary unless he has a present right of withdrawal.

(8) "Payment" of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any setoff or reduction or other disposition of all or part of an account pursuant to a pledge.

(9) "Proof of death" includes a death certificate or official record which is prima-facie proof of death.

(10) "P.O.D. account" means an account payable on request to one person during his or her lifetime or to an incorporated entity and on such person's death to one or more P.O.D. payees or to one or more persons during their lifetimes or to an incorporated entity and on the death of all of them or the dissolution of the incorporated entity to one or more P.O.D. payees.

(11) "P.O.D. payee" means a person or an incorporated entity designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

(12) "Request" means a proper request for withdrawal or a check or order for payment which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but, if the financial institution conditions withdrawal or payment on advance notice, for purposes of this article the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

(13) "Sums on deposit" means the balance payable on a multiple-party account, including interest, dividends, and, in addition, any deposit life insurance proceeds added to the account by reason of the death of a party.

(14) "Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account; it is not essential that payment to the beneficiary be mentioned in the deposit agreement. A trust account does not include a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account or a fiduciary account arising from a fiduciary relation such as attorney-client.

(15) "Withdrawal" includes payment to a third person pursuant to check or other directive of a party.

History.

Code 1933, § 41A-3801, enacted by Ga. L. 1976, p. 1388, § 8; Ga. L. 2011, p. 518, § 5/HB 239.

Law reviews.

For annual survey of wills, trusts, and administration, see 43 Mercer L. Rev. 457 (1991).

For annual survey article on wills, trusts and administration of estates, see 50 Mercer L. Rev. 381 (1998).

For survey article discussing developments in law of business associations for the period from June 1, 1998 through May 31, 1999, see 51 Mercer L. Rev. 127 (1999).

For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001).

For article, "Wills, Trusts & Administration of Estates," see 53 Mercer L. Rev. 499 (2001).

JUDICIAL DECISIONS

Multiple-party account. — Once the payee produced the sister's and husband's death certificates and had them removed as joint tenants on the CD accounts, the accounts ceased to be multiple-party accounts subject to the strictures of O.C.G.A. § 7-1-814. Lowe v. Barnett Bank, 209 Ga. App. 112, 433 S.E.2d 294, 1993 Ga. App. LEXIS 804 (1993), cert. denied, No. S93C1492, 1993 Ga. LEXIS 914 (Ga. Oct. 5, 1993).

Party's net contribution included amounts deposited for party. — In a dispute over a joint account created by a father, mother, and daughter, although only the father made contributions to the account, the daughter's contributions could include deposits made by the father for the daughter; because some evidence indicated an intent that the money would belong to the daughter, the trial court erred by concluding that all of the funds belonged to the mother after the father's death. Howard v. Leonard, 330 Ga. App. 331, 765 S.E.2d 466, 2014 Ga. App. LEXIS 830 (2014), cert. denied, No. S15C0636, 2015 Ga. LEXIS 211 (Ga. Mar. 30, 2015).

Corporation not proper beneficiary on "payable on death" account. — Corporation was not an eligible "payable on death" (POD) beneficiary on certificates of deposit or a trust account because under O.C.G.A. § 7-1-810(11), a POD payee on a death account had to have been a person, and under § 7-1-810(2), a beneficiary on a trust account had to have been a person; under O.C.G.A. § 7-1-4(26), a "person" was defined as an individual, trust, general or limited partnership, unincorporated association (except a joint-stock association), or any other form of unincorporated enterprise. Thus, the corporation did not meet the statutory definition of person. Tuvim v. United Jewish Cmtys., Inc., 285 Ga. 632, 680 S.E.2d 827, 2009 Ga. LEXIS 308 (2009).

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, §§ 662 et seq., 682 et seq. 22A Am. Jur. 2d, Death, §§ 366, 426, 427. 60 Am. Jur. 2d, Payment, § 1.

C.J.S.

9 C.J.S., Banks and Banking, §§ 292 et seq., 298 et seq. 70 C.J.S., Payment, § 1 et seq.

7-1-811. Applicability of provisions as to beneficial ownership and protection of financial institutions.

Code Sections 7-1-812 through 7-1-814, concerning beneficial ownership as between parties or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between those persons and their creditors and other successors and have no bearing on the power of withdrawal of these persons as determined by the terms of account contracts. Code Sections 7-1-816 through 7-1-821 govern the liability of financial institutions which make payments pursuant thereto and their setoff rights.

History.

Code 1933, § 41A-3802, enacted by Ga. L. 1976, p. 1388, § 8.

RESEARCH REFERENCES

ALR.

Right of one party to a joint bank account to follow money withdrawn by the other, 77 A.L.R. 799.

Joint bank account as subject to attachment, garnishment, or execution by creditor of one joint depositor, 86 A.L.R.5th 527.

7-1-812. Ownership during lifetime.

(a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

(b) A P.O.D. account belongs to the original payee during his lifetime and not to the P.O.D. payee or payees; if two or more parties are named as original payees, during their lifetimes the account belongs to them in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

(c) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is other clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during his lifetime; and, if two or more parties are named as trustee on the account, during their lifetimes the account belongs to them in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent. If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

History.

Code 1933, § 41A-3803, enacted by Ga. L. 1976, p. 1388, § 8.

Cross references.

Joint tenancy with survivorship generally, § 44-6-190.

Law reviews.

For article, "Wills, Trusts & Administration of Estates," see 53 Mercer L. Rev. 499 (2001).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 13-2039 have been included in the annotations for this Code section.

Use in determining breach of duty of financial institution. — Although the provisions of O.C.G.A. §§ 7-1-812 through 7-1-814 do not apply in disputes involving financial institutions and their customers concerning whether a party can properly withdraw funds in compliance with the terms of the applicable account contract, these sections may be considered in determining whether there has been a breach of the duty owed by financial institutions to properly handle transactions for their customers. Tucker Fed. Sav. & Loan Ass'n v. Rawlins, 209 Ga. App. 649, 434 S.E.2d 94, 1993 Ga. App. LEXIS 978 (1993).

Two parties having joint control of an account does not make deposits therein a gift from one to the other when there was no relinquishment of dominion by the original depositor such as would

create a gift in presenti. Georgia Sav. Bank & Trust Co. v. Sims, 332 F. Supp. 1306, 1971 U.S. Dist. LEXIS 10932 (N.D. Ga. 1971) (decided under former Code 1933, § 13-2039).

O.C.G.A. § 7-1-812 created a presumption that a party funding a joint account did not intend to make a gift of the funds of the account during the funder's life, and that presumption was subject to rebuttal only by clear and convincing evidence of a contrary intent. Caldwell v. Walraven, 268 Ga. 444, 490 S.E.2d 384.

Trial court correctly ruled that proceeds from jointly held CDs cashed in by daughters belonged entirely to their mother, since the daughters admitted to making no contributions to the CDs, no evidence whatsoever was presented of any other intent, and all the parties to the original CDs were still living, including the mother. Parker v. Kennon, 242 Ga. App. 627, 530 S.E.2d 527, 2000 Ga. App. LEXIS 286 (2000), cert. denied, No. S00C1105, 2000 Ga. LEXIS 591 (Ga. July 14, 2000).

Trial court erred to the extent the court applied the presumption in O.C.G.A. § 7-1-813(a) to funds which the executors withdrew from the original joint accounts and placed in accounts solely in their name because to the extent the executors took funds in excess of their ownership from a joint account containing funds owned by two beneficiaries and placed those funds in an account in their name, the executors severed the joint account relationship and extinguished the presumption that the funds belonged to them. Shirley v. Sailors, 329 Ga. App. 850, 766 S.E.2d 201, 2014 Ga. App. LEXIS 785 (2014).

Social Security benefits retain character as such, remaining exempt from garnishment, though deposited in a joint account. Anderson v. First Nat'l Bank, 151 Ga. App. 573, 260 S.E.2d 501, 1979 Ga. App. LEXIS 2647 (1979).

Intent of parties in making deposits. — In a dispute over a joint account created by a father, mother, and daughter, although only the father made contributions to the account, the daughter's contributions could include deposits made by him for her; because some evidence indicated an intent that the money would belong to the daughter, the trial court erred by concluding that all of the funds belonged to the mother after the father's death. Howard v. Leonard, 330 Ga. App. 331, 765 S.E.2d 466, 2014 Ga. App. LEXIS 830 (2014), cert. denied, No. S15C0636, 2015 Ga. LEXIS 211 (Ga. Mar. 30, 2015).

Presumption not overcome. — Viewed in conjunction with everything presented to the court, the trustee's evidence did not clearly lead to the conclusion that the claimant intended to make a voluntary transfer of the claimant's property to the debtor. Therefore, the trustee failed to overcome the presumption that the funds belonged to the claimant. In re Thornton, No. CODE, 549 B.R. 922, 2016 Bankr. LEXIS 2070 (Bankr. N.D. Ga. 2016).

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 663.

C.J.S.

9 C.J.S., Banks and Banking, §§ 298, 299.

ALR.

Right of one party to a joint bank account to follow money withdrawn by the other, 77 A.L.R. 799.

Power of one party to joint bank account to terminate the interests of the other, 161 A.L.R. 71.

Conflict of laws as to disposition of and relative rights to bank deposits in the names of more than one person, 25 A.L.R.2d 1240.

7-1-813. Rights of survivorship.

(a) Sums remaining on deposit at the death of a party to a joint

account belong to the surviving party or parties as against the estate of the decedent, unless there is clear and convincing evidence of a different intention at the time the account is created. If there are two or more surviving parties, the respective ownership of each during his lifetime shall be in proportion to his previous ownership interests under Code Section 7-1-812, augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.

(b) If the account is a P.O.D. account, on death of the original payee or of the survivor of two or more original payees, any sums remaining on deposit belong to the P.O.D. payee or to the P.O.D. payees in equal portions if surviving or to the survivor of them if one or more die before the original payee; if two or more P.O.D. payees survive, there is no right of survivorship in event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(c) If the account is a trust account, on the death of the trustee or the survivor of two or more trustees, any sums remaining on deposit belong to such person or persons named as beneficiaries who survive the death of the trustee or the survivor of two or more trustees, unless there is clear and convincing evidence of a contrary intent. If two or more beneficiaries survive:

(1) They receive equal portions of the sums contained in the trust account; and

(2) There is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(d) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of his estate.

(e) A right of survivorship arising from the express terms of the account or under this Code section, a beneficiary designation in a trust account, or a P.O.D. payee designation cannot be changed by will.

History.

Code 1933, § 41A-3804, enacted by Ga. L. 1976, p. 1388, § 8.

Cross references.

Joint tenancy with survivorship generally, § 44-6-190.

Law reviews.

For article, "Multiple Party Accounts: Georgia Law Compared with the Uniform Probate Code," see 8 Ga. L. Rev. 739 (1974).

For article surveying Georgia cases in the area of wills, trusts, and administration of estates from June 1977 through May 1978, see 30 Mercer L. Rev. 259 (1978).

For article surveying legislative and judicial developments in Georgia's will,

trusts, and estate laws, see 31 Mercer L. Rev. 281 (1979).

For annual survey of law of wills, trusts, and administration of estates, see 38 Mercer L. Rev. 417 (1986).

For annual survey of law of wills, trusts, and administration of estates, see 44 Mercer L. Rev. 445 (1992).

For annual survey article on commercial law, see 50 Mercer L. Rev. 193 (1998).

For annual survey on wills, trusts, guardianships, and fiduciary administration, see 64 Mercer L. Rev. 325 (2012).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code 1933, § 13-2039 have been included in the annotations for this Code section.

In order to constitute a "joint account" for purposes of O.C.G.A. § 7-1-813, an arrangement must constitute a contract of deposit of funds between a depositor and a financial institution; a municipal bond is not a contract of deposit, but an evidence of indebtness issued by a city or other corporate public body. Urban v. Lemley, 232 Ga. App. 259, 501 S.E.2d 529, 1998 Ga. App. LEXIS 581 (1998).

Presumptions. — When savings certificates were issued jointly to a decedent and another party and since the certificates contain no language expressly creating a survivorship interest, one of two presumptions will be applied, depending on the date of issue of the certificates: (1) if the certificates were issued before the effective date of former Code 1933, § 41A-3804 (see now O.C.G.A. § 7-1-813), July 1, 1976, the presumption is that there was no right of survivorship intended; or (2) if the certificates were issued after July 1, 1976, there is a presumption that a right of survivorship was intended unless there is clear and convincing evidence to the contrary. Collins v. Collins, 176 Ga. App. 79, 335 S.E.2d 307, 1985 Ga. App. LEXIS 2197 (1985).

There exists a presumption that a right of survivorship is intended by the issuance of joint certificates of deposit, absent clear and convincing evidence to the contrary. Wynn v. Wynn, 202 Ga. App. 679, 415 S.E.2d 287, 1992 Ga. App. LEXIS 133 (1992), cert. denied, No. S92C0628, 1992 Ga. LEXIS 273 (Ga. Mar. 18, 1992).

Trial court erred to the extent the court applied the presumption in O.C.G.A. § 7-1-813(a) to funds which the executors withdrew from the original joint accounts and placed in accounts solely in their name because to the extent they took funds in excess of their ownership from a joint account containing funds owned by two beneficiaries and placed those funds in an account in their name, they severed the joint account relationship and extinguished the presumption that the funds belonged to them. Shirley v. Sailors, 329 Ga. App. 850, 766 S.E.2d 201, 2014 Ga. App. LEXIS 785 (2014).

Survivorship presumption rebutted. — Presumption of survivorship in O.C.G.A. § 7-1-813 was effectively rebutted since there was testimony from a family member that around the time decedent opened a certificate account with the money from the decedent's sister's estate, the decedent gave assurances that the money was "taken care of" and would eventually reach those the money was intended to reach, as the plaintiff would "do the right thing with it". Hopkins v. Moore, 207 Ga. App. 383, 427 S.E.2d 853, 1993 Ga. App. LEXIS 178 (1993).

When as the decedent had done with other assets, a decedent designated the defendant as co-owner with the decedent of subordinated debentures with right of survivorship, evidence was sufficient to show that decedent intended that the defendant should receive the gifts which resulted from the defendant's transfer of their debentures and the sale of stock decedent owned individually. Stewart v. Stewart, 240 Ga. App. 573, 524 S.E.2d 267, 1999 Ga. App. LEXIS 1424 (1999), cert. denied, No. S00C0403, 2000 Ga. LEXIS 278 (Ga. Mar. 10, 2000).

Denial of a sister's motion for a judgment notwithstanding the verdict was af-

firmed as there was evidence supporting the imposition of a constructive trust after a mother's death on a bank account owned jointly with a right of survivorship by the mother and the sister since the sister acknowledged that the account was opened for the mother's convenience. Jenkins v. Jenkins, 281 Ga. App. 756, 637 S.E.2d 56, 2006 Ga. App. LEXIS 1165 (2006), cert. denied, No. S07C0281, 2007 Ga. LEXIS 87 (Ga. Jan. 8, 2007).

Survivorship presumption not rebutted. — In an action by the executor of a joint tenant's estate against the executor of the surviving joint tenant's estate, evidence presented by the former was not sufficient to overcome the presumption that funds in joint bank accounts belong to the survivor's estate. Urban v. Lemley, 232 Ga. App. 259, 501 S.E.2d 529, 1998 Ga. App. LEXIS 581 (1998).

Denial of a sister's and an executrix's motions for a judgment notwithstanding the verdict were reversed as a constructive trust could not be imposed over the proceeds of a condemnation since: (1) a mother did not make any agreement with her children regarding the quitclaim deeds or the proceeds of the condemnation; (2) the documents signed by the siblings were unequivocal and unrestricted; (3) the mother did not make any promise with the intent not to carry it out; (4) there was nothing to indicate that when the mother obtained a certificate of deposit and opened a money market account in her and the executrix's and the sister's names as joint tenants with right of survivorship, she meant to do anything other than that; and (5) the siblings did not raise the issue of a constructive trust in the condemnation proceedings and were collaterally estopped from raising the issue in a later action. Jenkins v. Jenkins, 281 Ga. App. 756, 637 S.E.2d 56, 2006 Ga. App. LEXIS 1165 (2006), cert. denied, No. S07C0281, 2007 Ga. LEXIS 87 (Ga. Jan. 8, 2007).

Sufficient evidence to overcome presumption. — In an action to recover property of an estate, when the administrator presented evidence that the decedent intended to divide the decedent's estate among the decedent's children equally and did not intend for the decedent's two youngest sons to have the funds in the joint accounts at the decedent's death, and also presented evidence of undue influence in the creation of the accounts, there was some evidence to overcome the presumption arising from O.C.G.A § 7-1-813, and a directed verdict was inappropriate. Myers v. Myers, 195 Ga. App. 529, 394 S.E.2d 374, 1990 Ga. App. LEXIS 610 (1990).

Lack of intention to make gift of funds. — Trial judge's determination that the decedent's lack of intention to make a gift of the funds to the decedent's daughter was established by clear and convincing evidence; thus, applying either O.C.G.A § 7-1-813(a) or pre-existing law, the trial judge was authorized to declare that the funds belonged to the estate. James v. Elder, 186 Ga. App. 810, 368 S.E.2d 570, 1988 Ga. App. LEXIS 522 (1988).

Evidence showing that the decedent's daughter had suggested putting another name on the decedent's certificates of deposit "in case Mama got sick," provided clear and convincing support for the jury's determination that the decedent had added the daughter's name to the certificates for convenience rather than to effect a gift of the funds to the daughter. Turner v. Mikell, 195 Ga. App. 766, 395 S.E.2d 20, 1990 Ga. App. LEXIS 729 (1990).

Since the decedent's expressed intent in establishing joint accounts was for the convenience of the decedent's niece in writing checks, paying bills and expenses, and handling the decedent's affairs during the decedent's illness, there was sufficient evidence to overcome the presumption that the niece, as surviving joint tenant, was entitled to the accounts. Williamson v. Echols, 205 Ga. App. 453, 422 S.E.2d 329, 1992 Ga. App. LEXIS 1185 (1992).

Intent held question for jury. — After a decedent had given a power of attorney to the decedent's nephews, and created joint accounts with one of the nephews, while expressing a concern that someone have access to the decedent's money should the decedent become ill, but there was testimony that the decedent understood the effect of survivorship accounts, there existed a material issue

regarding the decedents' intent, which created a jury question. Godwin v. Johnson, 197 Ga. App. 829, 399 S.E.2d 581, 1990 Ga. App. LEXIS 1474 (1990).

In an action for conversion of an estate's assets relating to a joint account created under O.C.G.A. § 7-1-813 between the executrix and a half-sister, given that some evidence existed that the decedent's purpose in establishing a joint account between the executrix of the decedent's estate and the half-sister was for the decedent's convenience, and not to effect a gift, summary judgment was erroneously granted to the half-sister. Gray v. Benton, 280 Ga. App. 339, 634 S.E.2d 86, 2006 Ga. App. LEXIS 732 (2006), cert. denied, No. S06C1978, 2006 Ga. LEXIS 920 (Ga. Oct. 30, 2006).

In a dispute over a joint account created by a father, mother, and daughter, although only the father made contributions to the account, the daughter's contributions could include deposits made by him for her; because some evidence indicated an intent that the money would belong to the daughter, the trial court erred by concluding that all of the funds belonged to the mother after the father's death. Howard v. Leonard, 330 Ga. App. 331, 765 S.E.2d 466, 2014 Ga. App. LEXIS 830 (2014), cert. denied, No. S15C0636, 2015 Ga. LEXIS 211 (Ga. Mar. 30, 2015).

Simultaneous death of husband and wife. — When the husband and wife died simultaneously there is no evidence, either "clear and convincing" or otherwise, which would authorize a finding that the husband did not intend for the wife to have a right of survivorship as to the joint bank accounts. Trust Co. Bank v. Thornton, 204 Ga. App. 903, 420 S.E.2d 817, 1992 Ga. App. LEXIS 1042 (1992).

Equitable division of property titled in name of surviving wife. — When the issue of the division of marital assets of a former husband and wife had not been resolved at the time of the husband's death, property acquired as a direct result of the labor and investments of the former husband during the course of the marriage was subject to equitable division in spite of the fact that it was titled in the former wife's name after the former husband's death as a matter of contract law. White v. White, 253 Ga. 267, 319 S.E.2d 447, 1984 Ga. LEXIS 900 (1984).

Ex-spouse entitled to balance of funds jointly held. — In a dispute between an estate administratrix and the decedent's ex-spouse, the trial court did not err by granting the ex-spouse summary judgment as to the accounts that were jointly held with the decedent because their divorce settlement agreement did not address such accounts and Georgia law entitled the ex-spouse to the balance remaining. Lowry v. Fenzel, 331 Ga. App. 603, 769 S.E.2d 522, 2015 Ga. App. LEXIS 58 (2015).

Joint tenancy not terminated by tenant's incapacity. — Joint tenancies in bank and stock investment accounts and in real property did not terminate as a matter of law when one of the joint tenants was declared incapacitated and a guardian was appointed for the incapacitated individual's person and property. A guardian, unlike a trustee, has no beneficial title in the ward's estate, but is merely a custodian or manager. Moore v. Self, 222 Ga. App. 71, 473 S.E.2d 507.

Two parties having joint control of account does not make deposits therein a gift from one to the other when there was no relinquishment of dominion by the original depositor such as would create a gift in presenti. Georgia Sav. Bank & Trust Co. v. Sims, 332 F. Supp. 1306, 1971 U.S. Dist. LEXIS 10932 (N.D. Ga. 1971) (decided under former Code 1933, § 13-2039).

Joint property not property of trust estate. — Funds, which had been deposited by a trust donor from a joint account in the names of one of the beneficiaries, the donor, and the trustee had been used prior to the donor's death to purchase securities in the name of the donor and the trustee as joint tenants; those securities properly belonged to the trustee as the surviving party under O.C.G.A. §§ 7-1-813(a) and 14-5-8, and did not belong to the trust estate. Davis v. Walker, 288 Ga. App. 820, 655 S.E.2d 634, 2007 Ga. App. LEXIS 1250 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Ga. L. 1937-38, Ex. Sess., p. 307 are included in the annotations for this Code section.

Disposition of joint account in federal institution when one party dies. — Upon death of the depositor in a federal savings and loan association, another person whose name was on the depositor's account is entitled absolutely to the deposit. 1958-59 Ga. Op. Att'y Gen. 19 (decided under Ga. L. 1937-38, Ex. Sess., p. 307).

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 662 et seq.

C.J.S.

9 C.J.S., Banks and Banking, §§ 298, 299.

ALR.

Gift or trust by deposit of funds belonging to depositor in bank account in name of himself and another, 103 A.L.R. 1123; 135 A.L.R. 993; 149 A.L.R. 879.

Conflict of laws as to disposition of and relative rights to bank deposits in the names of more than one person, 25 A.L.R.2d 1240.

7-1-814. Changing terms of account.

The provisions of Code Section 7-1-813 as to rights of survivorship are determined by the form of the account at the death of a party. Once established, the terms of a multiple-party account can be changed only:

(1) By closing the account and reopening it under different terms; or

(2) By presentation to the financial institution of a modification agreement in a form satisfactory to the financial institution and signed by all parties with a present right of withdrawal.

History.

Code 1933, § 41A-3805, enacted by Ga. L. 1976, p. 1388, § 8.

Law reviews.

For article surveying Georgia cases in the area of wills, trusts, and administration of estates from June 1977 through May 1978, see 30 Mercer L. Rev. 259 (1978).

JUDICIAL DECISIONS

Duty of financial institution to change customer's account. — Any financial institution which receives money from its customer in exchange for certificate(s) of deposit has a duty to issue and/or change the certificate in a manner that complies with the wishes of the customer, so long as the wishes of the customer are not contrary to any applicable law, and the financial institution may be liable to the customer or a third-party beneficiary for mishandling the transaction, including improperly advising the customer how the certificate should be established or changed to comply with the wishes of the customer. Tucker Fed. Sav. & Loan Ass'n v. Rawlins, 209 Ga. App. 649, 434 S.E.2d 94, 1993 Ga. App. LEXIS 978 (1993).

Financial institution's duty to establish or change a customer's account in a manner that is consistent with the customer's wishes and the applicable law does not derive solely from O.C.G.A § 7-1-814.

Tucker Fed. Sav. & Loan Ass'n v. Rawlins, 209 Ga. App. 649, 434 S.E.2d 94, 1993 Ga. App. LEXIS 978 (1993).

One party to account cannot unilaterally divest another party of right to draw on the account. — Once account of a wife is established as multiple-party account, her husband acquires a right to draw on it and she cannot unilaterally divest him of that right by instructing a credit union to delete his name from the account. Grady v. DeKalb County Teachers Fed. Credit Union, 152 Ga. App. 86, 262 S.E.2d 250, 1979 Ga. App. LEXIS 2818 (1979).

Compliance with statute required. — Terms of a multiple-party account, including the designation of those parties who have the right of withdrawal, can be changed only by compliance with the requirements of O.C.G.A § 7-1-814. Rawlins v. Campbell, 199 Ga. App. 472, 405 S.E.2d 111, 1991 Ga. App. LEXIS 529 (1991); Ralston v. Etowah Bank, 207 Ga. App. 775, 429 S.E.2d 102, 1993 Ga. App. LEXIS 349 (1993), cert. denied, No. S93C0978, 1993 Ga. LEXIS 945 (Ga. Oct. 5, 1993), cert. denied, No. S93C1002, 1993 Ga. LEXIS 944 (Ga. Oct. 5, 1993).

Removal of joint tenants. — Once payee produced her sister's and husband's death certificates and had them removed as joint tenants on the CD accounts, the accounts ceased to be multiple-party accounts subject to the strictures of O.C.G.A § 7-1-814. Lowe v. Barnett Bank, 209 Ga. App. 112, 433 S.E.2d 294, 1993 Ga. App. LEXIS 804 (1993), cert. denied, No. S93C1492, 1993 Ga. LEXIS 914 (Ga. Oct. 5, 1993).

Punitive damages improperly imposed. — Bank's action in violation of O.C.G.A § 7-1-814 did not evidence the necessary willful misconduct necessary for an award of punitive damages pursuant to O.C.G.A § 51-12-5.1(b). Ralston v. Etowah Bank, 207 Ga. App. 775, 429 S.E.2d 102, 1993 Ga. App. LEXIS 349 (1993), cert. denied, No. S93C0978, 1993 Ga. LEXIS 945 (Ga. Oct. 5, 1993), cert. denied, No. S93C1002, 1993 Ga. LEXIS 944 (Ga. Oct. 5, 1993).

7-1-815. Survivorship transfers nontestamentary.

Any transfers resulting from the application of Code Section 7-1-813 are effective by reason of the account contracts involved in this article and are not to be considered as testamentary.

History.
Code 1933, § 41A-3806, enacted by Ga. L. 1976, p. 1388, § 8.

Law reviews.
For article, "Commercial Law," see 53 Mercer L. Rev. 153 (2001).

JUDICIAL DECISIONS

Summary judgment was not proper when a question of fact remained as to whether the funds received by the surviving spouse passed to the survivor outside the estate and did not constitute an election to take under the will and if the surviving spouse was therefore entitled to the statutory year's support. Wynn v. Wynn, 202 Ga. App. 679, 415 S.E.2d 287, 1992 Ga. App. LEXIS 133 (1992), cert. denied, No. S92C0628, 1992 Ga. LEXIS 273 (Ga. Mar. 18, 1992).

7-1-816. Multiple-party accounts authorized; payment on signature of one party; inquiry as to deposits or withdrawals not required.

Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. Any multiple-party account may be paid, on request, to any one or more of

the parties. For purposes of establishing net contributions, a financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account or to inquire as to the proposed application of any sum withdrawn from an account.

History.

Code 1933, § 41A-3807, enacted by Ga. L. 1976, p. 1388, § 8.

Law reviews.

For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001).

For article, "Wills, Trusts & Administration of Estates," see 53 Mercer L. Rev. 499 (2001).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1919, p. 135, and former Code 1933, § 13-2039 have been included in the annotations for this Code section.

When O.C.G.A. § 7-1-816 applies, there is no basis for a breach of contract claim. South v. Bank of Am., 250 Ga. App. 747, 551 S.E.2d 55, 2001 Ga. App. LEXIS 574 (2001).

Section does not affect right to property as between parties to account. — Former Code 1933, § 13-2039 included reference only to liability of bank as to such deposit and did not affect right to property as between parties. Georgia Sav. Bank & Trust Co. v. Sims, 332 F. Supp. 1306, 1971 U.S. Dist. LEXIS 10932 (N.D. Ga. 1971) (decided under former Code 1933, § 13-2039).

Effect of section upon title to deposits. — Ga. L. 1919, p. 135 had reference to liability of bank as to joint deposit, making it lawful for a bank to pay either party under such circumstances. It did not affect the right of property as between parties; that was, between the depositor and a third person claiming deposit. It had no applicability to title to money as between the depositor and a third party. Clark v. Bridges, 163 Ga. 542, 136 S.E. 444, 1927 Ga. LEXIS 23 (1927) (decided under Ga. L. 1919, p. 135).

Caption of O.C.G.A. § 7-1-816, which refers to "payment on signature of one party," does not create a requirement that banks obtain the signature of at least one party to the account. South v. Bank of Am., 250 Ga. App. 747, 551 S.E.2d 55, 2001 Ga. App. LEXIS 574 (2001).

Payment on proper request not established. — Trial court erred in determining that a bank complied with O.C.G.A. § 7-1-816 because, despite the fact that CD proceeds were paid to a person who had a lawful interest in the funds, a jury could find that a joint owner of the account suffered financial harm as a result of the funds being disbursed. South v. Bank of Am., 250 Ga. App. 747, 551 S.E.2d 55, 2001 Ga. App. LEXIS 574 (2001).

Payment on proper request established. — In an action filed by a bank customer's son after the bank paid the proceeds of a certificate of deposit (CD) which the customer purchased in the customer's name and the son's name to the customer, alleging violations of the son's rights in the CD, the appellate court held that the bank was protected from liability by O.C.G.A. §§ 7-1-816 and 7-1-820 because the customer's telephone request for redemption was made in accordance with conditions of the customer's account and the bank's regulations, and the appellate court affirmed the trial court's judgment granting summary judgment for the bank. South v. Bank of Am., 260 Ga. App. 91, 579 S.E.2d 80, 2003 Ga. App. LEXIS 314 (2003), cert. denied, No. S03C1064, 2003 Ga. LEXIS 674 (Ga. July 14, 2003).

Title upon death of depositors. — When husband deposited in bank a sum of money belonging to himself, in name of his wife but with understanding that all

or any part thereof might be withdrawn either by himself or by the wife, but by no one else, thus reserving to himself a free right of withdrawal, but giving to the wife the same right, the effect was to make a joint deposit with the conditions stated attached thereto. Had money been thus withdrawn by the wife or by the husband, the bank, under such conditions would in such disbursement have been protected against suit by a legal representative of the other; but when the deposit remained intact and nothing was withdrawn by either the husband or wife, both of whom subsequently died, title to such moneys vested jointly in the estates of the husband and wife. First Nat'l Bank v. Sanders, 31 Ga. App. 788, 31 Ga. App. 789, 122 S.E. 341, 1924 Ga. App. LEXIS 197 (1924).

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 662 et seq.

C.J.S.
9 C.J.S., Banks and Banking, §§ 298, 299.

7-1-817. Payment from joint account after death or disability.

Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded; but payment may not be made to the personal representative or heirs of a deceased party unless proof of death is presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under Code Section 7-1-813.

History.
Code 1933, § 41A-3808, enacted by Ga. L. 1976, p. 1388, § 8.

Law reviews.
For article discussing nonjudicial settlement of decedent's estate, see 6 Ga. L. Rev. 74 (1971).

JUDICIAL DECISIONS

Joint account holder entitled to withdraw all funds. — Under the terms of a joint account agreement and O.C.G.A. § 7-1-817, a daughter was authorized to withdraw all the funds in a joint account created by her father, mother, and herself, following the father's death; the question of withdrawal was a separate question from whether she was entitled to the funds. Howard v. Leonard, 330 Ga. App. 331, 765 S.E.2d 466, 2014 Ga. App. LEXIS 830 (2014), cert. denied, No. S15C0636, 2015 Ga. LEXIS 211 (Ga. Mar. 30, 2015).

Joint accounts. — Trial court erred to the extent the court applied the presumption in O.C.G.A. § 7-1-813(a) to funds which the executors withdrew from the original joint accounts and placed in accounts solely in their name because to the extent they took funds in excess of their ownership from a joint account containing funds owned by two beneficiaries and placed those funds in an account in their name, they severed the joint account relationship and extinguished the presumption that the funds belonged to them. Shirley v. Sailors, 329 Ga. App. 850, 766 S.E.2d 201, 2014 Ga. App. LEXIS 785 (2014).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Code 1933, § 13-2039 are included in the annotations for this Code section.

Effect of section. — Although former Code 1933, § 13-2039 (see now O.C.G.A. § 7-1-817) does not give the right of survivorship between two parties to a bank account, the statute protects a bank which makes a payment of an account to a survivor. 1958-59 Ga. Op. Att'y Gen. 16 (decided under former Code 1933, § 13-2039).

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 662 et seq.

C.J.S.
9 C.J.S., Banks and Banking, §§ 292, 293.

ALR.
Conflict of laws as to disposition of and relative rights to bank deposits in the names of more than one person, 25 A.L.R.2d 1240.

7-1-818. Payment of P.O.D. account.

Any P.O.D. account may be paid, on request, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original payees. Payment may be made to the personal representative or heirs of a deceased original payee if proof of death is presented to the financial institution showing that his or their decedent was the survivor of all other persons named on the account either as an original payee or as P.O.D. payee.

History.
Code 1933, § 41A-3809, enacted by Ga. L. 1976, p. 1388, § 8.

RESEARCH REFERENCES

ALR.
Conflict of laws as to disposition of and relative rights to bank deposits in the names of more than one person, 25 A.L.R.2d 1240.

7-1-819. Payment of trust account.

Any trust account may be paid, on request, to any trustee. Payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that his or their decedent was the survivor of all other persons named on the account either as trustee or beneficiary, unless:

(1) The financial institution, with respect to a trust account as to which there is only one trustee, has received written notice, in a form

satisfactory to the financial institution, that the beneficiary has a vested interest not dependent upon his surviving the trustee; or

(2) The financial institution, with respect to a trust account as to which there is more than one trustee, has been provided with a copy of an agreement or resolution of all trustees, in a form satisfactory to the financial institution, to the effect that the beneficiary has a vested interest not dependent upon his surviving the trustees.

Payment may be made, on request, to a beneficiary or beneficiaries or the heirs or representative of a beneficiary or beneficiaries upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees.

History.
Code 1933, § 41A-3810, enacted by Ga. L. 1976, p. 1388, § 8.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 683, 684, 687.

7-1-820. Discharge upon proper payment; notice not to permit withdrawals.

Payment made pursuant to Code Section 7-1-816, 7-1-817, 7-1-818, or 7-1-819 discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees, or beneficiaries or their successors. The protection here given does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted.

History.
Code 1933, § 41A-3811, enacted by Ga. L. 1976, p. 1388, § 8.

JUDICIAL DECISIONS

Payment on proper request established. — In an action filed by a bank customer's son after the bank paid the proceeds of a certificate of deposit (CD) which the customer purchased in the customer's name and the son's name to the customer, alleging violations of the son's rights in the CD, the appellate court held that the bank was protected from liability by O.C.G.A. §§ 7-1-816 and 7-1-820 because the customer's telephone request for redemption was made in accordance with the conditions of the customer's account and the bank's regulations, and the appellate court affirmed the trial court's judgment

granting summary judgment for the bank. South v. Bank of Am., 260 Ga. App. 91, 579 S.E.2d 80, 2003 Ga. App. LEXIS 314 (2003), cert. denied, No. S03C1064, 2003 Ga. LEXIS 674 (Ga. July 14, 2003).

7-1-821. Right to setoff.

Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to setoff against the account in which the party has or had immediately before his death a present right of withdrawal. The amount of the account subject to setoff is that proportion to which the debtor is or was immediately before his death beneficially entitled and, in the absence of proof of net contributions, an equal share with all parties having present rights of withdrawal.

History.
Code 1933, § 41A-3812, enacted by Ga. L. 1976, p. 1388, § 8.

JUDICIAL DECISIONS

Right to setoff provided in O.C.G.A § 7-1-821 is also subject to any contractual provision. Simpson v. Georgia State Bank, 159 Ga. App. 310, 283 S.E.2d 278, 1981 Ga. App. LEXIS 2588 (1981).

Setoff held not unconscionable. — *Unpublished decision:* Under Georgia law, a contract allowing a bank a setoff of the bank's indebtedness to depositors against the depositors' indebtedness to the bank was not substantively unconscionable and the language in the agreement regarding arbitration was conspicuous so the provision was not procedurally unconscionable; thus, the arbitration clause was enforceable under the Federal Arbitration Act, 9 U.S.C. § 1. In re Checking Account Overdraft Litig., 459 Fed. Appx. 855, 2012 U.S. App. LEXIS 4180 (11th Cir.), cert. denied, 568 U.S. 942, 133 S. Ct. 431, 184 L. Ed. 2d 259, 2012 U.S. LEXIS 7890 (2012).

Right to set-off shown. — Even though the debtor was not beneficially entitled to any of the funds, the financial institution had a right of set off under the contractual provisions. Yates v. Trust Co. Bank, 212 Ga. App. 438, 442 S.E.2d 293, 1994 Ga. App. LEXIS 299 (1994).

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 853 et seq., 862 et seq.

ALR.
Bank's right to set off unmatured claims as against receiver, assignee for benefit of creditors, or trustee in bankruptcy, of insolvent depositor, 37 A.L.R.2d 850.

Bank's right of setoff, based on debit of one depositor, against funds in account standing in names of debtor and another, 68 A.L.R.3d 192.

ARTICLE 9

CRIMINAL AND RELATED PROVISIONS

7-1-840. Criminal prosecutions; assisting law enforcement.

(a) Upon discovery, by report or otherwise, of any apparent violation of any state or federal criminal law which is perpetrated through a deposit or loan account maintained at or which utilizes a monetary instrument issued by a financial institution located in this state or of any state or federal criminal law which relates to a financial institution, the department shall refer the matter to an appropriate law enforcement or prosecuting authority for further action. The appropriate state prosecuting authority shall have the right to submit to the grand juries of the respective counties of the state, or otherwise seek an indictment of, any criminal violations of the laws of Georgia known by it to have occurred in such counties. Similarly, any United States attorney may likewise submit to a grand jury, or otherwise seek an indictment of, any criminal violations of the laws of Georgia which also constitute violations of the laws of the United States applicable to such financial institution. Nothing herein shall be so construed as to prevent the appropriate state prosecuting authority or other persons from proceeding in such cases by affidavit and warrant.

(b) The department may assist state and federal law enforcement agencies in further investigation of apparent violations of state or federal criminal statutes referred to in subsection (a) of this Code section.

(c) Without incurring civil liability or, in the case of the department, violating the provisions of Code Section 7-1-70, any financial institution that is the employer or former employer of a person or the department, whether in its regulatory capacity or as the employer or former employer of a person, may provide information to a financial institution which has employed or is considering employment of such person concerning the known or suspected involvement of such person in an apparent violation of a state or federal law or regulation which has been reported to the state or federal law enforcement or regulatory agency having jurisdiction of the violation unless the information is false and such employer, former employer, or the department knows that it is false and provides it with actual malice. For purposes of this Code section, the terms "financial institution" and "department" shall mean any duly elected or appointed official of such entities.

(d) If any board of directors, director, or officer of any financial institution is required by the department, the Federal Deposit Insurance Corporation, the National Credit Union Administration, or any other federal financial institution supervisory agency to provide any

such regulatory entity or the fidelity bond carrier with any information regarding the appearance or suspicion of criminal activity involving any director, officer, agent, employee, or customer of such financial institution, such board of directors, director, or officer shall not incur any civil liability for providing such information unless the information is false and such board of directors, director, or officer knows that it is false and provides it with actual malice.

History.
Ga. L. 1919, p. 135, art. 20, § 37; Code 1933, § 13-9936; Code 1933, § 41A-9901, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1211, § 16; Ga. L. 1991, p. 1374, § 1; Ga. L. 2016, p. 390, § 5-1/HB 811; Ga. L. 2019, p. 828, § 30/HB 185.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 429 et seq.

C.J.S.
9 C.J.S., Banks and Banking, §§ 11 et seq., 137.

7-1-841. Applicability of Title 16.

(a) The following provisions of Title 16 are expressly made applicable to financial institutions, their directors, officers, agents, and employees and persons or corporations having dealings with, supervision over, or other contact with financial institutions:

(1) Article 2 of Chapter 7 of Title 16, relating to damage to property;

(2) Article 3 of Chapter 7 of Title 16, relating to arson and related offenses;

(3) Article 1 of Chapter 7 of Title 16, relating to burglary and related offenses;

(4) Chapter 9 of Title 16, relating to deceptive practices;

(5) Chapter 8 of Title 16, relating to theft, including robbery;

(6) Article 1 of Chapter 10 of Title 16, relating to abuse of government office; and

(7) Article 4 of Chapter 10 of Title 16, relating to perjury and other falsifications.

(b) Nothing in subsection (a) of this Code section shall be construed to indicate that the designated chapters of Title 16 were not applicable to the enumerated financial institutions, persons, or corporations prior to April 1, 1975, or that other provisions of Title 16 are not, in appropriate circumstances, also applicable to the enumerated financial institutions, persons, or corporations.

History.
Code 1933, § 41A-9902, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2016, p. 390, § 7-19/HB 811.

RESEARCH REFERENCES

ALR.
Criminal offense of making false statement or report as to assets or condition of bank, 85 A.L.R. 824.

7-1-842. Felonies of directors, officers, agents, and employees of financial institutions; aiding and abetting false entries.

Any director, officer, agent, or employee of a financial institution who knowingly:

(1) Makes any false entry in any book, report, or statement of the financial institution or who omits or concurs in omitting to make any material entry in its books or accounts with intent in either case to injure or defraud the financial institution or any other company, firm, or person or to deceive any officer of the financial institution, the commissioner, or any examiner and every person who with like intent aids or abets any officer, director, clerk, agent, or employee in making any false entry, report, or statement or omitting to make any material entry on its books and accounts shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one year nor more than ten years.

(2) While in charge of or employed in a financial institution, allows it to receive a deposit when he or she knows the financial institution to be insolvent shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one year nor more than ten years if loss or injury shall result to such depositor.

(3) By letterheads, newspaper advertisements, signs, circulars, or otherwise, represents the capital stock of any financial institution to be in excess of the capital actually paid in or who knowingly makes or concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement therein which is false or who knowingly omits or concurs in omitting any statement required by law or to be contained therein shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not less than one year nor more than five years.

(4) Uses information obtained through his or her association with the financial institution which he or she serves as a director, officer, agent, or employee, which is not otherwise publicly available, with the intent to realize personal gain or to cause financial harm to another party shall be guilty of a felony and, upon conviction, shall be

punished by a fine not to exceed $10,000.00 or twice the amount of improper gain realized, whichever is less, or by imprisonment for not less than one year nor more than five years, or both.

History.
Ga. L. 1919, p. 135, art. 20, §§ 10, 12, 14, 28; Code 1933, §§ 13-9910, 13-9912, 13-9914, 13-9928; Code 1933, § 41A-9905, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1989, p. 1249, § 8; Ga. L. 2016, p. 390, § 5-2/HB 811.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1919, p. 212 are included in the annotations for this Code section.

Ga. L. 1919, p. 135 being a penal statute, it must be strictly construed. Johnson v. State, 166 Ga. 755, 144 S.E. 283, 1928 Ga. LEXIS 397 (1928).

Unexplained false entries are sufficient to raise presumption of guilt against officer making the presumption. Holder v. Farmers Exch. Bank, 28 Ga. App. 21, 110 S.E. 762, 1921 Ga. App. LEXIS 464 (1921) (decided under Ga. L. 1919, p. 212).

Cashier who receives deposit knowing bank is insolvent commits a felony. — When a cashier of an insolvent bank, having charge and control of bank, and having knowledge of the bank's insolvency, receives money on general deposit in the bank, and thereby loss or injury results to the person who made the deposit, the cashier is guilty of a felony. Lenhardt v. State, 37 Ga. App. 41, 138 S.E. 590, 1927 Ga. App. LEXIS 449 (1927).

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, §§ 434, 443 et seq., 455 et seq.
C.J.S.
9 C.J.S., Banks and Banking, § 756 et seq.
ALR.
What amounts to a deposit within statute in relation to civil or criminal liability for accepting deposit when bank is unsafe or insolvent, 76 A.L.R. 1320.

When bank deemed insolvent within meaning of criminal statute, 81 A.L.R. 1160.

Criminal offense of making false statement or report as to assets or condition of bank, 85 A.L.R. 824.

7-1-843. Certain misdemeanors of directors, officers, agents, and employees of financial institutions.

Any officer, director, agent, or employee of any financial institution who shall perform the following acts or deeds shall be guilty of a misdemeanor:

(1) Advertises by any office sign or upon any letterhead, billhead, bank note, receipt, certificate, or circular or on any written or printed paper that the deposits in said financial institution are insured or guaranteed, unless such deposits in said financial institution are, in fact, insured and guaranteed as required by Code Sections 7-1-244 and 7-1-666 or regulation or action of the department pursuant thereto.

(2) Intentionally conceals from the directors of any financial institution or from the committee to whom the directors have delegated authority to pass on loans and discounts any discount or loan made for and in behalf of said financial institution or the purchase or sale of any evidence of indebtedness or agreement for the payment of money.

(3) Uses or applies any part of the capital or other funds of any financial institution to the purchase of shares of its own stock, unless such purchase shall be necessary to prevent loss upon a debt previously contracted in good faith under Code Section 7-1-263 or is otherwise permitted by law.

(4) Concurs in any vote or act of the directors of such financial institution by which it is intended to declare a dividend or reduce or make a distribution of capital, except as authorized by Code Section 7-1-460 or 7-1-461 or otherwise under this chapter or other applicable law.

(5) Discounts or receives any evidence of indebtedness or agreement for the payment of money in payment of any subscription for common or preferred shares or with intent to enable any shareholder to withdraw any part of the money paid by him for shares held in the financial institution.

(6) Knowingly and willfully issues, participates in issuing, or concurs in any vote of the directors to issue any increase of its capital beyond the amount of the capital thereof duly authorized by or in pursuance of law or who knowingly or willfully sells or agrees to sell or who is interested, directly or indirectly, in the sale of any such shares of stock of such financial institution or in any agreement to sell the same.

(7) Certifies any check, draft, or order where the drawer of such check, draft, or order does not have on deposit with the financial institution at the time of such certification an amount of money equal to the amount specified in such check, draft, or order or fails to charge or set aside such amount from the deposit of the drawer immediately for the purpose of paying such certified check, draft, or order when presented.

(8) Makes or consents to the making of any conveyance, assignment, transfer, mortgage, or lien with intent to hinder, delay, or defraud creditors, after insolvency of the financial institution or in contemplation thereof, whether the same is made to an innocent purchaser or to any other person.

History. Ga. L. 1919, p. 135, art. 19, § 37; Ga. L. 1919, p. 135, art. 20, §§ 15, 16, 24, 25, 26, 27, 30; Ga. L. 1927, p. 195, § 14; Code

1933, §§ 13-2037, 13-9915, 13-9916, 13-9924, 13-9925, 13-9926, 13-9927, 13-9929; Code 1933, § 41A-9906, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 2016, p. 390, § 7-20/HB 811.

Cross references.

Obligation of bank to certify check, § 11-3-411.

JUDICIAL DECISIONS

No defense in action for purchase price to cancel notes. — It is no defense to action for purchase price to set up agreement of bank president to cancel notes in consideration of surrender of stock. Knight v. Jeff Davis Banking Co., 31 Ga. App. 440, 120 S.E. 696, 1923 Ga. App. LEXIS 979 (1923).

RESEARCH REFERENCES

Am. Jur. 2d.

10 Am. Jur. 2d, Banks and Financial Institutions, § 429 et seq.

C.J.S.

9 C.J.S., Banks and Banking, § 775.

ALR.

Validity and enforceability of agreement with bank officer or employee individually in connection with bank accommodation, 41 A.L.R. 349.

Criminal offense of making false statement or report as to assets or condition of bank, 85 A.L.R. 824.

7-1-844. Other misdemeanors of directors, officers, agents, and employees of financial institutions.

Any director, officer, agent, or employee of a financial institution who shall willfully violate or participate in the violation of any of the following provisions of this chapter shall be guilty of a misdemeanor:

(1) Code Section 7-1-37, relating to restrictions on department officials and employees;

(2) Code Section 7-1-62, relating to accounting requirements to be followed by financial institutions;

(3) Code Section 7-1-285, relating to loan limits on banks;

(4) Code Section 7-1-291, relating to borrowing limits on banks;

(5) Code Section 7-1-311, relating to operations as a fiduciary by a trust company;

(6) Code Section 7-1-491, relating to limitations on financing to directors and officers of banks and trust companies;

(7) Code Section 7-1-492, relating to prohibitions applicable to directors, officers, employees, and attorneys of bank and trust companies in dealings with the institutions with which they are connected; or

(8) Code Section 7-1-658, relating to loan limits on credit unions.

History.
Ga. L. 1919, p. 135, art. 20, §§ 6, 21, 22, 23, 31; Code 1933, §§ 13-9906, 13-9922, 13-9930; Ga. L. 1966, p. 692, § 51; Code 1933, § 41A-9907, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1975, p. 445, § 45.

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 429 et seq.
C.J.S.
9 C.J.S., Banks and Banking, § 775.
ALR.
Construction and application of criminal statutes relating to loans by bank to officers, directors, stockholders, or employees of bank or of banking department, 90 A.L.R. 509.

7-1-845. Miscellaneous felonies; when punished as misdemeanors.

(a) Any person or corporation, including any financial institution or its directors, officers, agents, or employees, who shall perform the following acts or deeds shall be guilty of a felony:

(1) Publishes or causes to be published any false statement, expressed either by printing or writing or by signs, pictures, or the like, of or concerning any financial institution as to the assets or liabilities of such financial institution or as to its solvency or ability to meet its obligations or as to its soundness or who shall publish or cause to be published any other false statement so expressed, calculated to affect the credit or standing of such financial institution or to cast suspicion upon its solvency, soundness, or ability to meet its deposits or other obligations in due course;

(2) Falsely circulates any report or makes any false oral statement as to the assets or liabilities of a financial institution or as to its solvency or ability to meet its obligations or as to its soundness or who shall make any other false oral statement calculated to affect the credit or standing of such financial institution or to cast suspicion upon its solvency, soundness, or ability to meet its deposits or other obligations in due course;

(3) Willfully engages in the business of:

(A) A bank in violation of Code Section 7-1-241;

(B) A trust company in violation of Code Section 7-1-242;

(C) A credit union in violation of Code Section 7-1-633;

(D) Money transmission before receiving a license as required by Code Section 7-1-681;

(E) A foreign bank branch or foreign bank agency before receiving the license required by Article 14 of this chapter or a

foreign bank representative office before being registered with the department as required by Article 14 of this chapter;

(F) A business development corporation before approval of the department is granted under Code Section 7-1-743;

(G) Transacting business either directly or indirectly as a mortgage loan originator, mortgage broker, or mortgage lender unless licensed by the department or exempt from licensing pursuant to Code Section 7-1-1001; or

(H) Making installment loans unless licensed by the department or exempt from licensing requirements pursuant to Code Section 7-3-4; or

(4) Being an agent of a money transmitter licensee or such agent's employee who is authorized to sell or issue payment instruments on behalf of a licensee, issues payment instruments directly or indirectly to or for his or her own benefit, or sells or issues payment instruments without accepting funds therefor or sells or issues payment instruments and willfully fails to remit to the licensee the proceeds from the sale or issuance of such payment instruments within five business days from the date of such sale or issuance.

(b) Upon conviction under this Code section such person or corporation shall be punished by imprisonment for not less than one nor more than five years or fined $10,000.00; but, on the recommendation of the jury trying the case, when such recommendation is approved by the judge presiding on the trial, such crime shall be punished as a misdemeanor. If the judge trying the case deems it proper, he may, in fixing the punishment, reduce such felony to a misdemeanor.

History.

Ga. L. 1919, p. 135, art. 20, §§ 8, 32, 33; Code 1933, §§ 13-9907, 13-9931, 13-9932; Ga. L. 1937-38, Ex. Sess., p. 307, §§ 17, 18; Ga. L. 1965, p. 81, § 18; Code 1933, § 41A-9908, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1978, p. 1717, § 10; Ga. L. 1983, p. 602, § 20; Ga. L. 1989, p. 1257, § 31; Ga. L. 1999, p. 674, § 29; Ga. L. 2015, p. 344, § 32/HB 184; Ga. L. 2016, p. 390, § 7-21/HB 811; Ga. L. 2020, p. 156, § 3/SB 462; Ga. L. 2023, p. 651, § 39/HB 55, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, in subsection (a), substituted "Money transmission" for "Selling payment instruments" in subparagraph (a)(3)(D), rewrote subparagraph (a)(3)(E), which read: "An international bank agency before receiving the license required by Code Section 7-1-713;", and inserted "money transmitter" near the beginning of paragraph (a)(4).

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 429 et seq.
C.J.S.
9 C.J.S., Banks and Banking, § 775.
ALR.
Criminal offense of making false statement or report as to assets or condition of bank, 85 A.L.R. 824.
False representation by officers or directors of bank or building and loan association that impairment of capital has been made good, as basis of action against them, 144 A.L.R. 1498.
Liability of bank, to other than party whose financial condition is misrepresented, for erroneous credit information furnished by bank or its directors, officers, or employees, 77 A.L.R.3d 6.

7-1-846. Punishment for misdemeanor violations.

Upon conviction of a misdemeanor as prescribed by the several provisions of this chapter, the offender shall be punished as prescribed by Code Section 17-10-3, as now or hereafter amended.

History.
Ga. L. 1919, p. 135, art. 20, § 38; Code 1933, § 13-9937; Code 1933, § 41A-9910, enacted by Ga. L. 1974, p. 705, § 1.

ARTICLE 10

TRANSITION PROVISIONS; FEES OF SECRETARY OF STATE

7-1-860. Application of chapter.

This chapter applies to transactions and events occurring on and after April 1, 1975.

History.
Code 1933, § 41A-3701, enacted by Ga. L. 1974, p. 705, § 1.

7-1-861. Completion of pending transactions; continuation of existing charters, appointments, regulations, and fees.

(a) Transactions validly entered into before April 1, 1975, and the rights, duties, and interests flowing from them remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this chapter as though such repeal or amendment had not occurred.

(b) The validity of existing articles and charters shall not be impaired by this chapter. Appointments of officers in effect on April 1, 1975, shall continue in force until changed as permitted by this chapter or other applicable law. Regulations which have been issued by the department or the commissioner and fee schedules established by either of them or existing pursuant to statute shall remain in effect until changed pursuant to this chapter.

History.
Code 1933, § 41A-3702, enacted by Ga. L. 1974, p. 705, § 1.

7-1-862. Fees to be paid to Secretary of State.

The Secretary of State shall charge and collect fees with regard to filings by persons subject to the provisions of this chapter to the same extent as are charged and collected with regard to similar filings by corporations organized under Chapter 2 of Title 14, known as the "Georgia Business Corporation Code."

History.
Code 1933, § 41A-3703, enacted by Ga. L. 1974, p. 705, § 1; Ga. L. 1983, p. 602, § 21; Ga. L. 1989, p. 1257, § 32.
Cross references.
Fees to be paid to Secretary of State for filing documents and issuing certificates pertaining to Secretary of State corporations, § 14-4-183.

ARTICLE 11

RECORDS AND REPORTS OF CURRENCY TRANSACTIONS

7-1-910. Purpose.

It is the purpose of this article to require certain reports and records of transactions involving United States currency where such reports and records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

History.
Code 1981, § 7-1-910, enacted by Ga. L. 1982, p. 2219, § 1.

JUDICIAL DECISIONS

Applicability. — O.C.G.A. § 7-1-910 was not applicable in an action alleging that a bank improperly cashed certificates of deposit and a savings account. Emmett v. Regions Bank, 238 Ga. App. 455, 518 S.E.2d 472, 1999 Ga. App. LEXIS 778 (1999), cert. denied, No. S99C1430, 1999 Ga. LEXIS 879 (Ga. Oct. 22, 1999).

7-1-911. Definitions.

As used in this article, the term:

(1) "Commissioner" means the commissioner of banking and finance.

(2) "Conducts" includes initiating, concluding, or participating in initiating or concluding a transaction.

(3) "Currency" means currency and coin of the United States.

(4) "Currency transaction" means a transaction:

(A) Initiated from the receipt or payment of currency or concluding with the receipt or payment of currency; or

(B) Involving the movement or transfer of monetary value by electronic means other than within the books of account of the same financial institution.

(5) "Department" means the Department of Banking and Finance of the State of Georgia.

(6) "Financial institution" means:

(A) A state or national bank;

(B) A trust company;

(C) A state savings and loan association or a federal savings and loan association;

(D) A state or federal credit union;

(E) A foreign bank branch or foreign bank agency authorized to do business in this state pursuant to Article 14 of this chapter; or

(F) A licensee under Article 4 or Article 4A of this chapter and such other persons as may be engaged in the business of:

(i) Cashing payment instruments for a fee; or

(ii) Performing transactions by wire or other electronic means to facilitate the movement or transfer of money.

(7) "Knowing that the moneys involved in a currency transaction represent the proceeds of some form of unlawful activity" means that the person knew the moneys involved in the transaction represented proceeds from some form, although not necessarily which form, of activity that constitutes a felony under this Code.

(8) "Monetary instruments" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

(9) "Person" means natural persons, partnerships, trusts, estates, associations, corporations, and all entities cognizable as legal personalities.

(10) "Specified unlawful activity" means any act or activity constituting an offense punishable as a felony pursuant to the laws of this state or any act or acts constituting a pattern of racketeering activity as that term is defined in Code Section 16-14-3.

(11) "Transaction" includes:

(A) A purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition and, with respect to a financial institution, includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected; or

(B) The movement of funds by wire or other means or involving one or more monetary instruments or the use of a financial institution.

History.

Code 1981, § 7-1-911, enacted by Ga. L. 1982, p. 2219, § 1; Ga. L. 1986, p. 214, § 1; Ga. L. 1989, p. 1211, § 17; Ga. L. 1990, p. 362, § 2; Ga. L. 2004, p. 458, § 9; Ga. L. 2016, p. 390, § 7-22/HB 811; Ga. L. 2017, p. 774, § 7/HB 323; Ga. L. 2023, p. 651, § 40/HB 55, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, rewrote subparagraph (6)(E), which read: "An international bank agency doing business in this state on April 1, 1975, pursuant to the former 'International Bank Agency Act,' approved April 6, 1972 (Ga. L. 1972, p. 1140), or authorized to do business in this state pursuant to Article 5 of this chapter; or".

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1989, a comma was deleted following "disposition" and commas were inserted preceding and following "with respect to a financial institution" in subparagraph (10)(A) (now subparagraph (11)(A)).

Law reviews.

For note on 1990 amendment of this Code section, see 7 Ga. St. U.L. Rev. 201 (1990).

7-1-912. Reporting requirements.

(a)(1) Financial institutions and other money service businesses are required by state law to comply with the filing, reporting, and record-keeping requirements provided for in federal law. The department may promulgate regulations that specify additional requirements for currency transaction reports, record keeping, and suspicious activity reports.

(2) Pursuant to federal law, a financial institution must keep a record of any currency transaction deemed suspicious for any reason, including transactions where money laundering is suspected, and file a report of such transaction with the appropriate federal authority. All such suspicious activity reports shall be simultaneously filed with the department, unless by regulation the department deems a federal filing to be adequate.

(3) The provisions of paragraph (1) of this subsection shall not apply to transfers between banks, credit unions, or savings and loan associations chartered under the laws of any state or the United States which do not involve the payment or receipt of currency and

which are accomplished through a wire or electronic transfer system operated by the Federal Reserve System, the Federal Home Loan Bank System, or other governmental agency or instrumentality; provided, however, that with regard to each such transfer the bank, credit union, or savings and loan association shall maintain a record of the name, address, and tax identification number of its customer, the name and location of the corresponding bank, credit union, or savings and loan association, and the name of the customer of the corresponding bank, credit union, or savings and loan association.

(b) The commissioner shall prescribe such regulations as he may deem appropriate to carry out the purposes of this article. Such regulations shall to the extent feasible be consistent with federal regulations and may provide for exemption of such transactions as the commissioner determines are clearly of a legitimate nature for which mandatory reporting would serve no useful purpose. The regulations shall provide for adequate safeguards against unauthorized currency transactions or transactions otherwise inconsistent with this article.

(c) The commissioner in his discretion may exercise the authority granted in Code Section 7-1-64 to assure that financial institutions subject to this article are in compliance herewith.

(d) No person shall for the purpose of evading the reporting requirements of this Code section:

(1) Cause or attempt to cause a financial institution to fail to file a report required pursuant to this Code section;

(2) Cause or attempt to cause a financial institution to file a report required pursuant to this Code section that contains a material omission or misstatement of fact; or

(3) Structure or assist in structuring or attempt to structure or assist in structuring any currency transaction with one or more financial institutions.

(e) For purposes of this Code section, the term:

(1) "Material omission or misstatement" shall include the furnishing of a false or erroneous name, address, taxpayer identification number, and business, profession, or occupation for the person performing the currency transaction or the beneficiary of such transaction or displaying or otherwise producing physical proof of identity on such persons which is forged, falsified, or otherwise altered; and

(2) "Structuring" of a currency transaction means the division of a transaction which would otherwise be reportable under this Code section into two or more transactions which if considered separately would not be reportable.

History.
Code 1981, § 7-1-912, enacted by Ga. L. 1982, p. 2219, § 1; Ga. L. 1986, p. 214, § 2; Ga. L. 1989, p. 1211, § 18; Ga. L. 1990, p. 362, § 3; Ga. L. 1993, p. 917, § 9; Ga. L. 1994, p. 1780, § 6; Ga. L. 1996, p. 848, § 12; Ga. L. 1997, p. 485, § 28; Ga. L. 2004, p. 458, § 10; Ga. L. 2024, p. 1052, § 1(a)(26)/SB 448, effective July 1, 2024.
Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "however, that" for "however," in paragraph (a)(3).
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1997, a comma was inserted following "federal law" in the first sentence of paragraph (a)(2).
Law reviews.
For note on 1990 amendment of this Code section, see 7 Ga. St. U.L. Rev. 201 (1990).

7-1-913. Access to reports.

The Georgia Bureau of Investigation and the Department of Revenue shall have access to and shall be authorized to inspect and copy any reports filed with the department pursuant to this article. In addition, unless prohibited by federal law or by any agreements with federal authorities, the Georgia Bureau of Investigation and the Department of Revenue shall have access to and shall be authorized to inspect and copy any currency transaction report information received by the department from federal authorities.

History.
Code 1981, § 7-1-913, enacted by Ga. L. 1982, p. 2219, § 1; Ga. L. 1994, p. 1780, § 7.

7-1-914. Civil penalties; action for recovery.

(a) For each willful violation of this article, the commissioner may assess upon any financial institution and upon any director, officer, or employee thereof who willfully participates in the violation a civil penalty not exceeding $1,000.00.

(b) In the event of the failure of any person to pay any penalty assessed under this Code section, a civil action for recovery thereof may, in the discretion of the commissioner, be brought in the name of the State of Georgia.

(c) Whoever conducts or attempts to conduct a transaction described in subsection (c) of Code Section 7-1-915 is liable to the State of Georgia for a civil penalty of not more than the amount of the funds involved in the transaction or $10,000.00, whichever is greater.

History.
Code 1981, § 7-1-914, enacted by Ga. L. 1982, p. 2219, § 1; Ga. L. 1989, p. 1211, § 19.

7-1-915. Criminal penalties; penalties imposed by other Code sections not superseded.

(a) Except as provided in subsection (b) of this Code section, whoever

willfully violates any provision of this article shall be guilty of a misdemeanor.

(b) Whoever willfully violates any provision of this article where the violation is:

(1) Committed in furtherance of the commission of any other violation of Georgia law; or

(2) Committed as part of a pattern of illegal activity involving transactions exceeding $100,000.00 in any 12 month period

shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than $500,000.00 or by imprisonment for not more than five years, or both.

(c) Whoever, knowing that the moneys involved in a currency transaction represent the proceeds of some form of unlawful activity, conducts or attempts to conduct such a transaction which in fact involves the proceeds of specified unlawful activity:

(1) With the intent to promote the carrying on of specified unlawful activity; or

(2) Knowing that the transaction is designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or to avoid a transaction reporting requirement under this article

shall be sentenced to a fine of not more than $500,000.00 or twice the amount involved in the transaction, whichever is greater, or imprisonment for not more than 20 years, or both.

(d) Nothing in subsection (c) of this Code section nor in subsection (c) of Code Section 7-1-914 shall supersede any provision of law imposing criminal or civil penalties or affording civil remedies in addition to those provided for in this Code section or in Code Section 7-1-914.

History.
Code 1981, § 7-1-915, enacted by Ga. L. 1982, p. 2219, § 1; Ga. L. 1983, p. 3, § 5; Ga. L. 1989, p. 1211, § 20.

JUDICIAL DECISIONS

Evidence sufficient to support conviction. — Evidence that the defendant was part of a conspiracy to deceive the victims into believing the victims had to wire money to a co-conspirator's bank account, and that the funds were used to promote unlawful activity was sufficient to support the defendant's conviction for money laundering. Akintoye v. State, 340 Ga. App. 777, 798 S.E.2d 720, 2017 Ga. App. LEXIS 141 (2017).

7-1-916. Forfeiture of property involved in illegal transactions.

All property of every kind used or intended for use in the course of,

derived from, or realized through a transaction which in fact involves the proceeds of unlawful activity specified in Chapter 14 of Title 16 or otherwise subject to the provisions of this article shall be subject to forfeiture to the state. Forfeiture shall be had by the same procedure as is set forth in Chapter 16 of Title 9. As used in this Code section, the terms "proceeds" and "property" shall have the same meaning as set forth in Code Section 9-16-2.

History.
Code 1981, § 7-1-916, enacted by Ga. L. 1989, p. 1211, § 21; Ga. L. 2015, p. 693, § 3-6/HB 233.
Editor's notes.
Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."
Law reviews.
For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

RESEARCH REFERENCES

ALR.
Forfeiture of homestead based on criminal activity conducted on premises—state cases, 16 A.L.R.5th 855.

7-1-917. Venue for the offense of money laundering.

In a prosecution under this article, when a currency transaction involves the movement or transfer of digital or electronic money or currency held in an account at a financial institution while knowing the moneys involved in a currency transaction represent the proceeds of some form of unlawful activity, the crime shall be considered as having been committed:

(1) In any county in which the accused exercised control over such digital or electronic money or currency which was the subject of the transaction;

(2) In any county in which any act was performed in furtherance of such transaction; or

(3) In any county in which an alleged victim resides.

History.
Code 1981, § 7-1-917, enacted by Ga. L. 2023, p. 634, § 1/HB 219, effective July 1, 2023.
Effective date.
This Code section became effective July 1, 2023.
Cross references.
Racketeer and Corrupt Influences Act, § 16-4-1 et seq.

ARTICLE 12

SMALL MINORITY BUSINESS DEVELOPMENT CORPORATIONS

7-1-940. Definitions.

As used in this article, the term:

(1) "Board of directors" means any board of directors of a corporation created under this article.

(2) "Corporation" means a Georgia small minority business development corporation created under this article;

(3) "Lending institution" means any bank or trust company, savings and loan association, insurance company or related corporation, partnership, foundation, pension fund, or other institution engaged primarily in lending or investing funds.

(4) "Loan limit" means, for any member, the maximum amount permitted to be outstanding at any one time on member loans made by such member to the corporation, as determined under this article.

(5) "Member" means any lending institution authorized to do business in this state which shall undertake to make member loans to a corporation created under this article, upon its call, and in accordance with this article.

(6) "Member loan" means a loan made by a member upon the call of the corporation pursuant to Code Section 7-1-947.

(7) "Minority person" means a lawful permanent resident of the United States who is:

(A) Black;

(B) Hispanic;

(C) Asian-Pacific American;

(D) Native American; or

(E) Asian-Indian American.

(8) "Small minority business" means any for profit corporation, partnership, proprietorship, association, or other business entity which:

(A) Is at least 51 percent owned and controlled by minority persons and whose management and daily operation are controlled by one or more of the minority persons who own it;

(B) Has gross revenue of less than $6 million in a 12 month fiscal year;

(C) Has a net profit after taxes for each of the last two taxable years of less than $1 million;

(D) Employs less than 500 people; and

(E) Is not a lending institution.

History. Code 1981, § 7-1-940, enacted by Ga. L. 1988, p. 804, § 1; Ga. L. 2016, p. 390, § 7-4/HB 811.

RESEARCH REFERENCES

ALR. Small Business Owned and Controlled by Socially or Economically Disadvantaged Person Under Small Business Act § 8(a) (15 U.S.C.A. § 637), 33 A.L.R. Fed. 3d 1 (2018).

7-1-941. Creation of corporations; contents of articles of incorporation; subscription and acknowledgment.

(a) Five or more persons competent to contract, a majority of whom shall be residents of this state, who may desire to create a small minority business development corporation under this article, for the purpose of promoting, developing, and advancing small minority business and, to that end, to exercise the powers and privileges provided in this article, may be incorporated by presenting articles to the Secretary of State, as provided in this Code section and Code Section 7-1-942. The articles shall contain:

(1) The name of the corporation, which shall include the words "Small Minority Business Development Corporation of Georgia," and a recitation that the corporation is organized under this article;

(2) The location of its initial registered office, but such corporation may have branch offices in such other places within the state as may be fixed by the board of directors;

(3) The purposes for which the corporation is founded, which shall include: to promote, stimulate, develop, and advance small minority business and thereby promote, stimulate, develop, and advance the business prosperity and economic welfare of the State of Georgia; to encourage and assist, through loans, investments, or other business transactions, in the location of the small minority business and industry in this state and to rehabilitate and assist existing small minority business and industry; to stimulate and assist in the expansion of all kinds of small minority business activity which will tend to promote the small minority business development and maintain the economic stability of this state; to provide maximum opportunities for minority employment, encourage thrift, and improve the standard of living of minorities and other citizens of this state; similarly to cooperate and act in conjunction with other

organizations, public or private, in the promotion and advancement of industrial, commercial, agricultural, and recreational small minority business developments in this state; and to provide financing for the promotion, development, and conduct of all kinds of small minority business activity in this state;

(4) The names and post office addresses of the members of the first board of directors, who, unless otherwise provided by the articles or the bylaws, shall hold office for the first year of existence of the corporation or until their successors are elected and have qualified;

(5) Any provisions which the incorporators may choose to insert for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, dividing, limiting, and regulating the powers of the corporation, the directors, shareholders, or any class of the shareholders, including, but not limited to, a list of the officers, and provisions governing the issuance of stock certificates to replace lost or destroyed certificates, provided that no provision shall be contained for cumulative voting for directors; and

(6) The amount and number of authorized shares, the par value of each share, and the minimum amount of capital with which it shall do business and, if there is more than one class of stock, a description of the different classes. The minimum amount of capital with which the corporation shall commence business shall not be less than $50,000.00.

The articles may also contain any provisions consistent with the laws of this state for the regulation of the affairs of the corporation.

(b) The articles shall be in writing, subscribed by the incorporators, and acknowledged by each of them before an officer authorized to take acknowledgments. A copy of the articles so subscribed and acknowledged shall be filed with the department for approval.

History.
Code 1981, § 7-1-941, enacted by Ga. L. 1988, p. 804, § 1; Ga. L. 1990, p. 176, § 1.

7-1-942. Approval of articles by department.

Whenever the articles shall have been filed in the office of the Secretary of State and approved by the department and all filing fees and taxes prescribed by law have been paid, said entity shall constitute a corporation. Said corporation shall not be authorized to commence business until its articles are approved by the department. Upon such approval by the department, authorized stock of the corporation may thereafter be issued.

History.
Code 1981, § 7-1-942, enacted by Ga. L. 1988, p. 804, § 1; Ga. L. 1989, p. 1257, § 33; Ga. L. 1990, p. 176, § 2.

7-1-943. Standards for approval of articles by department; timing.

(a) Upon receipt of an application for approval of articles from a corporation organized pursuant to this article, the department shall exercise its discretion in its consideration of the application; but the department shall not approve the application until it has ascertained to its satisfaction:

(1) That the public need and advantage will be promoted by the establishment of the corporation;

(2) That conditions in the locality in which the corporation will transact business afford reasonable promise of a successful operation;

(3) That the applicants may legally invest in the stock of the corporation and that such investment would not be to the detriment of the applicants; and

(4) That the proposed officers and directors have sufficient experience, ability, and standing to afford reasonable promise of a successful operation.

(b) Within 90 days after receipt of an application for approval of the articles, the department shall issue a certificate either granting or denying permission for the corporation to commence business, provided that in no instance shall the department grant such permission until it has ascertained to its satisfaction that the above conditions and circumstances have been met and that the articles are in accordance with this article.

History.
Code 1981, § 7-1-943, enacted by Ga. L. 1988, p. 804, § 1; Ga. L. 1990, p. 176, § 3.

7-1-944. Filing departmental approval with Secretary of State.

Upon receiving the approval of the department, the incorporators shall file the same together with the fee specified by Code Section 7-1-862 with the Secretary of State.

History.
Code 1981, § 7-1-944, enacted by Ga. L. 1988, p. 804, § 1; Ga. L. 1989, p. 946, § 73; Ga. L. 1989, p. 1257, § 34.

7-1-945. Corporate powers.

In furtherance of its purposes and in addition to the powers now or hereafter conferred on business corporations by the laws of this state,

the corporation shall, subject to the restrictions and limitations contained in this Code section, have the following powers:

(1) To elect, appoint, and employ officers, agents, and employees;

(2) To make contracts and incur liabilities for any of the purposes of the corporation, provided that the corporation shall not incur any secondary liability by way of the guaranty or endorsement of the obligations of any person or corporation or in any other manner;

(3) To borrow money and to do all things necessary or desirable to secure aid, assistance, loans, and other financing from its members (whether as member loans or otherwise), from any lending institution, or from any agency established under federal or state law for any of the purposes of the corporation and to issue therefor its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchise, rights, and privileges of every kind and nature or any part thereof or interest therein without securing shareholder or member approval;

(4) To make loans to any small minority business and to establish and regulate the terms and conditions with respect to any such loans and the charges for interest and services connected therewith; provided, however, that the corporation shall not approve any application for a loan unless and until the small minority business applying for said loan shall show that such business has applied for the loan through ordinary lending channels and that the loan has been refused by at least two lending institutions that would be qualified by law to make such a loan, it not being the intention of this article to take from any lending institution any such loans or commitments as may be desired by such organizations generally in the ordinary course of their business;

(5) To purchase, receive, hold, lease, or otherwise acquire and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations;

(6) To acquire the good will, business rights, real and personal property, and other assets or any part thereof or interest therein of any small minority business and to assume, undertake, or pay the obligations, debts, and liabilities of any such small minority business; to acquire improved or unimproved real estate for the purpose of constructing small minority business establishments thereon or for the purposes of disposing of such real estate to others for the

construction of small minority business establishments; and to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of small minority business establishments;

(7) To acquire, subscribe for, own, sell, hold, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in or indebtedness of any small minority business and, while the owner or holder thereof, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon;

(8) To mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in paragraph (5), (6), or (7) of this Code section, as security for the payment of any part of the purchase price therefor;

(9) To cooperate with and avail itself of the facilities of the United States Department of Commerce, the Department of Economic Development, and any other similar state or federal governmental agencies and to cooperate with and assist and otherwise encourage organizations in the various communities of this state in the promotion, assistance, and development of small minority business and the economic well-being of such communities or of this state or any political subdivision thereof;

(10) To redeem or otherwise reacquire its shares under the circumstances and subject to the restrictions now or hereafter set forth for business corporations by the laws of this state;

(11) To make, amend, and repeal bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation, which bylaws may establish internal governance procedures and standards, including, but not limited to, procedures for voting by proxy at and for giving notice of meetings of directors and of shareholders and members and the delegation by the board of directors of its authority under the articles of incorporation and this article to one or more committees of the board or to officers of the corporation, and which bylaws may give the board of directors or committees thereof the power to pass resolutions necessary or convenient to carry out the purposes of the corporation;

(12) To contract with the Small Business Development Centers of the University System of Georgia and economic development centers of other colleges and universities, which centers shall also be authorized to contract with the corporation, for the performance of loan application and packaging functions, market studies, and such other activities necessary or convenient to carry out the purposes of the corporation;

(13) To provide technical assistance for both public and private sources of contract opportunities for small minority businesses;

(14) To provide equity funding as authorized for Minority Enterprise Small Business Investment Corporations through the federal Small Business Administration;

(15) To provide for import and export financing for small minority businesses; and

(16) To do all acts and things necessary or convenient to carry out the powers expressly granted in this article.

History.
Code 1981, § 7-1-945, enacted by Ga. L. 1988, p. 804, § 1; Ga. L. 1989, p. 1641, § 3; Ga. L. 2004, p. 690, § 2.

Editor's notes.
Ga. L. 1989, p. 1641, § 18, not codified by the General Assembly, provides that: "In the event of any substantive conflict between this Act and any other Act of the 1989 General Assembly, such other Act shall control over this Act."

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1988, "business" was substituted for "businesses" following "any small minority" near the beginning of paragraph (6).

7-1-946. Bond and stock holding authority; member loans to corporation not discriminatory.

Notwithstanding any rule at common law or any provision of any general or special law or any provision in their respective charters, agreements of association, articles of organization, or trust indentures:

(1) Any person, including all domestic corporations organized for the purpose of carrying on business within this state and further including, without implied limitation, public utility companies and insurance companies and foreign corporations licensed to do business within this state and all lending institutions as defined in Code Section 7-1-940 and all trusts are authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, securities, or other evidences of indebtedness created by or the shares of the corporation and, while owners of said shares, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the state, except as otherwise provided in this article;

(2) All lending institutions are authorized to become members of the corporation and to make loans to the corporation as provided in this article and such membership shall not constitute a violation of the prohibitions contained in Code Section 7-6-1;

(3) Each lending institution which becomes a member of the corporation is authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of any bonds, secu-

rities, or other evidences of indebtedness created by or the shares of the capital stock of the corporation and, while owners of said stock, to exercise all the rights, powers, and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of the State of Georgia, provided that the amount of the capital of the corporation which may be acquired by any member pursuant to the authority granted in this Code section shall not exceed 5 percent of the capital base of such member; and

(4) The amount of shares of the corporation which any member is authorized to acquire pursuant to the authority granted in this Code section is in addition to the amount of shares in the corporation which such member may otherwise be authorized to acquire.

History.
Code 1981, § 7-1-946, enacted by Ga. L. 1988, p. 804, § 1.

7-1-947. Application for membership; requirements for loans to corporation; member loan limits.

(a) Any lending institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by said board.

(b) Each member of the corporation shall make member loans to the corporation when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

(1) All loan limits for member loans may, at the option of the board of directors, be established at the $1,000.00 amount nearest the amount computed in accordance with this Code section; and

(2) No member loan to the corporation shall be made if immediately thereafter the total amount of the obligations (whether under member loans or otherwise) of the corporation would exceed 50 times the amount then paid in on the capital of the corporation.

(c) The total amount outstanding on member loans to the corporation made by any member at any one time, when added to the amount of the investment in the capital of the corporation then held by such member, shall not exceed the lesser of:

(1) Twenty percent of the aggregate of the capital of the corporation then outstanding plus the total amount then outstanding on all member loans to the corporation, including in said total amount

outstanding amounts validly called as member loans but not yet loaned;

(2) The following limit, to be determined each calendar year of membership on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding or, in the case of an insurance company, its last annual statement to the Commissioner of Insurance:

(A) Five percent of the statutory capital base of a bank or trust company;

(B) One-half of 1 percent of the total outstanding loans made by savings and loan associations;

(C) Two and one-half percent of the capital and unassigned surplus of stock insurance companies, except fire insurance companies;

(D) Two and one-half percent of the unassigned surplus of mutual insurance companies, except fire insurance companies;

(E) One-tenth of 1 percent of the assets of fire insurance companies; and

(F) Such limits as may be approved by the board of directors of the corporation for other lending institutions; or

(3) Seven hundred fifty thousand dollars.

(d) Subject to paragraphs (1) and (3) of subsection (c) of this Code section, each call for member loans made by the corporation shall be prorated among the members of the corporation in substantially the same proportion that the adjusted loan limit of each member bears to the aggregate of the adjusted loan limits of all members. The adjusted loan limit of a member shall be the amount of such member's loan limit, as determined by reference to paragraph (2) of subsection (c) of this Code section, reduced by the balance of outstanding member loans made by such member to the corporation and the investment in capital of the corporation held by such member at the time of such call.

(e) All member loans to the corporation shall be evidenced by bonds, debentures, notes, or other evidences of indebtedness of the corporation, which shall be freely transferable at all times and which shall bear interest at a rate of interest determined by the board of directors.

History. Code 1981, § 7-1-947, enacted by Ga. L. 1988, p. 804, § 1; Ga. L. 1989, p. 14, § 7; Ga. L. 2016, p. 390, § 7-4/HB 811.

7-1-948. Duration of membership; withdrawal.

(a) Membership in the corporation shall be for the duration of the

corporation, provided that, upon written notice given to the corporation two years in advance, a member may withdraw from membership in the corporation at the expiration of such notice.

(b) A member shall not be obligated to make any loans to the corporation pursuant to calls made subsequent to notice of the intended withdrawal of said member.

History.
Code 1981, § 7-1-948, enacted by Ga. L. 1988, p. 804, § 1.

7-1-949. Powers of shareholders and members.

(a) The shareholders and the members of the corporation shall have the following powers of the corporation:

(1) To determine the number of and elect directors as provided in Code Section 7-1-951;

(2) To amend its articles as provided in Code Section 7-1-950;

(3) To dissolve the corporation as provided in Code Section 7-1-956; and

(4) To exercise such other of the powers of the corporation, consistent with this article, as may be conferred on the shareholders and the members by the bylaws.

(b) As to all matters requiring action by the shareholders and the members of the corporation, said shareholders and said members shall vote separately thereon by classes; and, except as otherwise provided in this article, such matters shall require the affirmative vote of a majority of the votes to which the shareholders present or represented at the meeting shall be entitled and the affirmative vote of a majority of the votes to which the members present or represented at the meeting shall be entitled.

(c) Each shareholder shall have one vote, in person or by proxy, for each share of stock held by him; and each member shall have one vote, in person or by proxy, except that any member having a loan limit of more than $1,000.00 shall have one additional vote, in person or by proxy, for each additional $1,000.00 which such member is authorized to have outstanding on loans to the corporation at any one time, as determined under subsection (c) of Code Section 7-1-947.

(d) A holder of or subscriber to shares of the corporation or a member of the corporation shall be under no obligation to the corporation or its creditors with respect to such shares, subscriptions, or membership except in the circumstances set forth in Code Section 14-2-622, except

that this subsection does not affect the obligation of a member to lend funds to the corporation pursuant to valid call.

History. Code 1981, § 7-1-949, enacted by Ga. L. 1988, p. 804, § 1; Ga. L. 1989, p. 946, § 74.

7-1-950. Amendment of articles.

(a) Except as provided in subsections (b) and (c) of this Code section and subject to the approval of the department, the articles may be amended by the votes of the shareholders and the members of the corporation, voting separately by classes, and such amendments shall require approval by the affirmative vote of two-thirds of the votes to which the members shall be entitled.

(b) No amendment shall be adopted which is inconsistent with the general purposes expressed in paragraph (3) of subsection (a) of Code Section 7-1-941 or which authorizes any additional class of stock to be issued or which would tend to impair the ability of the department to examine and supervise the corporation.

(c) No amendment of the articles which increases the obligation of a member to make loans to the corporation or makes any change in the principal amount, interest rate, or maturity date or in the security or credit position of any outstanding loan of a member to the corporation or affects a member's right to withdraw from membership as provided in Code Section 7-1-948 or affects a member's voting rights as provided in this article shall be made without the consent of each member affected by such amendment.

(d) Within 30 days after any meeting at which an amendment to the articles is approved, it shall be submitted to the department together with such information as the department shall require. If the department finds in its discretion that the proposed amendment is in conformity with the objectives and requirements of this article, it shall issue its certificate approving the amendment. If the amendment is disapproved, the department shall briefly state its reasons for such action to the corporation. The decision of the department shall be conclusive, except as it may be subject to judicial review as provided in Code Section 7-1-90.

(e) Upon the approval of the department, articles of amendment signed and sworn to by the president, treasurer, and a majority of the directors, setting forth such amendment and due adoption thereof, shall, together with the department's certificate of approval, be submitted to the Secretary of State, who shall examine them and, if he finds that they conform to the requirements of this article, shall so certify and endorse his approval thereon.

History.
Code 1981, § 7-1-950, enacted by Ga. L. 1988, p. 804, § 1.

7-1-951. Board of directors; officers and agents.

The business affairs of the corporation shall be managed and controlled by a board of directors, a president, a vice-president, a secretary, a treasurer, and such other officers and such agents as the corporation shall authorize by its bylaws. The board of directors shall consist of such number, not less than nine nor more than 15, as shall be determined in the first instance by the incorporators and thereafter annually by the members and the shareholders of the corporation. The board of directors may exercise all the powers of the corporation except such as are conferred by law or by the bylaws of the corporation upon the shareholders or members and shall choose and appoint all the agents and officers of the corporation and fill all vacancies except vacancies in the office of director, which shall be filled as provided in this Code section. The annual meeting shall be held prior to May 1 or, if no annual meeting shall be held in the year of incorporation, then within 90 days after the approval of the articles at a special meeting as provided in this Code section. At such annual meeting or at each special meeting held as provided in this Code section, the members of the corporation shall elect one-fifth of the board of directors and the shareholders shall elect the remaining directors. The directors shall hold office until the next annual meeting of the corporation or special meeting held in lieu of the annual meeting after the election and until their successors are elected and qualified, unless sooner removed in accordance with provisions of the bylaws. Any vacancy in the office of a director elected by the members shall be filled by the directors elected by the members, and any vacancy in the office of a director elected by the shareholders shall be filled by the directors elected by the shareholders. Directors and officers shall not be responsible for losses unless the same shall have been occasioned by the willful misconduct of such directors and officers. Directors shall serve without compensation.

History.
Code 1981, § 7-1-951, enacted by Ga. L. 1988, p. 804, § 1; Ga. L. 1990, p. 176, § 4.

7-1-952. Setting apart net earnings; fiscal year.

(a) Each year the corporation shall set apart its net earnings for all the preceding fiscal year. Whenever the amount of minimum capital established in Code Section 7-1-941 shall become impaired, it shall be built up again to the required amount in the manner provided for its original accumulation. Net earnings and surplus shall be determined by the board of directors after providing for such reserves as said

directors deem desirable, and the determination of the directors made in good faith shall be conclusive on all persons.

(b) Corporations organized under this article shall adopt the calendar year as their fiscal year.

History.
Code 1981, § 7-1-952, enacted by Ga. L. 1988, p. 804, § 1.

7-1-953. Deposit of corporate funds.

The corporation shall not deposit any of its funds in any bank or other financial institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated. The corporation shall not receive money on deposit.

History.
Code 1981, § 7-1-953, enacted by Ga. L. 1988, p. 804, § 1.

7-1-954. Departmental power over corporations.

The department shall exercise the same power and authority over corporations organized under this article as is now or hereafter exercised over banks and trust companies by Articles 1 and 2 of this chapter where such law is not in conflict with this chapter.

History.
Code 1981, § 7-1-954, enacted by Ga. L. 1988, p. 804, § 1.

7-1-955. First meeting.

(a) The first meeting of the corporation shall be called by a notice signed by three or more of the incorporators, stating the time, place, and purpose of the meeting, a copy of which notice shall be mailed or delivered to each incorporator at least five days before the day appointed for the meeting. Said first meeting may be held without such notice upon agreement in writing to that effect signed by all the incorporators. There shall be recorded in the minutes of the meeting a copy of said notice or of such unanimous agreement of the incorporators.

(b) At such first meeting the incorporators shall organize by the choice, by ballot, of a temporary clerk; by the adoption of bylaws; by the election, by ballot, of directors; and by action upon such other matters within the powers of the corporation as the incorporators may see fit.

The temporary clerk shall be sworn and shall make and attest a record of the proceedings. Four of the incorporators shall be a quorum for the transaction of business.

History.
Code 1981, § 7-1-955, enacted by Ga. L. 1988, p. 804, § 1.

7-1-956. Duration of corporation; dissolution.

(a) The period of duration of the corporation shall be 35 years, subject, however, to the right of its shareholders and the members to dissolve the corporation prior to the expiration of said period as provided in subsection (b) of this Code section.

(b) The corporation may, upon the votes of the shareholders and the members of the corporation, voting separately by classes, dissolve said corporation; and such dissolution shall require approval by the affirmative vote of two-thirds of the votes to which the shareholders shall be entitled. Upon any dissolution of the corporation, none of the corporation's assets shall be distributed to the shareholders until all sums due the members of the corporation as creditors thereof have been paid in full.

History.
Code 1981, § 7-1-956, enacted by Ga. L. 1988, p. 804, § 1.

RESEARCH REFERENCES

ALR.
Propriety of applying minority discount to value of shares purchased by corporation or its shareholders from minority shareholders, 13 A.L.R.5th 840.

7-1-957. State indebtedness not to be created.

Under no circumstances shall the credit of the State of Georgia be pledged to any corporation organized under this article nor shall acts of such corporation in any manner constitute or result in the creation of any indebtedness of the State of Georgia or any county or municipal corporation therein.

History.
Code 1981, § 7-1-957, enacted by Ga. L. 1988, p. 804, § 1.

7-1-958. Tax exemptions, credits, and privileges; occupational license taxes.

(a) Any tax exemptions, tax credits, or tax privileges granted to

banks or trust companies and other lending institutions by any general laws of this state are granted to corporations organized pursuant to this article.

(b) Every corporation organized and engaged in business under this article shall pay an annual state occupational license tax of $50.00. Counties and municipalities are authorized, in addition, to levy the occupational license taxes as prescribed; provided, however, that no county or municipality shall levy any such occupational license tax in a greater amount than those prescribed.

History.
Code 1981, § 7-1-958, enacted by Ga. L. 1988, p. 804, § 1; Ga. L. 2016, p. 390, § 7-4/HB 811; Ga. L. 2017, p. 774, § 7/HB 323.

ARTICLE 13

LICENSING OF MORTGAGE LENDERS AND MORTGAGE BROKERS

Cross references.
Real estate brokers' license requirement, § 44-3-190.

Law reviews.
For note on 1993 enactment of this article, see 10 Ga. St. U.L. Rev. 11 (1993).
For note on the 1994 amendments of Code Sections 7-1-1000 to 7-1-1006, 7-1-1008, 7-1-1010 to 7-1-1011, 7-1-1014, 7-1-1016 to 7-1-1018 and enactment of Code Section 7-1-1021 of this article, see 11 Ga. St. U.L. Rev. 41 (1994).
For comment, "Regulation X: A New Direction for the Regulation of Mortgage Servicers," see 63 Emory L. J. 175 (2013).
For comment, "Amidst the Walking Dead: Judicial and Nonjudicial Approaches for Eradicating Zombie Mortgages," see 65 Emory L.J. 795 (2016).

RESEARCH REFERENCES

C.J.S.
59 C.J.S., Mortgages, § 73 et seq.

7-1-1000. Definitions.

As used in this article, the term:

(1) "Affiliate" or "person affiliated with" means, when used with reference to a specified person, a person who directly, indirectly, or through one or more intermediaries controls, is controlled by, or is under common control with the person specified. Any beneficial owner of 10 percent or more of the securities of a person or any executive officer, director, trustee, joint venturer, or general partner of a person is an affiliate of such person unless the shareholder, executive officer, director, trustee, joint venturer, or general partner shall prove that he or she in fact does not control, is not controlled by, or is not under common control with such person.

(2) "Audited financial statement" means the product of the exami-

nation of financial statements in accordance with generally accepted auditing standards by an independent certified public accountant, which product consists of an opinion on the financial statements indicating their conformity with generally accepted accounting principles.

(3) "Commissioner" means the commissioner of banking and finance.

(4) "Commitment" or "commitment agreement" means a statement by a lender required to be licensed under this article that sets forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower.

(5) "Control," including "controlling," "controlled by," and "under common control with,"' means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting or nonvoting securities, by contract, or otherwise.

(5.1) "Covered employee" means any employee of a mortgage lender or mortgage broker who is involved in residential mortgage loan related activities for property located in Georgia and includes, but is not limited to, a mortgage loan originator, processor, or underwriter, or other employee who has access to residential mortgage loan origination, processing, or underwriting information.

(6) "Department" means the Department of Banking and Finance.

(7) "Depository institution" has the same meaning as in Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. Section 1813(c), and includes any credit union.

(8) "Dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property pursuant to Regulation Z Section 226.2(a)(19). The term includes an individual condominium unit, cooperative unit, mobile home, and trailer if it is used as a residence.

(9) "Executive officer" means the chief executive officer, the president, the principal financial officer, the principal operating officer, each vice president with responsibility involving policy-making functions for a significant aspect of a person's business, the secretary, the treasurer, or any other person performing similar managerial or supervisory functions with respect to any organization whether incorporated or unincorporated.

(10) "Extortionate means" means the use or the threat of violence or other criminal means to cause harm to the person, reputation of the person, or property of the person.

(11) "Federal banking agencies" means the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation. Such term shall also include the Board of Governors of the Federal Reserve System.

(12) "Georgia Residential Mortgage Act" means this article, which also includes certain provisions in order to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008.

(13) "Individual" means a natural person.

(14) "License" means a license issued by the department under this article to act as a mortgage loan originator, mortgage lender, or mortgage broker.

(15) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing. For purposes of this paragraph, the term "clerical or support duties" may include, subsequent to the receipt of an application, the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms. An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

(16) "Lock-in agreement" means a written agreement whereby a lender or a broker required to be licensed under this article guarantees for a specified number of days or until a specified date the availability of a specified rate of interest for a mortgage loan, a specified formula by which the rate of interest will be determined, or a specific number of discount points if the mortgage loan is approved and closed within the stated period of time.

(17) "Makes a mortgage loan" means to advance funds, offer to advance funds, or make a commitment to advance funds to an applicant for a mortgage loan.

(18) "Misrepresent'" means to make a false statement of a substantive fact. Misrepresent may also mean to intentionally engage in any conduct which leads to a false belief which is material to the transaction.

(19)(A) "Mortgage broker" means any person who directly or indirectly solicits, processes, places, or negotiates mortgage loans for others; offers to solicit, process, place, or negotiate mortgage loans for others; or closes mortgage loans which may be in the mortgage broker's own name with funds provided by others, and which loans are assigned to the mortgage lenders providing the funding of such loans within 24 hours of the funding.

(B) The term does not include a retailer or retail broker of a manufactured or mobile home as defined in Code Section 8-2-131 or a residential industrialized building as defined in Code Section 8-2-111:

(i) Whose residential mortgage loan activities are limited to compiling and transmitting residential mortgage loan applications along with related supporting documentation to mortgage lenders who are licensed or exempt from the licensing provisions of this article or communicating with residential mortgage loan applicants as necessary to obtain additional documents that complete the residential mortgage loan application to those licensed or exempt mortgage lenders; and

(ii) Who does not receive any payment or fee from any person for assisting the applicant to apply for or obtain financing to purchase the manufactured home, mobile home, or residential industrialized building.

(C) The term does not include an employee of a retailer or retail broker of a manufactured or mobile home as defined in Code Section 8-2-131 or a residential industrialized building as defined in Code Section 8-2-111 who:

(i) Satisfies the requirements set forth in paragraph (B) of this paragraph;

(ii) Is acting within the scope of employment and under the supervision of the retailer or retail broker as an employee and not as an independent contractor;

(iii) Is employed by only one such retailer or retail broker and shall be at all times eligible for employment in compliance with the provisions and prohibitions of Code Section 7-1-1004;

(iv) Has not been issued a cease and desist order in the past five years if such order was based on a violation of Code Section 7-1-1002 or 7-1-1013; and

(v) Has not had a mortgage lender, mortgage broker, or mortgage loan originator license revoked within the past five years.

(20) "Mortgage lender" means any person who directly or indirectly makes, originates, underwrites, holds, or purchases mortgage loans or who services mortgage loans.

(21) "Mortgage loan" means a loan or agreement to extend credit made to a natural person, which loan is secured by a deed to secure debt, security deed, mortgage, security instrument, deed of trust, or other document representing a security interest or lien upon any interest in one-to-four family residential property located in Georgia, regardless of where made, including the renewal or refinancing of any such loan.

(22) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. Generally, this does not include an individual engaged solely as a loan processor or underwriter except as otherwise provided in subsection (a.1) of Code Section 7-1-1002; a person or entity that only performs real estate brokerage activities and is licensed in accordance with Georgia law unless the person or entity is compensated by a mortgage lender, mortgage broker, or other mortgage loan originator or by any agent of such mortgage lender, mortgage broker, or other mortgage loan originator; and does not include a person or entity solely involved in extensions of credit relating to time-share plans, as that term is defined in 11 U.S.C. Section 101(53D).

(23) "Nationwide Multistate Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators, mortgage loan brokers, and mortgage loan lenders, or its successor.

(24) "Nontraditional mortgage product" means any mortgage product other than a 30 year fixed rate mortgage.

(25) "Person" means any individual, sole proprietorship, corporation, limited liability company, partnership, trust, or any other group of individuals, however organized.

(26) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with

respect to any such transaction; engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and offering to engage in any activity or act in any capacity described herein.

(27) "Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator, is registered with and maintains a unique identifier through the Nationwide Multistate Licensing System and Registry, and is an employee of:

(A) A depository institution;

(B) A subsidiary that is:

(i) Owned and controlled by a depository institution; and

(ii) Regulated by a federal banking agency; or

(C) An institution regulated by the Farm Credit Administration.

(28) Reserved.

(29) "Residential property" means improved real property used or occupied, or intended to be used or occupied, as the primary residence of a natural person. Such term does not include rental property or second homes. A natural person can have only one primary residence.

(30) "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in 15 U.S.C. Section 1602 of the Truth in Lending Act, or residential real estate upon which is constructed or intended to be constructed a dwelling.

(31) "Residential real estate" means any real property located in Georgia upon which is constructed or intended to be constructed a dwelling.

(32) "Service a mortgage loan" means the collection or remittance or the right to collect or remit payments of principal, interest, trust items such as insurance and taxes, and any other payments pursuant to a mortgage loan.

(33) "Ultimate equitable owner" means a natural person who, directly or indirectly, owns or controls an ownership interest in a corporation or any other form of business organization, regardless of whether such natural person owns or controls such ownership interest through one or more natural persons or one or more proxies, powers of attorney, nominees, corporations, associations, limited

liability companies, partnerships, trusts, joint-stock companies, other entities or devices, or any combination thereof.

(34) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Multistate Licensing System and Registry.

History.

Code 1981, § 7-1-1000, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 1; Ga. L. 1996, p. 848, § 13; Ga. L. 1997, p. 143, § 7; Ga. L. 1997, p. 485, §§ 29, 30; Ga. L. 2000, p. 174, § 22; Ga. L. 2005, p. 826, § 29/SB 82; Ga. L. 2005, p. 1030, § 13/SB 55; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2011, p. 518, § 6/HB 239; Ga. L. 2015, p. 5, § 7/HB 90; Ga. L. 2016, p. 390, § 6-1/HB 811; Ga. L. 2018, p. 214, § 24/HB 780; Ga. L. 2019, p. 89, § 1/HB 212; Ga. L. 2019, p. 828, § 31/HB 185; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2022, p. 403, § 1/SB 470; Ga. L. 2024, p. 354, § 1-18/HB 876, effective July 1, 2024; Ga. L. 2024, p. 1052, § 1(a)(27)/SB 448, effective July 1, 2024.

Amendments.

The 2022 amendment, effective May 2, 2022, added paragraph (5.1).

The first 2024 amendment, effective July 1, 2024, in paragraphs (4), (16), and (22), deleted "or registered" following "licensed" and, in paragraph (28), substituted "Reserved" for "'Registrant' means any person required to register pursuant to Code Sections 7-1-1001 and 7-1-1003.2".

The second 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, inserted "the term" following "paragraph," in paragraph (15).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1993, "attorney" was substituted for "attorneys" in paragraph (12) (now paragraph (33)).

Editor's notes.

Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

Law reviews.

For note, "State-Imposed Interest Rate Ceilings and Home Equity Loan Scandal in Georgia," see 11 Ga. St. U.L. Rev. 591 (1995).

For survey article on real property law, see 60 Mercer L. Rev. 345 (2008).

JUDICIAL DECISIONS

Construction. — Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1000 et seq., gives rights not had under the common law and, thus, the Act is in derogation of the common law and must be strictly construed. Hartford Fire Ins. Co. v. iFreedom Direct Corp., 312 Ga. App. 262, 718 S.E.2d 103, 2011 Ga. App. LEXIS 934 (2011), cert. denied, No. S12C0408, 2012 Ga. LEXIS 246 (Ga. Feb. 27, 2012).

7-1-1001. Exemption for certain persons and entities; registration requirements; authorized actions of licensed mortgage lenders; violations.

(a) The following persons shall not be required to obtain a mortgage loan originator, mortgage broker, or mortgage lender license and shall not be subject to the provisions of this article but may be subject to registration requirements:

(1) Any lender authorized to engage in business as a bank, credit card bank, savings institution, or credit union under the laws of the

United States, any state or territory of the United States, or the District of Columbia, the deposits of which are federally insured;

(2) Any wholly owned subsidiary of any lender described in paragraph (1) of this subsection. Any subsidiary that violates any applicable law of this article may be subject to a cease and desist order as provided for in Code Section 7-1-1018;

(2.1) Any wholly owned subsidiary of any bank holding company;

(3) Registered mortgage loan originators, when acting for an entity described in paragraph (1) or (2) of this subsection. To qualify for this exemption, an individual shall be registered with and maintain a unique identifier through registration with the Nationwide Multistate Licensing System and Registry;

(4) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of such individual. For purposes of this exemption, the term "immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. Immediate family members shall include stepparents, stepchildren, stepsiblings, and adoptive relationships;

(5) An attorney licensed to practice law in Georgia who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;

(6) A Georgia licensed real estate broker or real estate salesperson not actively engaged in the business of negotiating mortgage loans or a Georgia licensed real estate salesperson providing information to a lender or its agent related to an existing or potential short sale transaction in which a separate fee is not received by such real estate broker or real estate salesperson; provided, however, that such real estate broker or real estate salesperson who directly or indirectly negotiates, places, or finds a mortgage for others shall not be exempt from the provisions of this article;

(7) Any person performing any act relating to mortgage loans under order of any court;

(8) Any natural person or the estate of or trust created by a natural person making a mortgage loan with his or her own funds for his or her own investment, including those natural persons or the estates of or trusts created by such natural persons who make a purchase money mortgage for financing sales of their own property;

(9) Any agency, division, or instrumentality of the federal government of the United States of America; the government of the State of

Georgia; the government of any other state of the United States; or any county or municipal government of the State of Georgia. This includes, but is not limited to, the Georgia Housing and Finance Authority, the Georgia Development Authority, the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Government National Mortgage Association (GNMA), the United States Department of Housing and Urban Development (HUD), the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), the Farmers Home Administration (FmHA), and the Farm Credit Administration and its chartered agricultural credit associations;

(10) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that serves as the individual's residence;

(11) Any person who makes a mortgage loan to an employee of such person as an employment benefit;

(12) Any licensee under Chapter 3 of this title, the "Georgia Installment Loan Act," provided that any mortgage loan made by such licensee is for $3,000.00 or less;

(13) Nonprofit corporations making mortgage loans to promote home ownership or improvements for the disadvantaged;

(14) A natural person employed by a licensed mortgage broker, a licensed mortgage lender, or any person exempted from the mortgage broker or mortgage lender licensing requirements of this article when acting within the scope of employment and under the supervision of the mortgage broker or mortgage lender or exempted person as an employee and not as an independent contractor, except those natural persons exempt from licensure as a mortgage broker or mortgage lender under paragraph (17) of this subsection. To be exempt from licensure as a mortgage broker or mortgage lender, a natural person shall be employed by only one such employer and shall be at all times eligible for employment in compliance with the provisions and prohibitions of Code Section 7-1-1004. Such natural person, who meets the definition of mortgage loan originator provided in paragraph (22) of Code Section 7-1-1000, shall be subject to mortgage loan originator licensing requirements. A natural person against whom a cease and desist order has become final shall not qualify for this exemption while under the employment time restrictions of subsection (p) of Code Section 7-1-1004 if such order was based on a violation of Code Section 7-1-1002 or 7-1-1013 or whose license was revoked within five years of the date such person was hired;

(15) Any person who purchases mortgage loans from a mortgage broker or mortgage lender solely as an investment and who is not in

the business of brokering, making, purchasing, or servicing mortgage loans;

(16) Any natural person who makes five or fewer mortgage loans in any one calendar year. A person other than a natural person who makes five or fewer mortgage loans in any one calendar year shall not be exempt from the licensing requirements of this article;

(17)(A) A natural person who is under an exclusive written independent contractor agreement with any person that is a licensed mortgage broker or mortgage lender, so long as such licensed mortgage broker or mortgage lender also meets the following requirements, subject to the review and approval of the department:

(i) The licensee continuously provides a surety bond as required by Code Section 7-1-1003.2 in the amount of $150,000.00 plus $50,000.00 per exempt natural person, not to exceed a maximum of $2 million to cover its activities as well as the activities of all of its natural persons exempted by this paragraph;

(ii) The licensee has applied for and been granted a mortgage broker or mortgage lender license, consistent with the provisions of this article and renewable annually;

(iii) The licensee has paid applicable fees for this license, which license fees shall be the sum of the cost of the individual mortgage broker license fees if each exempt natural person received a mortgage broker license;

(iv) The licensee has full and direct financial responsibility for the mortgage activities of such natural person and full and direct responsibility for the proper education of such natural person, the handling of consumer complaints related to such natural person, and the supervision of the mortgage activities of such natural person. The licensee shall supervise such natural person on an ongoing and regular basis and shall be accountable for the mortgage activities of such natural person;

(v) The licensee or the parent company if the licensee is a wholly owned subsidiary of or solely managed by the parent company:

(I) Files reports under Section 13(a) or 15(d) of the Securities Exchange Act of 1934;

(II) Has a market capitalization in excess of $4 billion at the time of the initial application for a mortgage broker or mortgage lender license based on the number of outstanding

shares at the end of the quarter as disclosed in the most recent Form 10-Q filed with the United States Securities and Exchange Commission; and

(III) Has equity securities that are listed on the New York Stock Exchange, the National Association of Securities Dealers Automated Quotations, or other stock market approved by the department in writing;

(vi) At the time of the initial application for a mortgage broker or mortgage lender license, the licensee has never had a mortgage lender license or mortgage broker license revoked or suspended in Georgia or any other state;

(vii) The licensee is licensed as a mortgage lender or mortgage broker in ten or more states; and

(viii) At the time of the initial application for a mortgage broker or mortgage lender license, the licensee has received at least a satisfactory evaluation in the most recent examination conducted by the majority of the states in which it has a mortgage broker or mortgage lender license and has adequately addressed with the department any unsatisfactory evaluations in the most recent examination conducted by any state in which it has a mortgage broker or mortgage lender license.

(B) To maintain the exemption, a natural person shall:

(i) Solicit, process, place, or negotiate a mortgage loan to be brokered or made solely by the licensee;

(ii) Be at all times in compliance with this article, including the provisions and prohibitions of Code Section 7-1-1013, the provisions and prohibitions applicable to employees under Code Section 7-1-1004, and the department's rules and regulations;

(iii) Be licensed as a mortgage loan originator in Georgia and engage in residential mortgage related activity exclusively for the licensee; and

(iv) Be licensed as an insurance agent with the office of the Commissioner of Insurance or registered as a broker-dealer agent with the Secretary of State.

(18)(A) An employee of a bona fide nonprofit corporation who acts as a mortgage loan originator only with respect to his or her work duties with the bona fide nonprofit corporation and who acts as a mortgage loan originator only with respect to mortgage loans with terms that are favorable to the borrower shall be exempt

from obtaining a mortgage loan originator license. In order for a corporation to be considered a bona fide nonprofit corporation under this paragraph, the department shall determine, under criteria and pursuant to processes established by the department, that the nonprofit corporation:

(i) Has the status of a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) Promotes affordable housing;

(iii) Conducts its activities in a manner that serves public or charitable purposes rather than commercial purposes;

(iv) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;

(v) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients;

(vi) Provides or identifies for the borrower mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs. In order for mortgage loans to have terms that are favorable to the borrower, the department shall determine that the terms are consistent with loan origination in a public or charitable context rather than in a commercial context; and

(vii) Satisfies the exemption from licensure set forth in paragraph (13) of this subsection.

(B) The department shall periodically examine the books and activities of an organization it has previously identified as a bona fide nonprofit corporation for purposes of this paragraph in order to determine if it continues to meet the criteria for such status under subparagraph (A) of this paragraph. In conducting such an examination, the department shall have all of the powers set forth in Code Section 7-1-1009. In the event the nonprofit corporation no longer qualifies for such status, then the employee exemption from having a mortgage loan originator license shall no longer be applicable;

(19) Any person who purchases or holds closed mortgage loans for the sole purpose of securitization into a secondary market, provided that such person holds the individual loans for 14 days or less and does not service the loans, but with such loans being serviced instead by a person licensed as a mortgage lender or exempt from the licensing requirements of this article; or

(20) Any trust, the trustee of which is a bank that satisfies the exemption from licensure set forth in paragraph (1) of this subsection, that purchases or holds closed mortgage loans for the sole purpose of securitization or otherwise transferring the loans into a secondary market, provided that the loans held in the trust are not serviced by the trust or the trustee of the trust but are instead serviced by a person licensed as a mortgage lender or exempt from the licensing requirements of this article. A trust that commences foreclosure proceedings on a mortgage loan held by the trust either through the trustee of the trust or otherwise shall not qualify for this exemption.

(b) Exemptions enumerated in paragraphs (1), (2), (2.1), (7), (8), (9), (11), (12), (13), (14), (15), (16), and (17) of subsection (a) of this Code section shall be exemptions from licensure as a mortgage broker or mortgage lender only. Nothing in paragraphs (1), (2), (2.1), (7), (8), (9), (11), (12), (13), (14), (15), (16), and (17) of subsection (a) of this Code section shall be intended to exempt natural persons from compliance with mortgage loan originator licensing requirements as set forth in this article and the Secure and Fair Enforcement for Mortgage Licensing Act of 2008. Individuals that transact business as a mortgage loan originator, unless specifically exempted by paragraph (3), (4), (5), (6), (10), or (18) of subsection (a) of this Code section, shall obtain a mortgage loan originator license as required by Code Section 7-1-1002 whether they are employed by a mortgage broker, mortgage lender, or person exempted as a mortgage broker or lender as set forth in this subsection.

(c) A licensed mortgage lender is authorized to engage in all activities that are authorized for a mortgage broker and, as a result, shall not be required to obtain a mortgage broker license.

(d) Any violation of this article or the rules and regulations of the department by a natural person exempted pursuant to paragraph (17) of subsection (a) of this Code section shall be deemed to be a violation by both the licensee and the exempt natural person for purposes of the enforcement provisions of this article.

History.

Code 1981, § 7-1-1001, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 2; Ga. L. 1996, p. 848, § 14; Ga. L. 1997, p. 485, § 31; Ga. L. 1999, p. 674, § 30; Ga. L. 2000, p. 174, § 23; Ga. L. 2003, p. 843, § 16; Ga. L. 2006, p. 750, § 1/SB 505; Ga. L. 2007, p. 502, § 33/SB 70; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2010, p. 878, § 7/HB 1387; Ga. L. 2011, p. 518, § 7/HB 239; Ga. L. 2011, p. 752, § 7/HB 142; Ga. L. 2012, p. 775, § 7/HB 942; Ga. L. 2013, p. 638, § 1/HB 83; Ga. L. 2014, p. 421, § 1/HB 750; Ga. L. 2016, p. 390, §§ 6-1, 7-4/HB 811; Ga. L. 2019, p. 828, § 32/HB 185; Ga. L. 2020, p. 156, § 9/SB 462; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2021, p. 323, § 36/HB 111; Ga. L. 2022, p. 220, § 35/HB 891; Ga. L. 2022, p. 352, § 7/HB 1428; Ga. L. 2023, p. 651, § 41/HB 55, effective July 1, 2023; Ga. L. 2024, p. 354, § 1-19/HB 876, effective July 1, 2024; Ga. L. 2024, p. 1052, § 1(a)(28)/SB 448, effective July 1, 2024.

Amendments.

The first 2022 amendment, effective July 1, 2022, substituted "salesperson; provided, however, that" for "salesperson; however," in paragraph (a)(6), rewrote paragraph (a)(17), substituted "; or" for a period at the end of subparagraph (a)(18)(B), added paragraph (a)(19); and added subsection (d).

The second 2022 amendment, effective May 2, 2022, part of an Act to revise, modernize, and correct the Code, substituted "instrumentality of the" for "instrumentality of: the" in paragraph (a)(9).

The 2023 amendment, effective July 1, 2023, substituted "subsection (p) of Code Section 7-1-1004" for "subsection (o) of Code Section 7-1-1004" in the last sentence of paragraph (a)(14) and rewrote paragraph (a)(17).

The first 2024 amendment, effective July 1, 2024, deleted ", if registration of such persons is required by this article" from the beginning of subsection (a); in paragraph (a)(2.1), deleted "; provided, however, that such subsidiary shall be subject to registration requirements in order to facilitate the department's handling of consumer inquiries. Such requirements are contained in Code Section 7-1-1003.3" from the end; in paragraph (a)(14), substituted "licensed mortgage" for "licensed or registered mortgage" twice near the beginning in the first sentence; deleted "or" from the end of subparagraph (a)(18)(B); in paragraph (a)(19), substituted "14 days or less and does not service the loans, but with such loans being serviced instead by a person licensed as a mortgage lender or exempt from the licensing requirements of this article; or" for "less than seven days"; and added paragraph (a)(20).

The second 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "engage" for "engages" in division (a)(17)(B)(iii) and revised punctuation in divisions (a)(18)(A)(iii) and (a)(18)(A)(vi).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1993, a semicolon was substituted for a period at the end of paragraph (6) of subsection (a) (now paragraph (a)(8)).

Pursuant to Code Section 28-9-5, in 2000, "Code section" was substituted for "subsection" in the first sentence in paragraph (2) (now paragraph (a)(2)).

Law reviews.

For annual survey on real property, see 65 Mercer L. Rev. 233 (2013).

7-1-1001.1. Requirement for mortgage loan originator license; application to sellers of mobile homes.

(a) It shall be prohibited for any person to engage in the activities of a mortgage loan originator without first obtaining and maintaining a mortgage loan originator license as set forth in this article.

(b) The department shall have the broad administrative authority to administer, interpret, and enforce this article and the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, and promulgate rules or regulations implementing it, in order to carry out the intentions of the federal legislation. Such administrative authority of the department shall include, but shall not be limited to, the authority to promulgate rules and regulations to implement the provisions of such federal legislation related to the temporary authority of mortgage loan originators.

(c) The provisions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 shall apply to the activities of retail sellers of manufactured homes to the extent determined by the United

States Department of Housing and Urban Development through written guidelines, rules, regulations, or interpretive letters.

History.
Code 1981, § 7-1-1001.1, enacted by Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2011, p. 518, § 8/HB 239; Ga. L. 2019, p. 828, § 33/HB 185.

7-1-1002. Prohibited transactions; liability.

(a) It shall be prohibited for any person to transact business in this state directly or indirectly as a mortgage broker, a mortgage lender, or a mortgage loan originator unless such person:

(1) Is licensed under this article by the department utilizing the Nationwide Multistate Licensing System and Registry;

(2) Is exempted from the licensing requirements of this article pursuant to Code Section 7-1-1001;

(3) In the case of an employee of a mortgage broker or mortgage lender, has qualified to be relieved of the necessity for a license under the employee exemption in paragraph (14) of subsection (a) of Code Section 7-1-1001; or

(4) In the case of a mortgage loan originator, is supervised by a mortgage broker, mortgage lender, or exemptee on a daily basis while performing mortgage functions; is employed by and works exclusively for only one mortgage broker, mortgage lender, or exemptee; and is paid on a W-2 basis by the employing mortgage broker, mortgage lender, or exemptee, except those natural persons exempt from licensure as a mortgage broker or mortgage lender under paragraph (17) of subsection (a) of Code Section 7-1-1001. Each licensed mortgage loan originator shall register with and maintain a valid unique identifier issued by the Nationwide Multistate Licensing System and Registry. For the purposes of implementing an orderly and efficient mortgage loan originator process, the department may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications.

(a.1) A loan processor or underwriter who is an independent contractor shall not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a mortgage broker or mortgage lender license. Each independent contractor loan processor or underwriter licensed as a mortgage broker or mortgage lender shall have and maintain a valid unique identifier issued by the Nationwide Multistate Licensing System and Registry.

(b) It shall be prohibited for any person, as defined in Code Section 7-1-1000, to purchase, sell, or transfer one or more mortgage loans or

loan applications from or to a mortgage loan originator, mortgage broker, or mortgage lender who is neither licensed nor exempt from the licensing provisions of this article. Such a purchase shall not affect the obligation of the borrower under the terms of the mortgage loan. The department shall provide for distribution or availability of information regarding approved or revoked licenses.

(c) Every person who directly or indirectly controls a person who violates subsection (a), (a.1), or (b) of this Code section, every general partner, executive officer, joint venturer, or director of such person, and every person occupying a similar status or performing similar functions as such person violates with and to the same extent as such person, unless the person whose violation arises under this subsection sustains the burden of proof that he or she did not know and, in the exercise of reasonable care, could not have known of the existence of the facts by reason of which the original violation is alleged to exist.

History.

Code 1981, § 7-1-1002, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1995, p. 673, § 33; Ga. L. 1996, p. 848, § 15; Ga. L. 1998, p. 795, § 28; Ga. L. 2000, p. 174, § 24; Ga. L. 2003, p. 843, § 17; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2010, p. 878, § 7/HB 1387; Ga. L. 2011, p. 518, § 9/HB 239; Ga. L. 2015, p. 5, § 7/HB 90; Ga. L. 2016, p. 390, § 6-1/HB 811; Ga. L. 2017, p. 774, § 7/HB 323; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2024, p. 354, § 1-20/HB 876, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, substituted "under this article" for "or registered as such" in paragraph (a)(1), substituted "requirements of this article" for "or registration requirements" in paragraph (a)(2), and deleted "or registration" preceding "provisions" near the end of the first sentence in subsection (b).

7-1-1003. Applications for licenses.

(a) An application for a license under this article shall be made in writing, under oath, and in such form as the department may prescribe. Each such form shall contain content as set forth by rule, regulation, instruction, or procedure of the department and may be changed or updated as necessary by the department in order to carry out the purposes of this article. The department, by regulation, may prescribe different classes of licenses for mortgage loan originators, mortgage brokers, and mortgage lenders.

(b) The application shall include the following:

(1) The legal name and address of the applicant and, if the applicant is a partnership, association, corporation, or other business entity, of every member, officer, and director thereof;

(2) All names, including, but not limited to, website domain names (URLs), under which the applicant will conduct business in Georgia;

(3) For mortgage brokers and mortgage lenders, the address of

the main office or principal place of business where books and records are located and any other locations at which the applicant will engage in any business activity covered by the provisions of this article, together with the mailing address where the department shall send all correspondence, orders, or notices. Any changes in this mailing address shall be delivered in writing to the department before the change is effective;

(4) For mortgage brokers and mortgage lenders, the complete name and address of the applicant's initial registered agent and registered office for service of process in Georgia. If the applicant is a Georgia corporation, this registered agent shall be the same as the agent recorded with the Secretary of State. Any changes in the registered agent or registered office shall be delivered in writing to the department and the Secretary of State, if applicable, before the change is effective. The registered agent may, but is not required to, be an officer of the applicant, and the registered office shall be a Georgia location where the registered agent may be served;

(5) For mortgage brokers and mortgage lenders, the general plan and character of the business;

(6) For mortgage brokers and mortgage lenders, a financial statement of the applicant;

(7) For mortgage brokers and mortgage lenders, such other data, financial statements, and pertinent information as the department may require with respect to the applicant, its directors, trustees, officers, members, agents, or ultimate equitable owners of 10 percent or more of the applicant; and

(8) For mortgage brokers and mortgage loan originators, evidence of satisfaction of experience or education requirements, as required by regulations of the department.

(c) All applications filed under this Code section shall be filed together with:

(1) Investigation and supervision fees established by regulation;

(2) The items required by Code Section 7-1-1003.2; and

(3) Other information as may be required by the department.

History.

Code 1981, § 7-1-1003, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 3; Ga. L. 1996, p. 848, § 16; Ga. L. 1999, p. 674, § 31; Ga. L. 2000, p. 174, § 25; Ga. L. 2001, p. 970, § 10; Ga. L. 2005, p. 826, § 30/SB 82; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2015, p. 344, § 33/HB 184.

JUDICIAL DECISIONS

Commercial property. — Earlier version of O.C.G.A. § 7-1-1003(c)(2) did

not include loans secured by commercial property represented to be residential; therefore, a purchaser of commercial property was unable to recover a bond to partially satisfy a judgment against a fraudulent mortgage broker. Accerbi v. Hartford Fire Ins. Co., No. CV 104-048, 2005 U.S. Dist. LEXIS 36032 (S.D. Ga. Sept. 26, 2005).

Acts not covered by bond. — Trial court erred in granting a purchaser summary judgment and in denying an insurer summary judgment in the purchaser's action to recover against a bond the insurer issued to a mortgage lender under the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1000 et seq., because the acts that gave rise to the judgment the purchaser obtained against the lender occurred before the bond was in effect, and the lender's failure to pay the judgment was not an act that authorized recovery against the bond; the bond did not contain a specific covenant extending liability to acts prior to the bond's execution. Hartford Fire Ins. Co. v. iFreedom Hartford Fire Ins. Co. v. iFreedom Direct Corp., 312 Ga. App. 262, 718 S.E.2d 103, 2011 Ga. App. LEXIS 934 (2011), cert. denied, No. S12C0408, 2012 Ga. LEXIS 246 (Ga. Feb. 27, 2012).

7-1-1003.1. [Reserved] Physical place of business.

History.

Ga. L. 1998, p. 590, § 1; Ga. L. 1999, p. 674, § 32; Ga. L. 2009, p. 252, § 1/HB 312; repealed by Ga. L. 2020, p. 320, § 18/HB 781, effective January 1, 2021.

Editor's notes.

Ga. L. 2020, p. 320, § 18/HB 781 repealed and reserved this Code section, effective January 1, 2021.

7-1-1003.2. Financial requirements for licensing and registration; bond requirements.

(a) Each licensed mortgage broker shall provide the department with a bond. The bond for a mortgage broker shall be in the principal sum of $150,000.00 or such greater sum as the department may require as set forth by regulation based on an amount that reflects the dollar amount of loans originated, and the bond shall meet the other requirements of subsection (d) of this Code section.

(b) Except as otherwise provided in subsection (d) of this Code section, the department shall not license any mortgage lender unless the applicant provides the department with a bond. The bond for a mortgage lender shall be in the principal sum of $250,000.00 or such greater sum as the department may require as set forth by regulation based on an amount that reflects the dollar amount of loans originated, and which bond shall meet the other requirements of subsection (d) of this Code section.

(c) Each mortgage loan originator shall be covered by the surety bond of his or her sponsoring licensed mortgage broker or lender. In the event that the mortgage loan originator is an employee of a licensed mortgage broker or lender or under an exclusive written independent contractor agreement as described in paragraph (17) of Code Section 7-1-1001, the surety bond of such licensed mortgage broker or lender may be used in lieu of the mortgage loan originator's surety bond requirement.

(d) General bond requirements:

(1) The bond requirements for mortgage loan originators, mortgage brokers, and mortgage lenders are continuous in nature and shall be maintained at all times as a condition of licensure;

(2) The corporate surety bond shall be for a term and in a form satisfactory to the department, shall be issued by a bonding company or insurance company authorized to do business in this state and approved by the department, and shall run to the State of Georgia for the benefit of any person damaged by noncompliance of a licensee with this article, the "Georgia Residential Mortgage Act," or with any condition of such bond. Damages under the bond shall include moneys owed to the department for fees, fines, or penalties. Such bond shall be continuously maintained thereafter in full force. Such bond shall be conditioned upon the applicant or the licensee conducting his or her licensed business in conformity with this article and all applicable laws;

(3) When an action is commenced on a licensee's bond, the department may require the filing of a new bond; and

(4) Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.

(e) Any person including the department who may be damaged by noncompliance of a licensee with any condition of a bond or this article, the "Georgia Residential Mortgage Act," may proceed on such bond against the principal or surety thereon, or both, to recover damages.

History.

Code 1981, § 7-1-1003.2, enacted by Ga. L. 2000, p. 174, § 26; Ga. L. 2001, p. 970, § 11; Ga. L. 2003, p. 843, § 18; Ga. L. 2004, p. 458, § 11; Ga. L. 2005, p. 826, § 31/SB 82; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2011, p. 518, § 10/HB 239; Ga. L. 2017, p. 193, § 24/HB 143; Ga. L. 2024, p. 354, § 1-21/HB 876, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, deleted "or registered" preceding "mortgage broker" in the first sentence in subsection (a) and three times in subsection (c) and, in the first sentence in subsection (b), deleted "or register" following "license" and "or registrant" following "applicant".

Law reviews.

For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001).

JUDICIAL DECISIONS

Acts not covered by bond. — Trial court erred in granting a purchaser summary judgment and in denying an insurer summary judgment in the purchaser's action to recover against a bond the insurer issued to a mortgage lender under the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1000 et seq., because the acts that gave rise to the judgment the purchaser obtained against the lender occurred before the bond was in effect, and the lender's failure to pay the

judgment was not an act that authorized recovery against the bond; the bond did not contain a specific covenant extending liability to acts prior to the bond's execution. Hartford Fire Ins. Co. v. iFreedom Hartford Fire Ins. Co. v. iFreedom Direct Corp., 312 Ga. App. 262, 718 S.E.2d 103, 2011 Ga. App. LEXIS 934 (2011), cert. denied, No. S12C0408, 2012 Ga. LEXIS 246 (Ga. Feb. 27, 2012).

Bond was performance bond, giving surety ability to collaterally attack underlying judgment. — *Unpublished decision:* Sureties on a performance bond for a mortgage lender under O.C.G.A. § 7-1-1003.2(b) of the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1000 et seq., were not liable on the bond for a default judgment against the lender because the underlying action should have been barred by res judicata due to a prior suit brought by the same borrower in federal court. Federer v. Zurich Am. Ins. Co., 701 Fed. Appx. 835, 2017 U.S. App. LEXIS 12358 (11th Cir. 2017).

7-1-1003.3. [Reserved] Application for registration.

History.

Code 1981, § 7-1-1003.3, enacted by Ga. L. 2000, p. 174, § 26; Ga. L. 2004, p. 458, § 12; Ga. L. 2009, p. 252, § 1/HB 312; repealed by Ga. L. 2024, p. 354, § 1-22/HB 876, effective July 1, 2024.

Editor's notes.

Ga. L. 2024, p. 354, § 1-22/HB 876, repealed and reserved this Code section, effective July 1, 2024.

7-1-1003.4. [Reserved] Notification statement.

History.

Code 1981, § 7-1-1003.4, enacted by Ga. L. 2000, p. 174, § 26; repealed by Ga. L. 2009, p. 252, § 1/HB 312, effective July 1, 2009.

Editor's notes.

Ga. L. 2009, p. 252, § 1/HB 312 repealed and reserved this Code section, effective July 1, 2009.

7-1-1003.5. Use of Nationwide Multistate Licensing System and Registry.

(a) The department is authorized to:

(1) Participate in the Nationwide Multistate Licensing System and Registry in order to facilitate the sharing of information and standardization of the licensing and application processes for mortgage loan originators, mortgage brokers, and mortgage lenders by electronic or other means;

(2) Enter into operating agreements, information sharing agreements, interstate cooperative agreements, and other contracts necessary for the department's participation in the Nationwide Multistate Licensing System and Registry;

(3) Request that the Nationwide Multistate Licensing System and Registry adopt an appropriate privacy, data security, and security breach notification policy that is in full compliance with existing state and federal law;

(4) Disclose or cause to be disclosed without liability via the Nationwide Multistate Licensing System and Registry applicant and licensee information, including, but not limited to, violations of this article and enforcement actions to facilitate regulatory oversight of mortgage loan originators, mortgage brokers, and mortgage lenders across state jurisdictional lines;

(5) Establish and adopt, by rule or regulation, requirements for participation by applicants and licensees in the Nationwide Multistate Licensing System and Registry upon the department's determination that each new or amended requirement is consistent with both the public interest and the purposes of this article; and

(6) Pay all fees received from licensees and applicants related to applications, licenses, and renewals to the Office of the State Treasurer; provided, however, that the department may net such fees to recover the cost of participation in the Nationwide Multistate Licensing System and Registry.

(b) Irrespective of its participation in the Nationwide Multistate Licensing System and Registry, the department retains full and exclusive authority over determinations whether to grant, renew, suspend, or revoke licenses issued to mortgage loan originators, mortgage brokers, and mortgage lenders under this article. Nothing in this Code section shall be construed to reduce this authority.

History.
Code 1981, § 7-1-1003.5, enacted by Ga. L. 2008, p. 539, § 1/HB 921; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2010, p. 863, § 2/SB 296; Ga. L. 2011, p. 518, § 11/HB 239; Ga. L. 2012, p. 775, § 7/HB 942; Ga. L. 2016, p. 390, § 6-1/HB 811; Ga. L. 2020, p. 493, § 7/SB 429.

7-1-1003.6. Privileged or confidential nature of information; exception.

(a) Except as otherwise provided in the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, the requirements under any federal law or Georgia state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Multistate Licensing System and Registry and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Multistate Licensing System and Registry. Such information and material may be shared with all state and federal regulatory agencies or law enforcement authorities without the loss of privilege or the loss of confidentiality protection provided by federal or state law.

(b) Information or material that is subject to privilege or confidentiality under subsection (a) of this Code section shall not be subject to:

(1) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(2) Subpoena or discovery, or admission into evidence, in any private civil action unless with respect to any privilege held by the Nationwide Multistate Licensing System and Registry regarding such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person that privilege.

(c) This Code section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, licensees that are included in the Nationwide Multistate Licensing System and Registry for access by the public.

History.

Code 1981, § 7-1-1003.6, enacted by Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2011, p. 518, § 12/HB 239; Ga. L. 2016, p. 390, § 6-1/HB 811; Ga. L. 2020, p. 493, § 7/SB 429.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2009, in subsection (a), "confidentiality" was substituted for "confidentially" in the first sentence, and in the beginning of subsection (b), "to privilege or confidentiality" was substituted for "to a privilege or confidentially".

7-1-1003.7. Approval of mortgage industry related courses; application; renewal applications; audits.

(a) Any education provider which offers mortgage industry related courses designed to satisfy education requirements as provided in subsection (d) of Code Section 7-1-1004 and associated department rules shall be approved by the department.

(b) An application under this Code section shall be made in writing, under oath, and in such form as the department may prescribe. The application shall include the following:

(1) The name and address of the applicant and, if the entity is not a sole proprietorship, the name of every member, officer, principal, or director thereof;

(2) The name under which the applicant will conduct business in Georgia;

(3) A proposed certificate program or course of study which lists each subject to be taught and credit or classroom hours for each course designed to satisfy education requirements;

(4) Qualifications and credentials of any and all instructors teaching courses named in paragraph (3) of this subsection; and

(5) Other information as may be required by the department.

(c) The initial application shall be filed with the department along with fees established by rule, no portion of which shall be refunded or prorated. Upon receipt of an application, the department shall conduct such investigation as it deems necessary to determine that the applicant and the individuals who direct the affairs or establish policy for the applicant, including the officers, directors, or the equivalent, are of good character and ethical reputation; that the applicant and such persons meet the requirements of subsection (i) of Code Section 7-1-1004; that the applicant and such persons demonstrate reasonable financial responsibility; that the applicant has and maintains a registered agent for service in this state; and that the applicant and such persons are qualified by education and experience to present courses directly related to the mortgage brokering process.

(d) All education providers approved under this Code section shall be required to file a renewal application on an annual basis in writing, under oath, and in such a form as the department may prescribe. A fee established by the department shall be paid with each renewal application, which fee shall not be refunded or prorated. Failure to file a renewal application shall result in the education provider being removed from the department list of approved mortgage education providers.

(e) The department may audit or investigate course offerings of the applicant or approved mortgage education provider as it deems necessary and without cost to the department.

History.

Code 1981, § 7-1-1003.7, enacted by Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2010, p. 878, § 7/HB 1387; Ga. L. 2011, p. 518, § 13/HB 239; Ga. L. 2023, p. 651, § 42/HB 55, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, substituted "subsection (d) of Code Section 7-1-1004" for "subsection (c) of Code Section 7-1-1004" near the end of subsection (a) and substituted "subsection (i) of Code Section 7-1-1004;" for "subsection (h) of Code Section 7-1-1004;" in the last sentence of subsection (c).

7-1-1004. Investigation of applicant; requirements for applicant; denial and revocation of license.

(a) As used in this Code section, the term "conviction data" means a record of a finding, verdict, or plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(b) Upon receipt of an application for license, the department shall conduct such investigation as it deems necessary to determine that the mortgage broker and mortgage lender applicant and the individuals who direct the affairs or establish policy for the mortgage broker and mortgage lender applicant, including the officers, directors, or the equivalent, are of good character and ethical reputation; that the mortgage broker and mortgage lender applicant is not disqualified for licensure as a result of adverse administrative civil or criminal findings in any jurisdiction; that the mortgage broker and mortgage lender applicant and such persons meet the requirements of subsection (i) of this Code section; that the mortgage broker and mortgage lender applicant and such persons demonstrate reasonable financial responsibility; that the mortgage broker and mortgage lender applicant has reasonable policies and procedures to receive and process customer grievances and inquiries promptly and fairly; and that the mortgage broker and mortgage lender applicant has and maintains a registered agent for service in this state.

(c) The department shall not license any mortgage broker and mortgage lender applicant unless it is satisfied that the mortgage broker and mortgage lender applicant may be expected to operate its mortgage lending or brokerage activities in compliance with the laws of this state and in a manner which protects the contractual and property rights of the citizens of this state.

(d) The department may establish by rule or regulation minimum education or experience requirements for an applicant for a mortgage broker license or renewal of such a license.

(e) Upon receipt of an application for a mortgage loan originator license, the department shall conduct such investigation as it deems necessary to determine that the mortgage loan originator applicant:

(1) Has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation;

(2) Has not been convicted of, or pleaded guilty or nolo contendere to, a felony in a domestic, foreign, or military court; provided, however, that any pardon of a conviction shall not be a conviction for purposes of this subsection;

(3) Has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this article;

(4) Has completed the prelicensing education requirement described in subsection (f) of this Code section; and

(5) Has passed a written test that meets the test requirement described in subsection (h) of this Code section.

(f)(1) An individual shall complete at least 20 hours of prelicensing education courses reviewed and approved by the Nationwide Multistate Licensing System and Registry based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider. The 20 hours of prelicensing education shall include at least:

(A) Three hours of federal law and regulations;

(B) Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(C) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) Nothing in this subsection shall preclude any prelicensing education course, as approved by the Nationwide Multistate Licensing System and Registry, that is provided by the employer of the mortgage loan originator applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

(3) Prelicensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Multistate Licensing System and Registry.

(4) The prelicensing education requirements approved by the Nationwide Multistate Licensing System and Registry in paragraph (1) of this subsection for any state shall be accepted as credit toward completion of prelicensing education requirements in Georgia.

(5) A person previously licensed under this article applying to be licensed again shall prove that he or she has completed all of the continuing education requirements for the year in which the license was last held.

(6) The department is authorized to enact rules and regulations related to the expiration of prelicensing education.

(g)(1) In order to meet the written test requirement referred to in subsection (e) of this Code section for mortgage loan originators, an individual shall pass, in accordance with the standards established under this subsection, a qualified written test developed by the Nationwide Multistate Licensing System and Registry and administered by a test provider approved by the Nationwide Multistate Licensing System and Registry based upon reasonable standards.

(2) A written test shall not be treated as a qualified written test for purposes of this subsection unless the test adequately measures

the applicant's knowledge and comprehension in appropriate subject areas, including:

(A) Ethics;

(B) Federal law and regulation pertaining to mortgage origination;

(C) State law and regulation pertaining to mortgage origination; and

(D) Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(3) Nothing in this subsection shall prohibit a test provider approved by the Nationwide Multistate Licensing System and Registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(4)(A) An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.

(B) An individual may retake a test three consecutive times with each consecutive taking occurring at least 30 days after the preceding test.

(C) After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

(D) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

(h)(1) In order to meet the annual continuing education requirements referred to in paragraph (2) of subsection (e) of Code Section 7-1-1005, a licensed mortgage loan originator shall complete at least eight hours of education approved in accordance with paragraph (2) of this subsection which shall include at least:

(A) Three hours of federal law and regulations;

(B) Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and

(C) Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) For purposes of paragraph (1) of this subsection, continuing education courses shall be reviewed and approved by the Nationwide Multistate Licensing System and Registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(3) Nothing in this subsection shall preclude any education course from approval by the Nationwide Multistate Licensing System and Registry that is provided by the employer of the mortgage loan originator or any entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

(4) Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Multistate Licensing System and Registry.

(5) A licensed mortgage loan originator, except as provided for in paragraph (9) of this subsection and subsection (g) of Code Section 7-1-1005, shall only receive credit for a continuing education course in the year in which the course is taken and shall not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(6) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours of credit for every one hour taught.

(7) An individual having successfully completed the education requirements approved by the Nationwide Multistate Licensing System and Registry in paragraph (1) of this subsection for any state shall be accepted as credit toward completion of continuing education requirements in Georgia.

(8) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license or the prelicensing education in the event the prelicensing education has expired pursuant to the rules and regulations of the department.

(9) An individual meeting the requirements of subsection (e) of Code Section 7-1-1005 may make up any deficiency in continuing education as established by rule or regulation of the department.

(i) The department shall not issue or may revoke a license if it finds that the mortgage loan originator, mortgage broker, or mortgage lender applicant or licensee, or any person who is a director, officer, partner,

covered employee, or ultimate equitable owner of 10 percent or more of the mortgage broker or mortgage lender applicant or licensee or any individual who directs the affairs or establishes policy for the mortgage broker or mortgage lender applicant or licensee, has been convicted of a felony in any jurisdiction or of a crime which, if committed within this state, would constitute a felony under the laws of this state. Other than a mortgage loan originator, for the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty or nolo contendere to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered, or an adjudication or sentence was otherwise withheld or not entered on the charge, unless and until such plea of guilty, or such decision, judgment, or verdict, shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented, or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction occurred. For purposes of this article, a mortgage loan originator shall be deemed to have been convicted of a crime if he or she has pleaded guilty to, been found guilty of, or entered a first offender or nolo contendere plea to a felony in a domestic, foreign, or military court; provided, however, that any pardon of a conviction shall not be a conviction.

(j) The department shall be authorized to obtain conviction data with respect to any mortgage loan originator, mortgage broker, or mortgage lender applicant or any person who is a director, officer, partner, covered employee, or ultimate equitable owner of 10 percent or more of the mortgage broker or mortgage lender applicant and any individual who directs the affairs of the company or establishes policy. Criminal history record checks may be requested by the department through the Georgia Crime Information Center and the Federal Bureau of Investigation. The department shall have the authority to receive the results of such checks. Fees required for a criminal history record check by the Georgia Crime Information Center or the Federal Bureau of Investigation shall be paid by the applicant or licensee.

(k) In connection with an application for licensing with respect to any mortgage loan originator applicant, mortgage broker, or lender applicant, at the direction of the department, the applicant shall, at a minimum, furnish to the Nationwide Multistate Licensing System and Registry information concerning the applicant's identity, including:

(1) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check;

(2) Personal history and experience in a form prescribed by the Nationwide Multistate Licensing System and Registry, including the submission of authorization for the Nationwide Multistate Licensing System and Registry and the department to obtain:

(A) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. Section 1681a(p); and

(B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction;

(3) For the purposes set forth in this subsection and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of such subsection, the department may use the Nationwide Multistate Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency; and

(4) For the purposes of this subsection and in order to reduce the points of contact which the department may have to maintain for purposes of such subsection, the department may use the Nationwide Multistate Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the department.

(l) Every mortgage broker and mortgage lender licensee and applicant shall be authorized and required to obtain criminal background checks on covered employees. Such criminal background checks shall be commercial background checks. Licensees and applicants shall be responsible for any applicable fees charged by the company performing the commercial background check. A licensee or applicant may only employ a covered employee whose criminal history has been checked in this manner and has been found to be in compliance with all lawful requirements prior to the initial date of hire. This provision shall not apply to directors, officers, partners, agents, or ultimate equitable owners of 10 percent or more or to persons who direct the company's affairs or establish policy, whose background shall have been investigated through the department before taking office, beginning employment, or securing ownership. The department shall be entitled to review any applicant's or licensee's files to determine whether the required commercial background checks have been conducted and whether all covered employees are qualified. Notwithstanding the

requirement that licensees and applicants conduct such commercial background checks on covered employees, the department shall retain the right to obtain conviction data on covered employees pursuant to subsection (j) of this Code section.

(m) Upon receipt of fingerprints, fees, and other required information from the department, the Georgia Crime Information Center shall promptly transmit fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding. All conviction data received by the department shall be used by the department for the exclusive purpose of carrying out the responsibilities of this article, shall not be a public record, shall be privileged, and shall not be disclosed to any other person or agency except to any person or agency which otherwise has a legal right to inspect the file. All such records shall be maintained by the department and the applicant or licensee pursuant to laws regarding such records and the rules and regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable.

(n) In connection with an application under this article, the department may use the Nationwide Multistate Licensing System and Registry as a channeling agent for the submission of fingerprints to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check and the receipt of such checks by the department.

(o) The department may deny or revoke a license or otherwise restrict a license if it finds that the mortgage broker or mortgage lender applicant or any person who is a director, officer, partner, or ultimate equitable owner of 10 percent or more or person who directs the company's affairs or who establishes policy of the applicant has been in one or more of these roles as a mortgage lender or broker whose license has been denied, revoked, or suspended within five years of the date of the application.

(p) The department shall not issue a license to and may revoke a license from a mortgage broker or mortgage lender applicant or licensee if such person:

(1) Has been the recipient of a final cease and desist order issued within the preceding five years if such order was based on a violation of subsection (i) of this Code section or Code Section 7-1-1002 or 7-1-1013;

(2) Employs any other person against whom a final cease and desist order has been issued within the preceding five years if such order was based on a violation of subsection (i) of this Code section or Code Section 7-1-1002 or 7-1-1013; or

(3) Has had his or her license revoked within five years of the date such person was hired or employs any other person who has had his or her license revoked within five years of the date such person was hired.

(q) Each mortgage broker and mortgage lender applicant or licensee shall, before hiring an employee, examine the department's public records to determine that such employee is not subject to the type of order described in subsection (p) of this Code section.

(r) Within 90 days after receipt of a completed application and payment of licensing fees prescribed by this article, the department shall either grant or deny the request for license.

(s) A person shall not be indemnified for any act covered by this article or for any fine or penalty incurred pursuant to this article as a result of any violation of the law or regulations contained in this article, due to the legal form, corporate structure, or choice of organization of such person, including, but not limited to, a limited liability company.

History.

Code 1981, § 7-1-1004, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 4; Ga. L. 1996, p. 848, § 17; Ga. L. 1998, p. 795, § 29; Ga. L. 1999, p. 674, § 33; Ga. L. 2000, p. 174, § 27; Ga. L. 2001, p. 4, § 7; Ga. L. 2001, p. 970, § 12; Ga. L. 2002, p. 1220, § 11; Ga. L. 2003, p. 843, § 19; Ga. L. 2004, p. 458, § 13; Ga. L. 2004, p. 631, § 7; Ga. L. 2005, p. 826, § 32/SB 82; Ga. L. 2007, p. 502, § 34/SB 70; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2010, p. 878, § 7/HB 1387; Ga. L. 2011, p. 518, § 14/HB 239; Ga. L. 2011, p. 752, § 7/HB 142; Ga. L. 2016, p. 390, §§ 6-1, 6-2/HB 811; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2022, p. 403, § 2/SB 470; Ga. L. 2023, p. 651, § 43/HB 55, effective July 1, 2023; Ga. L. 2024, p. 354, § 1-23/HB 876, effective July 1, 2024; Ga. L. 2024, p. 1052, § 1(a)(29)/SB 448, effective July 1, 2024.

Amendments.

The 2022 amendment, effective May 2, 2022, in the first sentence in subsections (h) and (i), substituted "covered employee" for "agent, employee"; and substituted "Governor" for "governor" near the end of the second sentence in subsection (h).

The 2023 amendment, effective July 1, 2023, rewrote this Code section.

The first 2024 amendment, effective July 1, 2024, rewrote this Code section.

The second 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "contract" for "contact" paragraph (h)(3), deleted "for" following "except" in paragraph (h)(5), and revised capitalization in subsection (i).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2009, "paragraph (1) of this subsection" was substituted for "paragraph (1) of this Code section" in paragraph (e)(4) (now paragraph (f)(4)).

Pursuant to Code Section 28-9-5, in 2023, "department for the exclusive purpose" was substituted for "department exclusive purpose" in the third sentence of subsection (m).

Law reviews.

For article, "Administrative Law," see 53 Mercer L. Rev. 81 (2001).

For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001).

JUDICIAL DECISIONS

Standing to challenge constitutionality. — After proceedings to revoke the license of a mortgage lending company for allegedly having an impermissible relationship with an individual in violation of O.C.G.A. § 7-1-1004(e) (now subsection (f)), the individual, a convicted felon, had standing to bring an independent declaratory judgment action questioning the constitutionality of the subsection. Agan v. State, 272 Ga. 540, 533 S.E.2d 60, 2000 Ga. LEXIS 538 (2000).

7-1-1004.1. Reports of condition.

Each mortgage broker and mortgage lender shall submit to the Nationwide Multistate Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the department and the Nationwide Multistate Licensing System and Registry may require.

History.
Code 1981, § 7-1-1004.1, enacted by Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2016, p. 390, § 6-1/HB 811; Ga. L. 2020, p. 493, § 7/SB 429.

7-1-1004.2. Licensees' ability to challenge information.

The department shall establish a process whereby licensees may challenge information entered into the Nationwide Multistate Licensing System and Registry by the department.

History.
Code 1981, § 7-1-1004.2, enacted by Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2016, p. 390, § 6-1/HB 811; Ga. L. 2020, p. 493, § 7/SB 429.

7-1-1004.3. Visibility requirement for unique identifier of individuals originating residential mortgage loan.

The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards, websites, and any other documents as established by rule, regulation, or order of the department.

History.
Code 1981, § 7-1-1004.3, enacted by Ga. L. 2009, p. 252, § 1/HB 312.

7-1-1005. Renewal of licenses; expiration.

(a) Except as otherwise specifically provided in this article, all licenses issued pursuant to this article shall expire on December 31 of

each year, and application for renewal shall be made annually on or before December 1 of each year.

(b) Any licensee making proper application on or before December 1 for the renewal of a license for the following calendar year shall be permitted to continue to operate pending final approval or disapproval of the application if the application for the license is not acted upon prior to January 1. For purposes of this subsection, a "proper application" shall include a requirement that all documentation requesting a renewal has been completed, the requisite continuing education has been successfully obtained, and payment has been made of all outstanding fines and applicable fees required by this article.

(c) No investigation fee shall be payable in connection with the renewal application, but an annual license fee established by regulation of the department to defray the cost of supervision shall be paid with each renewal application, which fee shall not be refunded.

(d) Any person holding a license pursuant to this article who fails to file a proper application for a license renewal for the following license year on or before December 1 and who files an application after December 1 may be required to pay, in addition to the license fees, a fine in an amount to be established by regulations promulgated by the department.

(e) The minimum standards for license renewal for mortgage loan originators shall include:

(1) The mortgage loan originator continues to meet the minimum standards for license issuance;

(2) The mortgage loan originator has satisfied the annual continuing education requirements;

(3) The mortgage loan originator has paid all required fees for renewal of the license; and

(4) The mortgage loan originator is in compliance with any and all written orders issued by the department.

(f) A mortgage loan originator license shall become inactive in the event that the mortgage loan originator is no longer sponsored by a mortgage lender or mortgage broker that is licensed. A mortgage loan originator shall not act as a mortgage loan originator in this state while the license is inactive. A mortgage loan originator license shall remain in inactive status until the license expires pursuant to subsection (a) of this Code section, the licensee surrenders the license, the license is revoked or suspended, or the licensee obtains sponsorship.

(g) The department may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Multistate Licensing System and Registry.

History.

Code 1981, § 7-1-1005, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 5; Ga. L. 2000, p. 174, § 28; Ga. L. 2001, p. 970, § 13; Ga. L. 2005, p. 826, § 33/SB 82; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2011, p. 518, § 15/HB 239; Ga. L. 2016, p. 390, § 6-1/HB 811; Ga. L. 2019, p. 828, § 34/HB 185; Ga. L. 2024, p. 354, § 1-24/HB 876, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, deleted "and registrations" following "licenses" in subsection (a); in the first sentence in subsection (b), deleted "or registrant" following "Any licensee" and deleted "or registration" following "license" twice; in subsection (c), deleted "or registration" following "license"; and, in subsection (d), deleted "or registration" following "license" three times.

Law reviews.

For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001).

7-1-1006. Names of licensees; license nontransferable; posting, notification, and location requirements.

(a) Each license issued under this article shall state the name of the licensee.

(b) A licensee shall post a copy of such license in a conspicuous place in each place of business of the licensee.

(c) A license shall not be transferred or assigned.

(d) No licensee shall transact business under any name or names other than those designated in the records of the department.

(e) For mortgage brokers and mortgage lenders, each licensee shall notify the department in writing of any change in the address of the principal place of business or of any additional location of business in Georgia, any change in registered agent or registered office, any change of executive officer or contact person for consumer complaints, or of any material change in the licensee's financial statement. Notice of changes shall be received by the department no later than 30 business days after the change is effective.

(f) No mortgage broker or mortgage lender shall open a new additional office in Georgia without prior approval of the department. Applications for such additional office shall be made in writing on a form prescribed by the department and shall be accompanied by payment of a $350.00 nonrefundable application fee. The application shall be approved unless the department finds that the applicant has not conducted business under this article efficiently, fairly, in the public interest, and in accordance with law. The application shall be deemed approved if notice to the contrary has not been mailed by the department to the applicant within 45 days of the date the application is received by the department.

(g) All branch managers in Georgia shall be approved by the department. A mortgage broker or mortgage lender may place a new branch

manager subject to the department's approval but shall file for approval within 15 days of the placement and shall remove the person immediately should the department deny approval.

History.
Code 1981, § 7-1-1006, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 97, § 7; Ga. L. 1994, p. 570, § 6; Ga. L. 1999, p. 674, § 34; Ga. L. 2000, p. 174, § 29; Ga. L. 2005, p. 826, § 34/SB 82; Ga. L. 2007, p. 502, § 35/SB 70; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2020, p. 320, § 19/HB 781.

7-1-1007. Notification requirements.

(a) A licensee shall give written notice to the department of any action which may be brought against it by any creditor or borrower where such action is brought under this article, involves a claim against the bond filed with the department for the purposes of compliance with Code Section 7-1-1003.2 or 7-1-1004, or involves a claim for damages in excess of $25,000.00 for a mortgage broker or mortgage loan originator and $250,000.00 for a lender and of any judgment which may be entered against it by any creditor or any borrower or prospective borrower, with details sufficient to identify the action or judgment, within 30 days after the commencement of any such action or the entry of any such judgment.

(b) A corporate surety shall, within ten days after it pays any claim to any claimant, give notice to the department by registered or certified mail or statutory overnight delivery of such payment with details sufficient to identify the claimant and the claim or judgment so paid. Whenever the principal sum of such bond is reduced by one or more recoveries or payments thereon, the mortgage loan originator, mortgage broker, or mortgage lender shall furnish a new or additional bond so that the total or aggregate principal sum of such bond or bonds shall equal the sum required under Code Section 7-1-1003.2 or 7-1-1004 or shall furnish an endorsement duly executed by the corporate surety reinstating the bond to the required principal sum thereof.

(c) A bond filed with the department for the purpose of compliance with Code Section 7-1-1003.2 or 7-1-1004 shall not be canceled by either the mortgage loan originator, mortgage broker, or mortgage lender or the corporate surety except upon notice to the department electronically through the Nationwide Multistate Licensing System and Registry, the cancellation to be effective not less than 30 days after receipt by the department of such notice and only with respect to any breach of condition occurring after the effective date of such cancellation.

(d) A licensee shall, within ten days after knowledge of the event, report in writing to the department:

(1) Any knowledge or discovery of an act prohibited by Code Section 7-1-1013;

(2) The discharge of any employee for dishonest or fraudulent acts; and

(3) Any administrative, civil, or criminal action initiated against the licensee or any of its control persons by any government entity.

Any person reporting such an event shall be protected from civil liability as provided in Code Section 7-1-1009.

History.

Code 1981, § 7-1-1007, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1999, p. 674, § 35; Ga. L. 2000, p. 1589, § 3; Ga. L. 2002, p. 1220, § 12; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2017, p. 193, § 25/HB 143; Ga. L. 2020, p. 320, § 20/HB 781; Ga. L. 2022, p. 220, § 36/HB 891; Ga. L. 2024, p. 354, § 1-25/HB 876, effective July 1, 2024.

Amendments.

The 2022 amendment, effective July 1, 2022, substituted "written notice to the department" for "notice to the department by registered or certified mail or statutory overnight delivery" in subsection (a).

The 2024 amendment, effective July 1, 2024, in the beginning of subsection (d), deleted "or registrant" following "licensee" and in paragraph (d)(3), deleted ", registrant," following "licensee".

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1993, "ten days" was substituted for "10 days" in the second sentence in subsection (a) (now first sentence of subsection (b)).

Pursuant to Code Section 28-9-5, in 1999, "ten" was substituted for "10" in the beginning of subsection (d).

7-1-1008. Prohibited acquisitions of shares without prior approval.

(a) Except as provided in this Code section, no person shall acquire directly or indirectly 10 percent or more of the voting shares of a corporation or 10 percent or more of the ownership of any other entity licensed to conduct business as a mortgage broker or mortgage lender under this article unless it first:

(1) Files an application with the department in such form as the department may prescribe from time to time;

(2) Delivers such other information to the department as the department may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors and officers, if a corporation, and its members, if applicable, and of any proposed new directors, officers, or members of the licensee; and

(3) Pays such application fee as the department may prescribe.

(b) Upon the filing and investigation of an application, the department shall permit the applicant to acquire the interest in the mortgage broker or mortgage lender licensee if it finds that the applicant and its members, if applicable, its directors and officers, if a corporation, and

any proposed new directors and officers have the financial responsibility, character, reputation, experience, and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. The department shall grant or deny the application within 60 days from the date a completed application accompanied by the required fee is filed unless the period is extended by order of the department reciting the reasons for the extension. If the application is denied, the department shall notify the applicant of the denial and the reasons for the denial.

(c) The provisions of this Code section shall not apply to:

(1) The acquisition of an interest in a licensee directly or indirectly, including an acquisition by merger or consolidation by or with a person licensed by this article or a person exempt from this article under Code Section 7-1-1001;

(2) The acquisition of an interest in a mortgage broker or mortgage lender licensee directly or indirectly, including an acquisition by merger or consolidation by or with a person affiliated through common ownership with the licensee; or

(3) The acquisition of an interest in a mortgage broker or mortgage lender licensee by a person by bequest, descent, or survivorship or by operation of law.

The person acquiring an interest in a mortgage broker or mortgage lender licensee in a transaction which is exempt from filing an application by this subsection shall send written notice to the department of such acquisition within 30 days of the closing of such transaction.

History.

Code 1981, § 7-1-1008, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 7; Ga. L. 2007, p. 502, § 36/SB 70; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2011, p. 518, § 16/HB 239; Ga. L. 2024, p. 354, § 1-26/HB 876, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, deleted "or registered" following "licensed" in the beginning of subsection (a) and in paragraph (c)(1); and deleted "or registrant" following "licensee" in paragraph (a)(2), in subsection (b), and in paragraphs (c)(1), (c)(2), and (c)(3).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1993, "from" was substituted for "form" in paragraph (c)(1).

7-1-1009. Record keeping; investigations and examinations; exemptions from civil liability.

(a) Mortgage brokers and mortgage lenders required to be licensed under this article shall maintain at their offices or such other location as the department shall permit such books, accounts, and records as the department may reasonably require in order to determine whether such mortgage brokers and mortgage lenders are complying with the provisions of this article and rules and regulations adopted in further-

ance thereof. Such books, accounts, and records shall be maintained separately and distinctly from any other personal or unrelated business matters in which the mortgage brokers and mortgage lenders are involved.

(b) The department shall investigate and examine the affairs, business, premises, and records of any mortgage broker or mortgage lender required to be licensed under this article insofar as such affairs, business, premises, and records pertain to any business for which a license is required by this article. The department may conduct such investigations and examinations as often as it deems necessary in order to carry out the purposes of this article, but shall conduct such investigations and examinations at least once every 60 months. In order to avoid unnecessary duplication of examinations, the department may accept examination reports performed and produced by other state or federal agencies, unless the department determines that the examinations are not available or do not provide the information necessary to fulfill the responsibilities of the department under this article. Notwithstanding the provisions of this subsection, the department may alter the frequency or scope of investigations and examinations through rules and regulations prescribed by the department. If the department determines, based on the records submitted to the department and past history of operations of the licensee in the state, that such investigations or examinations are unnecessary, then the department may waive such investigations and examinations.

(c) In addition to any authority allowed under this article, the department shall be authorized to conduct investigations and examinations of mortgage loan originators as follows:

(1) For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this article, the department shall have the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence, including, but not limited to:

(A) Criminal, civil, and administrative history information, including nonconviction data;

(B) Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. Section 1681a(f); and

(C) Any other documents, information, or evidence the department deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence;

(2) For the purposes of investigating violations or complaints, or for the purposes of examination, the department may review, investigate, or examine any mortgage loan originator licensee, individual, or person subject to this article as often as necessary in order to carry out the purposes of this article. The department may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the department deems relevant to the inquiry;

(3) Each mortgage loan originator licensee, individual, or person subject to this article shall make available to the department upon request the books and records relating to the activities of a mortgage loan originator;

(4) Each mortgage loan originator subject to this article shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this subsection, including, but not limited to:

(A) Accounting compilations;

(B) Information lists and data concerning loan transactions in a format prescribed by the department; or

(C) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate a mortgage loan originator;

(5) In making any examination or investigation authorized by this article, the department may control access to any documents and records of the licensee or person under investigation. In order to carry out the purposes of this Code section, the department may:

(A) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this Code section;

(B) Accept and rely on examination or investigation reports made by other government officials, within or without this state; and

(C) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this article in the course of that part of the examination covering

the same general subject matter as the audit and may incorporate the audit report in the report of examination, report of investigation, or other writing of the department;

(6) The authority to investigate provided for in this subsection shall remain in effect whether such licensee, individual, or person subject to this article acts or claims to act under any licensing or registration law of this state or claims to act without such authority; and

(7) No mortgage loan originator licensee, individual, or person subject to investigation or examination under this article shall knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(d) The department, at its discretion, may:

(1) Make such public or private investigations within or outside of this state as it deems necessary to determine whether any person has violated or is about to violate this article or any rule, regulation, or order under this article, to aid in the enforcement of this article, or to assist in the prescribing of rules and regulations pursuant to this article;

(2) Require or permit any person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated;

(3) Disclose information concerning any violation of this article or any rule, regulation, or order under this article, provided the information is derived from a final order of the department;

(4) Disclose the imposition of an administrative fine or penalty under this article; and

(5) Conduct an on-site examination without prior notice, with the licensee to pay the reasonably incurred costs for such examination, including out-of-state travel expenses, and the department shall be authorized to net such out-of-state expenses against the payments from the licensee.

(e)(1) For the purpose of conducting any investigation as provided in this Code section, the department shall have the power to administer oaths, to call any party to testify under oath in the course of such investigations, to require the attendance of witnesses, to require the production of books, records, and papers, and to take the depositions of witnesses; and for such purposes, the department is authorized to issue a subpoena for any witness or for the production of documentary evidence. Such subpoenas may be served by certified mail or statutory overnight delivery, return receipt requested, to the address-

ee's business mailing address, by examiners appointed by the department, or shall be directed for service to the sheriff of the county where such witness resides or is found or where the person in custody of any books, records, or paper resides or is found. The required fees and mileage of the sheriff, witness, or person shall be paid from the funds in the state treasury for the use of the department in the same manner that other expenses of the department are paid.

(2) The department may issue and apply to enforce subpoenas in this state at the request of a government agency regulating mortgage lenders or brokers of another state if the activities constituting the alleged violation for which the information is sought would be a violation of this article if the activities had occurred in this state.

(f) In case of refusal to obey a subpoena issued under this article to any person, a superior court of appropriate jurisdiction, upon application by the department, may issue to the person an order requiring him or her to appear before the court to show cause why he or she should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished as contempt by the court.

(g) Examinations and investigations conducted under this article and information obtained by the department in the course of its duties under this article are confidential, except as provided in this subsection, pursuant to the provisions of Code Section 7-1-70. In addition to the exceptions set forth in subsection (b) of Code Section 7-1-70 and in paragraphs (3) and (4) of subsection (d) of this Code section, the department is authorized to share information obtained under this article with other state and federal regulatory agencies or law enforcement authorities. In the case of such sharing, the safeguards to confidentiality already in place within such agencies or authorities shall be deemed adequate. The commissioner or an examiner specifically designated may disclose such limited information as is necessary to conduct a civil or administrative investigation or proceeding. Information contained in the records of the department which is not confidential and may be made available to the public either on the department's website, upon receipt by the department of a written request, or in the Nationwide Multistate Licensing System and Registry shall include:

(1) For mortgage brokers and mortgage lenders, the name, business address, and telephone, designated email address, and unique identifier of a licensee;

(2) For mortgage brokers and mortgage lenders, the names and titles of the principal officers;

(3) For mortgage brokers and mortgage lenders, the name of the owner or owners thereof;

(4) For mortgage brokers and mortgage lenders, the business address of a licensee's agent for service; and

(5) The terms of or a copy of any bond filed by a licensee.

(h) In the absence of malice, fraud, or bad faith, a person shall not be subject to civil liability arising from the filing of a complaint with the department or furnishing other information required by this Code section or required by the department under the authority granted in this article. No civil cause of action of any nature shall arise against such person:

(1) For any information relating to suspected prohibited acts furnished to or received from law enforcement officials, their agents, or employees or to or from other regulatory or licensing authorities;

(2) For any such information furnished to or received from other persons subject to the provisions of this title; or

(3) For any such information furnished in complaints filed with the department.

(i) The commissioner or any employee or agent shall not be subject to civil liability, and no civil cause of action of any nature exists against such persons arising out of the performance of activities or duties under this article or by publication of any report of activities under this Code section.

History.

Code 1981, § 7-1-1009, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1996, p. 848, § 18; Ga. L. 1998, p. 795, § 30; Ga. L. 1999, p. 674, § 36; Ga. L. 2000, p. 174, § 30; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 970, § 14; Ga. L. 2003, p. 843, § 20; Ga. L. 2007, p. 502, § 37/SB 70; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2010, p. 878, § 7/HB 1387; Ga. L. 2017, p. 193, § 26/HB 143; Ga. L. 2018, p. 214, § 25/HB 780; Ga. L. 2019, p. 828, § 35/HB 185; Ga. L. 2020, p. 320, § 21/HB 781; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2024, p. 354, § 1-27/HB 876, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, deleted "or registered" following "licensed" in the first sentence in subsection (a); in subsection (b), in the first sentence, deleted "or registered" following "licensed" and "or registration" following "license", and deleted the former last sentence which read: "In the case of registrants, the department shall not be required to conduct such examinations if it determines that the registrant has been adequately examined by another bank regulatory agency."; in paragraph (d)(5), deleted "or registrant" following "licensee" twice; in paragraph (g)(1), substituted "designated email address" for "facsimile" and deleted "or registrant" from the end; deleted "or registrant's" following "licensee's" in paragraph (g)(4); and deleted "or registrant" from the end of paragraph (g)(5).

Editor's notes.

Ga. L. 2018, p. 214, § 26(b)/HB 780, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of March 9, 2018."

Law reviews.

For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001).

7-1-1010. Annual financial statements.

(a) If a mortgage broker is a United States Department of Housing and Urban Development loan correspondent, such broker shall also submit to the department the audit that is required for the United States Department of Housing and Urban Development. The department may require the mortgage broker to have made an audit of the books and affairs of the licensed business and submit to the department an audited financial statement if the department finds that such an audit is necessary to determine whether the mortgage broker is complying with the provisions of this article and the rules and regulations adopted in furtherance of this article.

(b) Each mortgage lender licensed under this article shall at least once each year have made an audit of the books and affairs of the licensed business and submit to the department at renewal an audited financial statement, except that a mortgage lender licensed under this article which is a subsidiary shall comply with this provision by annually providing a consolidated audited financial statement of its parent company and a financial statement, which may be unaudited, of the licensee which is prepared in accordance with generally accepted accounting principles. A lender who utilizes a bond in lieu of an audit need not supply such audit, unless specially required by the department. An audit shall be less than 15 months old to be acceptable. The department may by regulation establish additional minimum standards for audits and reports under this Code section.

History.

Code 1981, § 7-1-1010, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 8; Ga. L. 1996, p. 848, § 19; Ga. L. 1999, p. 674, § 37; Ga. L. 2000, p. 174, § 31; Ga. L. 2004, p. 458, § 14; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2024, p. 354, § 1-28/HB 876, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, deleted "or registered" following "licensed" in the second sentence in subsection (a) and, in the first sentence in subsection (b), deleted "or registered" following "licensed" three times and deleted "or registrant" following "licensee".

7-1-1011. Annual fees.

(a) The department may, by regulation, prescribe annual fees to be paid by licensees, which fees shall be set at levels necessary to defray costs and expenses incurred by the state in providing the examinations and supervision required by this article and its federally mandated participation in the Nationwide Multistate Licensing System and Registry, and which fees may vary according to whether a person is a licensee or is a mortgage loan originator, mortgage broker, or a mortgage lender.

(b)(1) As used in this subsection, the term "collecting agent" means the person listed as the secured party on a security deed or other loan

document that establishes a lien on the residential real property taken as collateral at the time of the closing of the mortgage loan transaction.

(2) There shall be imposed on the closing of every mortgage loan subject to regulation under this article which, as defined in Code Section 7-1-1000, includes all mortgage loans, whether or not closed by a mortgage broker or mortgage lender licensee, a fee of $10.00. The fee shall be paid by the borrower to the collecting agent at the time of closing of the mortgage loan transaction. The collecting agent shall remit the fee to the department at the time and in the manner specified by regulation of the department. Revenue collected by the department pursuant to this subsection shall be deposited in the general fund of the state.

(3) The fee imposed by this subsection shall be a debt from the borrower to the collecting agent until such assessment is paid and shall be recoverable at law in the same manner as authorized for the recovery of other debts. Any collecting agent who neglects, fails, or refuses to collect the fee imposed by this subsection shall be liable for the payment of the fee.

History.
Code 1981, § 7-1-1011, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 9; Ga. L. 1995, p. 673, § 34; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2010, p. 9, § 1-18/HB 1055; Ga. L. 2016, p. 390, § 6-1/HB 811; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2024, p. 354, § 1-29/HB 876, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, in subsection (a), deleted "and registrants" following "licensees" near the beginning and deleted "or registrant" following "licensee" near the end and deleted "or registrant" following "licensee" near the end of the first sentence in paragraph (b)(2).

7-1-1012. Rules and regulations.

Without limitation on the power conferred by Article 1 of this chapter, the department may make reasonable rules and regulations, not inconsistent with law, for the enforcement of this article, to effectuate the purposes of this article, and to clarify the meaning of terms.

History.
Code 1981, § 7-1-1012, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 2001, p. 970, § 15; Ga. L. 2009, p. 252, § 1/HB 312.

7-1-1013. Prohibition of certain acts.

It shall be prohibited for any person transacting a mortgage business in or from this state, including any person required to be licensed under this article and any person exempted from the licensing requirements of this article under Code Section 7-1-1001, to:

(1) Misrepresent the material facts, make false statements or promises, or submit false statements or documents likely to influ-

ence, persuade, or induce an applicant for a mortgage loan, a mortgagee, or a mortgagor to take a mortgage loan, or, through agents or otherwise, pursue a course of misrepresentation by use of fraudulent or unauthorized documents or other means to the department or anyone;

(2) Misrepresent or conceal or cause another to misrepresent or conceal material factors, terms, or conditions of a transaction to which a mortgage lender or broker is a party, pertinent to an applicant or application for a mortgage loan or a mortgagor;

(3) Fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan;

(4) Improperly refuse to issue a satisfaction of a mortgage loan;

(5) Fail to account for or deliver to any person any personal property obtained in connection with a mortgage loan such as money, funds, deposit, check, draft, mortgage, or other document or thing of value which has come into the possession of a licensee and which is not the property of the licensee, or which the mortgage lender or broker is not in law or at equity entitled to retain;

(6) Engage in any transaction, practice, or course of business which is not in good faith or fair dealing, or which operates a fraud upon any person, in connection with the attempted or actual making of, purchase of, transfer of, or sale of any mortgage loan;

(7) Engage in any fraudulent home mortgage underwriting practices;

(8) Induce, require, or otherwise permit the applicant for a mortgage loan or mortgagor to sign a security deed, note, loan application, or other pertinent financial disclosure documents with any blank spaces to be filled in after it has been signed, except blank spaces relating to recording or other incidental information not available at the time of signing;

(9) Make, directly or indirectly, any residential mortgage loan with the intent to foreclose on the borrower's property. For purposes of this paragraph, there shall be a presumption that a person has made a residential mortgage loan with the intent to foreclose on the borrower's property if the following circumstances can be demonstrated:

(A) Lack of substantial benefit to the borrower;

(B) Lack of probability of full payment of the loan by the borrower; and

(C) A significant proportion of similarly foreclosed loans by such person;

(10) Provide an extension of credit or collect a mortgage debt by extortionate means; or

(11) Purposely withhold, delete, destroy, or alter information requested by an examiner of the department or make false statements or material misrepresentations to the department or the Nationwide Multistate Licensing System and Registry or in connection with any investigation conducted by the department or another governmental agency.

History.

Code 1981, § 7-1-1013, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1996, p. 848, § 20; Ga. L. 1999, p. 674, § 38; Ga. L. 2000, p. 174, § 32; Ga. L. 2005, p. 826, § 35/SB 82; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2016, p. 390, § 6-1/HB 811; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2024, p. 354, § 1-30/HB 876, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, in the middle of the introductory language, deleted "or registered" following "licensed" and deleted "or registration" following "licensing"; and deleted "or registrant" following "licensee" twice in paragraph (5).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1993, "paragraph" was substituted for "subsection" in the second sentence of paragraph (9).

JUDICIAL DECISIONS

Section does not apply to foreclosure proceedings. — Plain language of O.C.G.A. § 7-1-1013 limits the statute's applicability to the actions taken to make, purchase, transfer, or sell mortgage loans. The Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1000 et seq., is not applicable in foreclosure proceedings. Roylston v. Bank of Am., N.A., 290 Ga. App. 556, 660 S.E.2d 412, 2008 Ga. App. LEXIS 371 (2008).

Acts not covered by bond. — Trial court erred in granting a purchaser summary judgment and in denying an insurer summary judgment in the purchaser's action to recover against a bond the insurer issued to a mortgage lender under the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1000 et seq., because the acts that gave rise to the judgment the purchaser obtained against the lender occurred before the bond was in effect, and the lender's failure to pay the judgment was not an act that authorized recovery against the bond; the bond did not contain a specific covenant extending liability to acts prior to the bond's execution. Hartford Fire Ins. Co. v. iFreedom Hartford Fire Ins. Co. v. iFreedom Direct Corp., 312 Ga. App. 262, 718 S.E.2d 103, 2011 Ga. App. LEXIS 934 (2011), cert. denied, No. S12C0408, 2012 Ga. LEXIS 246 (Ga. Feb. 27, 2012).

Act foreclosed borrower's claim under the Fair Business Practices Act. — Homeowner's Fair Business Practices Act (FBPA), O.C.G.A. § 10-1-390 et seq., claim against the homeowner's mortgage lender arising out of foreclosure of the homeowner's home failed because the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1000 et seq., specifically regulates misrepresentation by use of fraudulent or unauthorized documents or other means relating to mortgages; thus, O.C.G.A. § 7-1-1013(1) precluded a claim under the FBPA, pursuant to O.C.G.A. § 10-1-396. Stewart v. SunTrust Mortg., Inc., 331 Ga. App. 635, 770 S.E.2d 892, 2015 Ga. App. LEXIS 216 (2015).

7-1-1014. Regulations governing disclosure required to applicants for mortgage loans.

In addition to such other rules, regulations, and policies as the department may promulgate to effectuate the purposes of this article, the department shall promulgate regulations governing the disclosure required to be made to applicants for mortgage loans, including, without limitation, the following requirements:

(1) Any person required to be licensed under this article shall provide to each applicant for a mortgage loan prior to accepting an application fee or any third-party fee such as a property appraisal fee, credit report fee, or any other similar fee a disclosure of the fees payable and the conditions under which such fees may be refundable;

(2) Any mortgage lender required to be licensed under this article shall make available to each applicant for a mortgage loan at or before the time a commitment to make a mortgage loan is given a written disclosure of the fees to be paid in connection with the commitment and the loan, or the manner in which such fees shall be determined and the conditions under which such fees may be refundable; and

(3) Any mortgage lender required to be licensed under this article shall disclose to each borrower of a mortgage loan that failure to meet every condition of the mortgage loan may result in the loss of the borrower's property through foreclosure. The borrower shall be required to sign the disclosure at or before the time of the closing of the mortgage loan.

The department may prescribe standards regarding the accuracy of required disclosures and may provide for applicable administrative or civil penalties or fines for failure to provide the disclosures or to meet the prescribed standards.

History.
Code 1981, § 7-1-1014, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 10; Ga. L. 2001, p. 970, § 16; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2024, p. 354, § 1-31/HB 876, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, deleted "or registered" following "licensed" near the beginning of paragraphs (1), (2), and (3).

7-1-1015. Rules relative to escrow accounts.

The department may promulgate rules with respect to the placement in escrow accounts by any person required to be licensed by this article of any money, fund, deposit, check, or draft entrusted to it by any persons dealing with it as a residential mortgage loan originator, mortgage broker, mortgage lender, or servicer.

History.
Code 1981, § 7-1-1015, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2024, p. 354, § 1-32/HB 876, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, deleted "or registered" following "licensed" near the middle of the Code section.

7-1-1016. Regulations relative to advertising.

In addition to such other rules, regulations, and policies as the department may promulgate to effectuate the purpose of this article, the department shall prescribe regulations governing the advertising of mortgage loans, including, without limitation, the following requirements:

(1)(A) Advertisements for loans regulated under this article shall not be false, misleading, or deceptive. No person whose activities are regulated under this article shall advertise in any manner so as to indicate or imply that its interest rates or charges for loans are in any way "recommended," "approved," "set," or "established" by the state or this article.

(B) An advertisement shall not include an individual's loan number, loan amount, or other publicly available information unless it is clearly and conspicuously stated in boldface type at the beginning of the advertisement that the person disseminating it is not authorized by, in sponsorship with, or otherwise affiliated with the individual's lender, which shall be identified by name. Such an advertisement shall also state that the loan information contained therein was not provided by the recipient's lender; and

(2) All advertisements, including websites, disseminated by a licensee in this state by any means shall contain the name, which shall conform to a name on record with the department, and unique identifier, which shall clearly indicate that the number was issued by the Nationwide Multistate Licensing System and Registry, of the licensee.

History.
Code 1981, § 7-1-1016, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 11; Ga. L. 2002, p. 1220, § 13; Ga. L. 2007, p. 502, § 38/SB 70; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2016, p. 390, § 6-1/HB 811; Ga. L. 2020, p. 320, § 22/HB 781; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2024, p. 354, § 1-33/HB 876, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, in paragraph (2), deleted "or a registrant" following "by a licensee" near the beginning and deleted "or registrant" from the end.

Editor's notes.
Ga. L. 2020, p. 493, § 54(e)/SB 429, not codified by the General Assembly, provides: "In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2020 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict." Accordingly, the amendment to paragraph

(2) of this Code section by Ga. L. 2020, p. 493, § 7(20)(V)/SB 429, was not given effect.

7-1-1017. Suspension or revocation of licenses or mortgage broker education approval; notice; judicial review; effect on preexisting contract.

(a)(1) The department may suspend or revoke an original or renewal license or mortgage broker education approval on any ground on which it might refuse to issue an original license or approval or for a violation of any provision of this article or of Chapter 6A of this title or any rule or regulation issued under this article or under Chapter 6A of this title, including failure to provide fees on a timely basis, or for failure of the licensee to pay, within 30 days after it becomes final, a judgment recovered in any court within this state by a claimant or creditor in an action arising out of the licensee's business in this state as a mortgage loan originator, mortgage lender, or mortgage broker or for violation of a final order previously issued by the department.

(2) Where an applicant or licensee has been found not in compliance with an order for child support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action shall be sufficient grounds for refusal of a license or suspension of a license. In such actions, the hearing and appeal procedures provided for in those Code sections shall be the only such procedures required under this article. The department shall be permitted to share, without liability, information on its applications or other forms with appropriate state agencies to assist them in recovering child support when required by law.

(3) Where an applicant or licensee has been certified by any entity of the federal government for nonpayment or default or breach of a repayment or service obligation under any federal educational loan, loan repayment, or service conditional scholarship program, such action shall not be grounds for refusal of a license or suspension of a license.

(b) Notice of the department's intention to enter an order denying an application for a license under this article or of an order suspending or revoking a license under this article shall be given to the applicant or licensee in writing, sent by email to the email address of record for the applicant or licensee, or registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant or licensee. Within 20 days of the date of the notice of intention to enter an order of denial, suspension, or revocation under this article, the applicant or licensee may request in writing a hearing to contest the order. If a hearing is not requested in writing within 20 days of the date of such notice of intention, the department shall enter

a final order regarding the denial, suspension, or revocation. If a person refuses to accept service of the notice or order by registered or certified mail or statutory overnight delivery and the notice sent by email to the email address of record has not been delivered to the person, the notice or order shall be served by the commissioner or the commissioner's authorized representative under any other method of lawful service; and the person shall be personally liable to the commissioner for a sum equal to the actual costs incurred to serve the notice or order. This liability shall be paid upon notice and demand by the commissioner or the commissioner's representative and shall be assessed and collected in the same manner as other fees or fines administered by the commissioner. Any final order of the department denying, suspending, or revoking a license shall state the grounds upon which it is based and shall be effective on the date of issuance. The department shall promptly send a copy of such order by mail addressed to the principal place of business of such applicant or licensee and post a copy of such order on the Nationwide Multistate Licensing System and Registry. For purposes of this subsection, the term "email address of record" means the email address that the applicant or licensee has designated as their email address for regulatory contact on file with the Nationwide Multistate Licensing System and Registry.

(c) A licensee may, at the discretion of and with the consent of the department, agree to a voluntary suspension of its license for a period of time to be agreed upon by the parties. Such order of suspension shall be considered a final order and shall be forwarded to the licensee in the same manner as any other final order. Grounds for such a voluntary suspension shall be the same as provided in subsection (a) of this Code section, and the licensee may waive its right to an administrative hearing before issuance of the suspension. With the consent of the department, a licensee may voluntarily surrender its license. A voluntary surrender of a license shall have the same effect as a revocation of said license. A voluntary surrender of a license shall be regarded as a final order of the department.

(d) A decision of the department denying a license application, original or renewal, shall be conclusive, except that it may be subject to judicial review under Code Section 7-1-90. A decision of the department suspending or revoking a license shall be subject to judicial review in the same manner as a decision of the department to take possession of the assets and business of a bank under Code Section 7-1-155.

(e) Except as otherwise provided by law, a revocation, suspension, or surrender of a license shall not impair or affect the obligation of a preexisting contract between the licensee and another person.

(f) Nothing in this article shall preclude a mortgage broker or mortgage lender whose license has been suspended or revoked from

continuing to service mortgage loans pursuant to servicing contracts in existence at the time of the suspension or revocation for a period not to exceed six months after the date of the final order of the department suspending or revoking the license.

(g) Whenever a person subject to an order of the department fails to comply with the terms of such order which has been properly issued, the department upon notice of three days to such person may, through the Attorney General, petition the principal court for an order directing such person to obey the order of the department within the period of time fixed by the court. Upon the filing of such petition, the court shall allow a motion to show cause why such motion should not be granted. Whenever, after a hearing upon the merits or after failure of such person to appear when ordered, it shall appear that the order of the department was properly issued, the court shall grant the petition of the department.

(h) Whenever the department initiates an administrative action against a current licensee or an applicant, the department may pursue that action to its conclusion despite the fact that a licensee may withdraw its license or fail to renew it or an applicant may withdraw its application.

History.

Code 1981, § 7-1-1017, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 12; Ga. L. 1996, p. 453, § 2; Ga. L. 1997, p. 485, § 32; Ga. L. 1998, p. 795, § 31; Ga. L. 1998, p. 1094, § 4; Ga. L. 2000, p. 1589, § 3; Ga. L. 2003, p. 843, § 21; Ga. L. 2005, p. 826, § 36/SB 82; Ga. L. 2007, p. 502, § 39/SB 70; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2011, p. 518, § 17/HB 239; Ga. L. 2015, p. 344, § 34/HB 184; Ga. L. 2019, p. 462, § 1-4/SB 214; Ga. L. 2019, p. 828, § 36/HB 185; Ga. L. 2023, p. 651, § 44/HB 55, effective July 1, 2023; Ga. L. 2024, p. 120, § 2-4/HB 985, effective June 30, 2024; Ga. L. 2024, p. 354, § 1-34/HB 876, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2023, in subsection (b), inserted "email to the email address of record for the applicant, licensee, or registrant, or" in the first sentence, deleted the former fourth and fifth sentences, which read: "Any final order of the department denying, suspending, or revoking a license or registration shall state the grounds upon which it is based and shall be effective on the date of issuance. A copy thereof shall be forwarded promptly by registered or certified mail or statutory overnight delivery addressed to the principal place of business of such applicant, licensee, or registrant.", inserted "and the notice sent by email to the email address of record has not been delivered to the person" in the present fourth sentence, and added the last three sentences.

The first 2024 amendment, effective June 30, 2024, deleted "has been found to be a borrower in default under the Georgia Higher Education Loan Program as determined by the Georgia Higher Education Assistance Corporation or" following "or licensee" near the beginning of paragraph (a)(3).

The second 2024 amendment, effective July 1, 2024, deleted "or registration" following "license" throughout subsections (b), (c), (d), (e), and (f); deleted "or registrant" following "licensee" in paragraph (a)(1) and four times in subsection (c); in paragraph (a)(1), deleted "or registrant's" following "licensee's" and substituted "license or" for "license, registration, or" twice; and substituted "applicant or licensee" for "applicant, licensee, or registrant" throughout subsection (b).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1998, Ga. L. 1998, p. 795, § 31 and Ga. L. 1998, p. 1094, § 4, both amended this Code section. These amendments conflicted in the last sentence of paragraph (2) of subsection (a). This sentence was added in 1997 by Ga. L. 1997, p. 485, § 32. It was determined that the omission of the last sentence of paragraph (2) of subsection (a) by Ga. L. 1998, p. 1094, § 4 was inadvertent and thus the amendments were construed together to read as set out above.

JUDICIAL DECISIONS

Failure to pay judgment. — Strictly limited to the plain meaning of the language employed in the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1017(a)(1), does not mandate that a mortgage lender pay a judgment within 30 days, but rather, the statute simply gives the Georgia Department of Banking and Finance the discretion to suspend or revoke a mortgage lender's license for failure to pay, within 30 days of it becoming final, a judgment arising from the lender's mortgage business; this statutorily-created administrative remedy cannot be extended beyond its plain terms to create an additional private cause of action against a mortgage lender's bond based on a failure to pay a judgment. Hartford Fire Ins. Co. v. iFreedom Direct Corp., 312 Ga. App. 262, 718 S.E.2d 103, 2011 Ga. App. LEXIS 934 (2011), cert. denied, No. S12C0408, 2012 Ga. LEXIS 246 (Ga. Feb. 27, 2012).

Alternative language used in the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1017(a)(1), stating that the Georgia Department of Banking and Finance may revoke a license for a violation of the Act or failure to pay a final judgment, clearly shows that violating the Act and failing to pay a judgment are separate and distinct matters. Hartford Fire Ins. Co. v. iFreedom Direct Corp., 312 Ga. App. 262, 718 S.E.2d 103, 2011 Ga. App. LEXIS 934 (2011), cert. denied, No. S12C0408, 2012 Ga. LEXIS 246 (Ga. Feb. 27, 2012).

Acts not covered by bond. — Trial court erred in granting a purchaser summary judgment and in denying an insurer summary judgment in the purchaser's action to recover against a bond the insurer issued to a mortgage lender under the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1000 et seq., because the acts that gave rise to the judgment the purchaser obtained against the lender occurred before the bond was in effect, and the lender's failure to pay the judgment was not an act that authorized recovery against the bond; the bond did not contain a specific covenant extending liability to acts prior to the bond's execution. Hartford Fire Ins. Co. v. iFreedom Hartford Fire Ins. Co. v. iFreedom Direct Corp., 312 Ga. App. 262, 718 S.E.2d 103, 2011 Ga. App. LEXIS 934 (2011), cert. denied, No. S12C0408, 2012 Ga. LEXIS 246 (Ga. Feb. 27, 2012).

7-1-1018. Cease and desist orders; enforcement procedure; civil penalty; fines.

(a) Whenever it shall appear to the department that any person required to be licensed under this article or employed by a licensee or who would be covered by the prohibitions in Code Section 7-1-1013 has violated any law of this state or any order or regulation of the department, the department may issue an initial written order requiring such person to cease and desist immediately from such unauthorized practices. Such cease and desist order shall be final 20 days after it is issued unless the person to whom it is issued makes a written request within such 20 day period for a hearing. The hearing shall be conducted in accordance with Chapter 13 of Title 50, the

"Georgia Administrative Procedure Act." A cease and desist order to an unlicensed person that orders such person to cease doing a mortgage business without the appropriate license shall be final 30 days from the date of issuance, and there shall be no opportunity for an administrative hearing. If the proper license or evidence of exemption or valid employment status during the time of the alleged offense is delivered to the department within the 30 day period, the order shall be rescinded by the department. If a cease and desist order is issued to a person who has been sent a notice of bond cancellation and if the bond is reinstated or replaced and such documentation is delivered to the department within the 20 day period following the date of issuance of the order, the order shall be rescinded. If the notice of reinstatement of the bond is not received within the 20 days, the license shall expire at the end of the 20 day period, and the person shall be required to make a new application for license and pay the applicable fees. In the case of an unlawful purchase of mortgage loans, such initial cease and desist order to a purchaser shall constitute the knowledge required under subsection (b) of Code Section 7-1-1002 for any subsequent violations. Any cease and desist order sent to the person at both his or her personal and business addresses pursuant to this Code section that is returned to the department as "refused" or "unclaimed" shall be deemed as received and sufficiently served.

(b) Whenever a person shall fail to comply with the terms of an order of the department which has been properly issued under the circumstances, the department, upon notice of three days to such person, may, through the Attorney General, petition the principal court for an order directing such person to obey the order of the department within the period of time as shall be fixed by the court. Upon the filing of such petition, the court shall allow a motion to show cause why it should not be granted. Whenever, after a hearing upon the merits or after failure of such person to appear when ordered, it shall appear that the order of the department was properly issued, the court shall grant the petition of the department.

(c) Any person who violates the terms of any order issued pursuant to this Code section shall be liable for a civil penalty not to exceed $1,000.00 per violation per day unless otherwise agreed to by the department. In determining the amount of penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of such person, the good faith efforts of such person to comply with the order, the gravity of the violation, the history of previous violations by such person, and such other factors or circumstances as shall have contributed to the violation. The department may at its discretion compromise, modify, or refund any penalty which is subject to imposition or has been imposed pursuant to this Code section. Any person assessed as provided in this subsection shall

have the right to request a hearing into the matter within ten days after notification of the assessment has been served upon the person involved; otherwise, such penalty shall be final except as to judicial review as provided in Code Section 7-1-90.

(d) Initial judicial review of the decision of the department entered pursuant to this Code section or Code Section 7-1-1017 shall be available solely in the superior court of the county of domicile of the department.

(e) All penalties and fines recovered by the department as authorized by subsection (g) of this Code section shall be paid into the state treasury to the credit of the general fund; provided, however, that the department at its discretion may remit such amounts recovered, net of the cost of recovery, if it makes an accounting of all such costs and expenses of recovery in the same manner as prescribed for judgments received through derivative actions pursuant to the provisions of Code Section 7-1-441.

(f) For purposes of this Code section, the term "person" also includes any officer, director, employee, agent, or other person participating in the conduct of the affairs of the person subject to the orders issued pursuant to this Code section.

(g) In addition to any other administrative penalties authorized by this article, the department may, by regulation, prescribe administrative fines for violations of this article and of any rules promulgated by the department pursuant to this article.

History.

Code 1981, § 7-1-1018, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 570, § 13; Ga. L. 1995, p. 673, § 35; Ga. L. 1997, p. 485, § 33; Ga. L. 1999, p. 674, § 39; Ga. L. 2000, p. 174, § 33; Ga. L. 2001, p. 4, § 7; Ga. L. 2003, p. 843, § 22; Ga. L. 2004, p. 631, § 7; Ga. L. 2005, p. 826, § 37/SB 82; Ga. L. 2007, p. 502, § 40/SB 70; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2011, p. 518, § 18/HB 239; Ga. L. 2013, p. 141, § 7/HB 79; Ga. L. 2020, p. 320, § 23/HB 781; Ga. L. 2024, p. 354, § 1-35/HB 876, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, deleted "or registered" following "licensed" near the beginning of the first sentence in subsection (a).

7-1-1019. Criminal penalties.

Any person and the several members, officers, directors, agents, and employees thereof who:

(1) Shall violate the provisions of subsection (a) or (a.1) of Code Section 7-1-1002, by the willful transaction of a mortgage business without a license or exemption, shall be guilty of a felony punishable as provided in Code Section 7-1-845; or

(2) Shall violate any of the other provisions of this article shall be guilty of a misdemeanor and shall be punished by imprisonment for

not more than one year or by a fine of not more than $1,000.00, or by both fine and imprisonment.

History.
Code 1981, § 7-1-1019, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 1994, p. 97, § 7; Ga. L. 1999, p. 674, § 40; Ga. L. 2009, p. 252, § 1/HB 312; Ga. L. 2015, p. 5, § 7/HB 90.

7-1-1020. Construction.

Nothing in this article shall limit any statutory or common law right of any person to bring any action in any court for any act involved in the mortgage business or the right of the state to punish any person for any violation of any law. Without limiting the generality of the foregoing, nothing in this article shall be construed as limiting in any manner the application of Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975."

History.
Code 1981, § 7-1-1020, enacted by Ga. L. 1993, p. 543, § 1; Ga. L. 2009, p. 252, § 1/HB 312.

7-1-1021. Regulations governing lock-in and commitment agreements.

The department may promulgate regulations governing the use and contents of lock-in agreements and commitment agreements.

History.
Code 1981, § 7-1-1021, enacted by Ga. L. 1994, p. 570, § 14; Ga. L. 2009, p. 252, § 1/HB 312.

ARTICLE 14

FOREIGN BANKING INSTITUTIONS

Effective date.
This article became effective July 1, 2023.

Part 1

Banking By Foreign Entities

7-1-1100. Definitions.

As used in this article, the term:

(1) "Affiliate" has the meaning assigned by 12 U.S.C. Section 1841(k) of the Bank Holding Company Act.

(2) "Agency," when used in reference to an office of a foreign bank, has the meaning assigned by 12 U.S.C. Section 3101(1) of the International Banking Act.

(3) "Bank" has the meaning assigned by 12 U.S.C. Section 1841(c)

of the Bank Holding Company Act, except that the term does not include a foreign bank or a branch or agency of a foreign bank.

(4) "Bank supervisory agency" means any of the following:

(A) An agency of another state with primary responsibility for chartering and supervising banks; or

(B) The Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System, and any successor to these agencies.

(5) "Branch," when used in reference to an office of a foreign bank, has the meaning assigned by 12 U.S.C. Section 3101(3) of the International Banking Act.

(6) "Commissioner" means the commissioner of banking and finance.

(7) "Control" has the meaning assigned by 12 U.S.C. Section 1841(a) of the Bank Holding Company Act, and regulations and interpretive rulings of the Board of Governors of the Federal Reserve System.

(8) "Department" means the Department of Banking and Finance.

(9) "Deposit" has the meaning assigned by 12 U.S.C. Section 1813(l) of the Federal Deposit Insurance Act.

(10) "Depository institution" means an institution included for any purpose within the definition of insured depository institution as assigned by 12 U.S.C. Section 1813(c)(2) of the Federal Deposit Insurance Act.

(11) "Federal agency" means an agency of a foreign bank that is licensed by the Comptroller of the Currency pursuant to 12 U.S.C. Section 3102 of the International Banking Act.

(12) "Federal branch" means a branch of a foreign bank that is licensed by the Comptroller of the Currency pursuant to 12 U.S.C. Section 3102 of the International Banking Act.

(13) "Foreign bank" has the meaning assigned by 12 U.S.C. Section 3101(7) of the International Banking Act.

(14) "Functional regulatory agency" means a department or agency of this state, another state, the United States, or a foreign government that regulates and charters, licenses, or registers persons engaged in financial activities or activities incidental or complementary to financial activities, including activities related to banking, insurance, or securities.

(15) "Georgia state agency" means, when used in reference to an office of a foreign bank, an agency of a foreign bank that is located in this state and licensed pursuant to this article.

(16) "Georgia state bank" means a bank that is organized under the laws of the State of Georgia.

(17) "Georgia state branch" means, when used in reference to an office of a foreign bank, a branch of a foreign bank that is located in this state and licensed pursuant to this article.

(18) "Georgia state representative office" means, when used in reference to an office of a foreign bank, a representative office that is located in this state and registered pursuant to this article.

(19) "Home state" means the state determined to be the home state of the foreign bank under 12 U.S.C. Section 3103(c) of the International Banking Act.

(20) "Insolvency" means:

(A) Inability to meet liabilities as they become due in the regular course of business; or

(B) Insufficiency in actual cash market value of assets to pay liabilities to depositors and other creditors.

(21) "International Banking Act" means the federal International Banking Act of 1978, 12 U.S.C. Section 3101, et seq.

(22) "Interstate Banking and Branching Efficiency Act" means the federal Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law No. 103-328, codified and subsequently amended at various sections of Title 12, United States Code.

(23) "Interstate branch" means a branch of a bank or a branch of a foreign bank, as the context requires, established, acquired, or retained pursuant to the Interstate Banking and Branching Efficiency Act, outside the home state of the bank or foreign bank.

(24) "National bank" means a national banking association organized pursuant to 12 U.S.C. Sections 21 through 215c or a federal savings association organized pursuant to 12 U.S.C. Sections 1461-1470.

(25) "Office of a foreign bank" means a branch, agency, or representative office operated by a foreign bank.

(26) "Out-of-state foreign bank" means a foreign bank whose home state is another state.

(27) "Representative office," when used in reference to an office of a foreign bank, has the meaning assigned by 12 U.S.C. Section 3101(15) of the International Banking Act.

(28) "State" means a state of the United States.

(29) "State bank" means a Georgia state bank or an out-of-state state bank, including an out-of-state state savings bank.

(30) "Subsidiary" has the meaning assigned by 12 U.S.C. Section 1841(d) of the Bank Holding Company Act.

(31) "United States" means:

(A) When used in a geographical sense, the several states, the District of Columbia, Puerto Rico, Guam, American Samoa, the American Virgin Islands, the Trust Territory of the Pacific Islands, and other territories of the United States; and

(B) When used in a political sense, the federal government of the United States.

History. Code 1981, § 7-1-1100, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1101. Limitations on doing business; exceptions.

(a) A foreign bank may not engage in business in this state except to the extent permitted by this article.

(b) Unless subject to an order to cease and desist under Code Section 7-1-1108, the following activities of a foreign bank shall not be considered engaging in business in this state for purposes of subsection (a) of this Code section and, therefore, such subsection shall not prohibit a foreign bank:

(1) From engaging in business at a licensed federal branch or federal agency in this state in accordance with federal law;

(2) That does not maintain a branch or agency in this state or conduct business from a location in this state from making unsecured loans in this state or loans secured by liens on real or personal property located in this state or enforcing those loans in this state, to the extent permitted by other law; or

(3) Organized under the laws of a territory of the United States the deposits of which are insured by the Federal Deposit Insurance Corporation from establishing and operating an interstate branch in this state in its capacity as a state bank pursuant to Part 20 of Article 2 of this chapter.

(c) A foreign bank may engage in business as expressly authorized by the department.

(d) For purposes of subsection (a) of this Code section, a foreign bank is not considered to be engaging in business in this state merely because

a subsidiary or affiliate engages in business in this state, including business that a depository institution subsidiary or affiliate may lawfully conduct in this state as an agent for the foreign bank, to the extent authorized by the laws of this state.

History. Code 1981, § 7-1-1101, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1102. Record keeping.

Each Georgia state branch, Georgia state agency, or Georgia state representative office shall maintain and make available appropriate books, accounts, and records reflecting:

(1) All transactions effected by or on behalf of the office of the foreign bank; and

(2) All other actions taken in this state by employees of the foreign bank located in this state to effect transactions on behalf of an office of the foreign bank located outside this state.

History. Code 1981, § 7-1-1102, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1103. Examination; fees.

(a) The department may make examinations of a Georgia state branch, Georgia state agency, or Georgia state representative office as the department considers necessary to determine whether the office of the foreign bank is being operated in compliance with the laws of this state and in accordance with safe and sound banking practices. Such examinations shall be conducted in the same manner as examinations for financial institutions pursuant to Code Section 7-1-64.

(b) A foreign bank that maintains a Georgia state branch, Georgia state agency, or Georgia state representative office shall pay fees for licensing, registration, assessment, and examination to the department in accordance with this article and rules or regulations adopted pursuant to this article.

History. Code 1981, § 7-1-1103, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1104. Written reports; requirements; penalty for failure to comply.

(a) A foreign bank operating in this state through a Georgia state branch, Georgia state agency, or Georgia state representative office shall make written reports to the department that:

(1) Are in English;

(2) Are submitted at the times and in the form specified by the department;

(3) Are under oath of one of the foreign bank's officers, managers, or agents located at a branch, agency, or representative office in this state;

(4) Show the amount of the foreign bank's assets and liabilities, expressed in United States currency;

(5) With respect to a Georgia state branch or Georgia state agency, show the amount of the branch or agency's assets and liabilities, expressed in United States currency; and

(6) Contain other information that the department requires.

(b) A license or registration of a foreign bank under this article may be revoked, or the foreign bank may be subject to an order to cease and desist under Code Section 7-1-1108, if the foreign bank fails to make a report required under subsection (a) of this Code section or makes a material misrepresentation in such report.

History. Code 1981, § 7-1-1104, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1105. Changes in control.

A foreign bank that operates a Georgia state branch, Georgia state agency, or Georgia state representative office shall inform the department in writing of the direct or indirect acquisition of control of the foreign bank by any person or entity, or group of persons or entities acting in concert, within 14 calendar days after such change in control. Such foreign bank shall provide to the department any additional information the department may require in connection with such change in control.

History. Code 1981, § 7-1-1105, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1106. Rights, privileges, and other duties.

(a) Except as otherwise provided by the International Banking Act, other applicable federal laws or regulations, other applicable state laws or regulations, or otherwise determined by the department, the operations of a foreign bank at a Georgia state branch, a Georgia state agency, or a Georgia state representative office shall be conducted with the same rights and privileges and subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply if the Georgia state branch, Georgia state agency, or Georgia state

representative office were operated by a Georgia state bank operating at the same location.

(b) Notwithstanding subsection (a) of this Code section, a Georgia state branch, Georgia state agency, or Georgia state representative office shall not have greater rights than afforded a Georgia state bank under applicable state and federal laws.

History.
Code 1981, § 7-1-1106, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

U.S. Code.
The International Banking Act, referred to in this Code section, is codified at 12 U.S.C. § 3101 et seq.

7-1-1107. Offices.

(a) For purposes of this Code section, offices of foreign banks in this state shall be divided into classes and ranked in descending order as a:

(1) Georgia state branch;

(2) Georgia state agency; and

(3) Georgia state representative office.

(b) A foreign bank may change a lower class office into a higher class office by applying for the higher class office pursuant to Code Section 7-1-1111. On approval of the application to establish the higher class office and after all conditions to the approval have been satisfied, the foreign bank may change the lower class office into the higher class office, and the department shall issue a license authorizing the bank to maintain the higher class office. Upon issuance of the license for the higher class office, the license or registration previously issued by the department in connection with the lower class office shall be deemed surrendered and rescinded.

(c) A foreign bank may change a higher class office into a lower class office by applying for approval to close the higher class office pursuant to Code Section 7-1-1125. On approval of the application to close the higher class office and after conditions precedent to the closing have been satisfied, the foreign bank may change the higher class office into the lower class office, and the department shall issue a license or registration authorizing the bank to maintain the lower class office. Upon issuance of the license or registration for the lower class office, the license or registration previously issued by the department in connection with the higher class office shall be deemed surrendered and rescinded.

History.
Code 1981, § 7-1-1107, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1108. Cease and desist orders; notice; failure to comply; judical review; fines.

(a) The department may issue an order requiring a foreign bank to cease and desist immediately from unauthorized activities whenever it shall appear to the department that:

(1) A foreign bank is operating outside the scope of the authority granted by its license or registration;

(2) The foreign bank is operating in an unsafe or unsound manner;

(3) The foreign bank has violated any law of this state or any order or regulation of the department; or

(4) The foreign bank is directly or indirectly engaged in activities in violation of any law of this state or any order or regulation of the department.

Such cease and desist order shall be final 20 days after it is issued unless the foreign bank to whom it is issued makes a written request within such 20 day period for a hearing.

(b) Such cease and desist order shall be in writing, sent via email to the foreign bank at the email address provided to the department by such foreign bank for receipt of notifications and as is on record with the department. Any cease and desist order sent to a foreign bank at its email address that is returned to the department as "undeliverable" or to a foreign bank that has not provided an email address to the department shall be served by the department under any other method of lawful service.

(c) Any hearing authorized under subsection (a) of this Code section shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(d) If a foreign bank shall fail to comply with the terms of a final order or decision of the department issued pursuant to this article, the department may, through the Attorney General and upon notice of three days to such foreign bank, petition the court of the county in which the foreign bank has conducted operations for an order directing such foreign bank to obey the order of the department within the period of time as shall be fixed by the court. Upon the filing of such petition, the court shall allow a motion to show cause why it should not be granted. After a hearing upon the merits or after failure of such foreign bank to appear when ordered, the court shall grant the petition of the department upon a finding that the order of the department was properly issued.

(e) Any foreign bank that violates the terms of any final order or

decision issued pursuant to this article shall be liable for a civil penalty not to exceed $10,000.00. Each day the violation continues shall constitute a separate offense. In determining the amount of penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of such foreign bank, the good faith efforts of such foreign bank to comply with the order, the gravity of the violation, the history of previous violations by such foreign bank, and such other factors or circumstances that contributed to the violation. The department may at its discretion compromise or modify any penalty which is subject to imposition or has been imposed pursuant to this Code section. Any foreign bank assessed as provided in this subsection shall have the right to request a hearing into the matter within ten days after notification of the assessment has been served upon the licensee involved; otherwise, such penalty shall be final except as to judicial review as provided in Code Section 7-1-90.

(f) Judicial review of any final order or decision of the department entered pursuant to this article shall be available solely in the Superior Court of DeKalb County, where the department's main office is located.

(g) In addition to any other administrative penalties authorized by this article, the department may, by rule or regulation, prescribe administrative fines for violations of this article and any rules and regulations promulgated by the department pursuant to this article.

History. Code 1981, § 7-1-1108, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1109. Regulatory authority.

Without limiting the power conferred by this title, the department may make reasonable rules and regulations, not inconsistent with law, for the interpretation and enforcement of this article, including, but not limited to, prescribing administrative fines for violations of this article and of any rules promulgated by the department pursuant to this article.

History. Code 1981, § 7-1-1109, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1110. Service of process.

Except as provided in Code Sections 7-1-1109, 7-1-1112, 7-1-1127, and 7-1-1135, a foreign bank operating in this state at a branch, agency, or representative office shall be subject to service of process at such location.

History. Code 1981, § 7-1-1110, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

PART 2

LICENSING

7-1-1111. Application procedures.

(a) A foreign bank that desires to establish and maintain a Georgia state branch or Georgia state agency shall submit an application to the department. Such application shall:

(1) Be accompanied by all application fees and commitments for the pledge of assets required by this article and applicable rules and regulations;

(2) Be in the form specified by the department;

(3) Be signed and acknowledged by an officer of the foreign bank;

(4) Have attached a complete copy of the foreign bank's notice or application to the Board of Governors of the Federal Reserve System under 12 U.S.C. Section 3105(d) of the International Banking Act for the same Georgia state branch or Georgia state agency location and, when issued, the order from the Board of Governors approving the application or acknowledging its nonobjection;

(5) Be submitted simultaneously with the federal notice or application to the Board of Governors of the Federal Reserve System; and

(6) Include on its face or in accompanying documents:

(A) The name of the foreign bank;

(B) The street and mailing address where the principal office of the Georgia state branch or Georgia state agency is to be located, and the name of the person who shall be in charge of the business and affairs of the Georgia state branch or Georgia state agency;

(C) The location of its initial registered office in this state;

(D) The managerial resources of the foreign bank, including the competence, experience, and integrity of the officers and directors, the integrity of its principal shareholders, and management's experience and capacity to engage in international banking;

(E) The competence, experience, and integrity of the natural person who shall be in charge of the business and affairs of the Georgia state branch or Georgia state agency;

(F) A detailed, audited statement of the foreign bank's financial condition as of a date not more than 360 days before the date of the application;

(G) An email address at which the foreign bank can receive official communications, including, but not limited to, administrative orders; and

(H) Other information that is requested by the department.

(b) The department may adopt rules and regulations prescribing abbreviated application procedures and standards applicable to applications by foreign banks to establish additional Georgia state branches or Georgia state agencies that have already established an initial Georgia state branch or Georgia state agency.

History. Code 1981, § 7-1-1111, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1112. Notification of intent to deny application; notice; confidentiality; conditons; review.

(a) After the application is complete and accepted for filing and all required fees and deposits have been paid, the department shall determine from the application and initial investigation whether the conditions set forth by Code Section 7-1-1113 have been established. The department shall approve the application or give the applicant notice of the department's intention to deny the application pursuant to subsection (c) of this Code section.

(b) If the department intends to deny the application, the department shall notify the Board of Governors of the Federal Reserve System that a notice of intent to deny has been issued and the applicant has a right to request a hearing and, if a hearing is requested, the commissioner shall conduct the hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c) Notice of the department's intention to enter an order denying an application for a license shall be given to the applicant in writing, sent by email to the email address provided on the application or registered or certified mail or statutory overnight delivery addressed to the mailing address provided on the application. Within 20 days of the date of the notice of intention to enter an order of denial under this article, the applicant may request in writing a hearing to contest the order. If a hearing is not requested in writing within 20 days of the date of such notice of intention, the department shall enter a final order regarding the denial. Any final order of the department denying an application shall state the grounds upon which it is based and shall be effective on the date of issuance. The department shall promptly send a copy of such order by email to the foreign bank.

(d) Information relating to the financial condition and business affairs of the foreign bank and financial information relating to its

management and shareholders, except for previously published statements and information, is confidential and may not be considered in the public portion of the hearing or disclosed by the commissioner or the department except as provided by Code Section 7-1-70.

(e) The commissioner shall make a finding from the record of the hearing on each condition listed in Code Section 7-1-1113 and enter an order granting or denying the license. If the license is denied, the commissioner shall inform the Board of Governors of the Federal Reserve System of the order and the reasons the federal application should be denied.

(f) The commissioner may include conditions in the approval of any license application. The commissioner may not issue a license until the Georgia state branch or Georgia state agency has received the approval of the Board of Governors of the Federal Reserve System. If the approval is conditioned on a written commitment from the applicant offered to and accepted by the commissioner, the commitment is enforceable against the applicant.

(g) A final decision by the department denying an application for license shall be subject to review in accordance with Code Section 50-13-19.

History. Code 1981, § 7-1-1112, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1113. Required determinations prior to licensing; non-transferable and non-assignable licenses.

(a) The department shall not issue a license to a foreign bank to establish and maintain a Georgia state branch or Georgia state agency unless the department determines that:

(1) The foreign bank engages directly in the business of banking outside of the United States and the Board of Governors of the Federal Reserve System has concluded the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country or determined that comprehensive supervision or regulation is not required but the foreign bank's application is otherwise subject to approval;

(2) The foreign bank has furnished to the department the information it needs to act on the application;

(3) The appropriate authorities in the home country of the foreign bank have consented to the proposed establishment of a branch or agency in the United States by the foreign bank;

(4) The managerial resources of the foreign bank, including the

foreign bank's experience and capacity to engage in international banking, are sufficient to enable the Georgia state branch or Georgia state agency to operate in accordance with safe and sound banking practices;

(5) The foreign bank has provided the department with adequate assurances that the bank will make available to the department such information on the operations or activities of the foreign bank and any affiliate of the bank that the department deems necessary to determine and enforce compliance with state law, the International Banking Act, and other applicable federal law;

(6) The foreign bank is in compliance with applicable federal and state law;

(7) The financial resources of the foreign bank, including the foreign bank's capital position, projected capital position, profitability, level of indebtedness, and future prospects, are sufficient to enable the Georgia state branch or Georgia state agency to operate in accordance with safe and sound banking practices;

(8) The directors, executive officers, and principal shareholders of the foreign bank are qualified by reason of their financial ability, reputation, and integrity and have sufficient banking and other business experience to indicate that they will manage and direct the affairs of the foreign bank in accordance with safe and sound banking practices;

(9) The natural person who shall be in charge of the business and affairs of the Georgia state branch or Georgia state agency is of sufficient banking experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the Georgia state branch or Georgia state agency will operate in compliance with state law, the International Banking Act, and other applicable federal law;

(10) Federal law permits the appropriate bank supervisory agency to issue a comparable license to the foreign bank;

(11) The foreign bank has sufficient standing to justify a belief that the Georgia state branch or Georgia state agency will be free from improper or unlawful influence or interference with respect to the operation of the Georgia state branch or Georgia state agency in compliance with state law; and

(12) The foreign bank is acting in good faith and the application does not contain a material misrepresentation.

(b) A license issued under this article is not transferable or assignable.

History.
Code 1981, § 7-1-1113, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1114. Certificate of authority; notification of revocation of certificate of authority; foreign corporation requirements.

(a) After the department has issued a license permitting a foreign bank to establish and maintain a Georgia state branch or Georgia state agency, the foreign bank shall obtain a certificate of authority from the Secretary of State pursuant to Code Section 14-2-1501. The foreign bank shall provide the certificate of authority to the department prior to commencing operations of a Georgia state branch or Georgia state agency.

(b) A foreign bank shall notify the department within three business days if its certificate of authority is revoked by the Secretary of State.

(c) Notwithstanding the definition of the term "foreign corporation" in paragraph (13) of Code Section 14-2-140, all of the provisions of Article 15 of Chapter 2 of Title 14, relating to foreign corporations, shall apply to all foreign banks establishing and maintaining a Georgia state branch or Georgia state agency in this state. Such foreign banks shall file an annual registration with the Secretary of State as set forth in Code Section 14-2-1622.

History.
Code 1981, § 7-1-1114, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023; Ga. L. 2024, p. 354, § 1-36/HB 876, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, added the second sentence in subsection (c).

7-1-1115. Maintenance of federal branch or agency.

(a) A foreign bank licensed under this article to establish and maintain a Georgia state branch or Georgia state agency shall not concurrently maintain a federal branch or federal agency in this state.

(b) A foreign bank which maintains a federal branch or federal agency in this state shall not concurrently be licensed under this article to maintain a Georgia state branch or Georgia state agency.

History.
Code 1981, § 7-1-1115, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1116. Application of other provisions; activities; maintenance of books or records.

(a) A Georgia state branch or Georgia state agency is subject to this

article and other laws of this state applicable to banks as if the Georgia state branch or Georgia state agency were a Georgia state bank unless:

(1) This chapter, a rule or regulation of the department, or federal law provides otherwise; or

(2) The context of a provision or other information indicates that such provision shall apply only to a bank organized under the laws of a state or the United States.

(b) Among other exceptions to subsection (a) of this Code section that may be required or authorized by the department, provided by this article, or by adopted rules or regulations:

(1) A Georgia state branch may only accept deposits subject to the limitations and requirements established by applicable federal law, including, but not limited to, 12 U.S.C. Section 3104 and 12 C.F.R. 28.16;

(2) A Georgia state agency may not accept deposits; and

(3) A limitation or restriction based on the capital and surplus of a Georgia state bank is considered to refer, as applied to a Georgia state branch or Georgia state agency, to the dollar equivalent of the capital and surplus of the foreign bank.

(c) Subject to subsections (a) and (b) of this Code section, a foreign bank licensed to transact business in this state through a Georgia state branch or Georgia state agency may:

(1) Borrow and lend money with or without property as security;

(2) Purchase, sell, and make loans regardless of whether the loans are secured by bond or mortgages on real property;

(3) Engage in foreign exchange transactions;

(4) Issue, advise, confirm, and otherwise deal with a letter of credit and pay, accept, or negotiate a draft drawn under a letter of credit;

(5) Accept a bill of exchange or draft;

(6) Buy or acquire and sell or dispose of a bill of exchange, draft, note, acceptance, or other obligation for the payment of money;

(7) Maintain a credit balance of money received at the Georgia state branch or Georgia state agency incidental to or arising out of the exercise of its authorized activities in this state, provided that the money is not intended to be a deposit and does not remain in the Georgia state branch or Georgia state agency after the completion of all transactions to which it relates;

(8) Accept deposits to the extent permitted by subsection (b) of this Code section;

(9) Receive money for transmission and transmit the money from its authorized place of business in this state to any other place without the need for a license under Article 4 of this chapter;

(10) Act as an indenture trustee or as a registrar, paying agent, or transfer agent, on behalf of the issuer, for equity or investment securities;

(11) Subject to the prior approval of the department in accordance with Code Section 7-1-1117, act as a fiduciary; and

(12) Perform other activities that:

(A) Are authorized by the rules and regulations adopted to accomplish the purposes of this article;

(B) Are authorized for federal branches of foreign banks, subject to compliance with any related federal conditions or limitations and subject to the notice and objection procedures set forth in Code Section 7-1-296; or

(C) The department determines are analogous or incidental to specific activities authorized by this Code section for a Georgia state branch or Georgia state agency.

(d) A foreign bank licensed to transact business in this state through a Georgia state branch or Georgia state agency may share the premises of the Georgia state branch or Georgia state agency with another authorized office of the foreign bank or direct or indirect subsidiary of the foreign bank, provided that the books or records of the Georgia state branch or Georgia state agency are maintained separately from the books and records of the other office of the foreign bank.

History.
Code 1981, § 7-1-1116, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1117. Acting as a fiduciary.

(a) Except as provided in paragraph (10) of subsection (c) of Code Section 7-1-1116, a foreign bank may not act as a fiduciary at a Georgia state branch or Georgia state agency except by obtaining approval from the department as provided in this Code section. No Georgia state branch or Georgia state agency shall exercise the powers and privileges of a fiduciary without submitting an application to do so in a manner and form prescribed by the department. At a minimum, the application shall describe in detail:

(1) The proposed fiduciary activities;

(2) The names and relevant expertise of its officers and employees who will conduct the fiduciary activities; and

(3) The manner in which the fiduciary activities will be captured in the books and records of the Georgia state branch or Georgia state agency with due regard for separation of beneficial and legal interests.

The department shall evaluate the application in the same manner as for a license as provided in Code Section 7-1-1113.

(b) The department may approve a foreign bank applicant to engage in fiduciary activities if the commissioner finds that the foreign bank will exercise its fiduciary powers in accordance with the laws of this state and has sufficient fiduciary and accounting expertise and controls to protect beneficial interests under its control. The department may include conditions and limitations in any approval of fiduciary powers. If the approval is conditioned on a written commitment from the applicant offered to and accepted by the commissioner, the commitment is enforceable against the applicant. If the department, in its discretion, disapproves the proposed use of fiduciary powers, it shall notify the foreign bank of its disapproval and state generally the unfavorable factors influencing its decision. The decision of the department shall be conclusive, except that it may be subject to judicial review as provided in Code Section 7-1-90.

(c) Notwithstanding the limitations in Article 15 of Chapter 12 of Title 53, a foreign bank that obtains the approval of the department under this Code section may engage in fiduciary activities at its Georgia state branch or Georgia state agency to the same extent and in the same manner as a Georgia state bank could do so at the same location, subject to any conditions or limitations applicable to the approval.

(d) The department may initiate an enforcement action or may order a foreign bank to cease engaging in fiduciary activities in this state in the same manner as a cease and desist order under Code Section 7-1-1108 if the department finds in writing that:

(1) Conditions exist related to the fiduciary activities of the foreign bank in this state which would authorize the department to revoke its license pursuant to Code Section 7-1-1126; or

(2) A fact or condition exists which, if it had existed at the time of the foreign bank's original application to engage in fiduciary activities, would have resulted in the department disapproving the foreign bank to engage in fiduciary activities.

History. Code 1981, § 7-1-1117, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1118. Amending license; requirements.

(a) A foreign bank licensed to establish and maintain a Georgia state branch or Georgia state agency shall apply to the department for an amended license if it changes its corporate name, changes the duration of its corporate existence, or desires to pursue in this state other or additional purposes than those set forth in its prior application for the foreign bank's license then in effect.

(b) The requirements with respect to the form and contents of an application under subsection (a) of this Code section, the manner of its execution, the issuance of an amended license, and the effect of the amended license shall be the same as in the case of an initial application for a license to establish and maintain a Georgia state branch or Georgia state agency.

History. Code 1981, § 7-1-1118, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1119. Act of relocating; notice.

(a) For purposes of this Code section, the term "relocation" means the location of an existing Georgia state branch or Georgia state agency is to be moved to a new location which is to be constructed, purchased, or leased within the State of Georgia.

(b) A foreign bank may submit a letter form application to the department to relocate an existing Georgia state branch or Georgia state agency. Unless the department denies the application, the approval to relocate an existing Georgia state branch or Georgia state agency under this Code section shall be effective at the earlier of:

(1) The date of an approval letter from the department; or

(2) Ten business days following the date of the department's acknowledged receipt of the application.

(c) At least 30 days before the relocation, a foreign bank shall post a notice to consumers of such proposed relocation in a conspicuous location at the affected Georgia state branch or Georgia state agency and on its website.

History. Code 1981, § 7-1-1119, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1120. Treatment of assets.

Each foreign bank licensed to establish and maintain a Georgia state branch or Georgia state agency in this state shall keep the assets of its

business in this state separate and apart from the assets of its business outside this state.

History.
Code 1981, § 7-1-1120, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1121. Notice of uninsured deposits.

Each foreign bank licensed to establish and maintain a Georgia state branch or Georgia state agency shall give clear and conspicuous notice consistent with 12 C.F.R. 347.207 that deposits and credit balances in the Georgia state branch or Georgia state agency are not insured by the Federal Deposit Insurance Corporation.

History.
Code 1981, § 7-1-1121, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1122. Operations.

A foreign bank with an out-of-state branch or agency may, with the approval of the department:

(1) Establish a Georgia state branch or Georgia state agency;

(2) Acquire or merge with another foreign bank maintaining a Georgia state branch or Georgia state agency and after the acquisition or merger continue the operations as its own; or

(3) Acquire or establish a Georgia state branch or Georgia state agency through another means not inconsistent with 12 U.S.C. Section 3102 of the International Banking Act.

History.
Code 1981, § 7-1-1122, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023; Ga. L. 2024, p. 1052, § 1(a)(30)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "department:" for "department, establish:" in the introductory language and substituted "Establish a" for "A" at the beginning of paragraph (1).

7-1-1123. Value of assets and deposits; minimum requirements; reporting.

(a) A foreign bank licensed to establish and maintain a Georgia state branch or Georgia state agency shall be required to keep dollar deposits or investment securities, with unaffiliated banks in this state that the foreign bank designates and the department approves, or money and securities pledged to the department in an aggregate amount to be determined by the department, valued at the lower of principal amount or market value, consisting of:

(1) United States dollar deposits;

(2) Bonds, notes, debentures, or other legally created, general obligations of a state, an agency or political subdivision of a state, the United States, or an instrumentality of the United States;

(3) Securities that this state, an agency or political subdivision of this state, the United States, or an instrumentality of the United States has unconditionally agreed to purchase, insure, or guarantee;

(4) Certificates of deposit, payable in the United States, and bankers' acceptances, provided that, in either case, the issuer has an adequate capacity to meet financial commitments, meaning the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected, for the projected life of the asset or exposure expected;

(5) Repurchase agreements; or

(6) Other assets as may be permitted by rule.

(b) The aggregate amount of deposited investment securities and dollar deposits for each Georgia state branch or Georgia state agency established and operating under this Code section shall be not less than the greater of:

(1) That amount of capital which would be required of a Georgia state bank under Code Section 7-1-410; or

(2) One percent of the total liabilities of such Georgia state branch or Georgia state agency, including acceptances, but excluding accrued expenses and amounts due and other liabilities to offices, branches, agencies, and subsidiaries of such foreign bank.

Notwithstanding the above deposit requirement, the department is authorized to enact rules and regulations pursuant to this article to establish a maximum dollar amount of deposited investment securities and dollar deposits for certain highly rated foreign banks. For prudential or supervisory reasons, the department may require that a foreign bank has deposited investment securities and dollar deposits above the minimum amount.

(c) The assets deposited and the amount of the assets to be maintained under subsection (a) of this Code section are subject to the conditions and limitations the department considers necessary or desirable for the maintenance of a sound financial condition; the protection of depositors, creditors, and the public interest in this state; and the support of public confidence in the business of the Georgia state branch or Georgia state agency.

(d) A foreign bank shall require its depository bank to segregate its dollar deposits and deposited investment securities on the depository

bank's books and records. The funds deposited and obligations referred to in subsection (a) of this Code section that are placed in safekeeping at a depository bank:

(1) Shall not be reduced in value below the minimum required for that Georgia state branch or Georgia state agency without the prior approval of the department, but in no event below the minimum amount required under Code Section 7-1-410;

(2) Shall be maintained pursuant to an agreement prescribed by the department that shall be a written agreement entered into with the department; and

(3) Shall be free from any lien, charge, right of setoff, credit, or preference in connection with any claim of the depository bank against the foreign bank.

(e) Each Georgia state branch or Georgia state agency shall file with the department such reports as required by rule or regulation to determine compliance with this Code section.

History.
Code 1981, § 7-1-1123, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023; Ga. L. 2024, p. 1052, § 1(a)(31)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "bankers' acceptances," for "banker's acceptances," in paragraph (a)(4) and substituted "has deposited" for "have deposited" in the undesignated text at the end of subsection (b).

7-1-1124. Asset maintenance.

(a) The department may require a foreign bank to hold certain assets in this state.

(b) If the department requires asset maintenance, the amount of assets held by a foreign bank shall be prescribed by the department after consideration of the aggregate amount of liabilities of the Georgia state branch or Georgia state agency, payable at or through the Georgia state branch or Georgia state agency. To determine the aggregate amount of liabilities for purposes of this subsection, the foreign bank shall include bankers' acceptances, but exclude liabilities to the head office and any other branches, offices, agencies, subsidiaries, and affiliates of the foreign bank.

(c) In determining compliance with the asset maintenance requirements, the department shall give the Georgia state branch or Georgia state agency credit for:

(1) Assets pledged pursuant to Code Section 7-1-1123; and

(2) Reserves required to be maintained by the Georgia state

branch or Georgia state agency pursuant to 12 U.S.C. Section 3105(a).

(d) In determining eligible assets for purposes of this Code section, the Georgia state branch or Georgia state agency shall exclude:

(1) Any amount due from the head office or any other branch, office, agency, subsidiary, or affiliate of the foreign bank;

(2) Any classified asset;

(3) Any asset that, in the determination of the department, is not supported by sufficient credit information;

(4) Any deposit with a bank in the United States, unless that bank has executed a valid waiver of offset agreement;

(5) Any asset not in the actual possession of the Georgia state branch or Georgia state agency, unless the branch or agency holds title to the asset and maintains records sufficient to enable independent verification of the ownership of the asset by the branch or agency, as determined at the most recent examination; and

(6) Any other particular asset or class of assets as provided by the department, based on a case-by-case assessment of the risks associated with the asset.

(e) In the event the department requires asset maintenance, assets to be held in this state for the purpose of satisfying the ratio of assets to liabilities shall:

(1) Include:

(A) Currency, bonds, notes, debentures, drafts, bills of exchange, or other evidences of indebtedness, including loan participation agreements or certificates;

(B) Other obligations payable in the United States or in United States funds or, with the prior approval of the department, in funds freely convertible into United States funds; and

(C) Other assets as may be specified by rule or regulation; and

(2) Exclude obligations of a person for money borrowed to the extent that the total of the obligations of the person exceeds 10 percent of total assets considered for purposes of this Code section.

(f) For purposes of this Code section, assets shall be valued at the lower of principal amount or market value. The department may determine the value of a nonmarketable security, loan, or other asset or obligation held or owed to the foreign bank or its Georgia state branch or Georgia state agency in this state. If the department cannot

determine the value of a nonmarketable asset, such asset shall be excluded from the ratio computation.

(g) The department may require a foreign bank to deposit the assets required to be held in this state pursuant to this Code section with specific banks in this state designated by the department if, because of the existence or the potential occurrence of unusual and extraordinary circumstances, the department considers it necessary or desirable for the maintenance of a sound financial condition; the protection of depositors, creditors, and the public interest in this state; and the maintenance of public confidence in the business of a Georgia state branch or Georgia state agency.

History. Code 1981, § 7-1-1124, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1125. Approval for closure; requirements.

(a) A foreign bank licensed to establish and maintain a Georgia state branch or Georgia state agency may not close the Georgia state branch or Georgia state agency without filing an application with, and obtaining the prior approval of, the department. An application by a foreign bank under this Code section shall be in such form and include such information as the department requires.

(b) The commissioner shall approve such application if the department finds that the closing of the Georgia state branch or Georgia state agency will not be substantially detrimental to the foreign bank's depositors and creditors in this state. An application may be approved subject to conditions imposed by the department for the continued protection of the foreign bank's depositors and creditors in this state, including a condition that the foreign bank pledge assets in the manner specified by Code Section 7-1-1123 or maintain assets as contemplated by Code Section 7-1-1124 for a specified period of time.

(c) When an application by a foreign bank under this Code section has been approved and all conditions precedent to the closing have been fulfilled, the foreign bank shall deliver to the department:

(1) All existing copies of examination reports or other property of the department;

(2) A statement under oath by an authorized officer, manager, or agent of the foreign bank that all deposit and other liabilities of the Georgia state branch or Georgia state agency to depositors and creditors in this state have been properly discharged by payment or pledge or otherwise assumed or retained by a financial institution;

(3) An appropriate board resolution closing the Georgia state branch or Georgia state agency; and

(4) A statement of the location where the Georgia state branch or Georgia state agency records will be kept after the closing.

Upon receipt of adequate documentation, the department shall provide written authorization that the foreign bank may close the Georgia state branch or Georgia state agency.

History. Code 1981, § 7-1-1125, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1126. Revocation.

The department may revoke the license of a Georgia state branch or Georgia state agency if the department by examination or other credible evidence finds that the foreign bank:

(1) Does not currently meet the criteria established by this article for the original issuance of a license;

(2) Has refused to permit the department to examine its books, papers, accounts, records, or affairs in accordance with Code Sections 7-1-1102 and 7-1-1103;

(3) Has failed to make a report required under this article or made a material false or misleading statement in such report;

(4) Has violated this article, another law or rule applicable to a foreign bank or a Georgia state branch or Georgia state agency, or a final and enforceable order of the department;

(5) Has misrepresented or concealed a material fact in the application for licensure;

(6) Has violated a condition of its license or an agreement between the foreign bank and the department or other functional regulatory agency;

(7) Has had its authorization to act dissolved, revoked, or otherwise terminated in its jurisdiction of incorporation or jurisdiction where it is operating a branch, agency, or representative office;

(8) One or more grounds for receivership, including insolvency, as specified in Code Section 7-1-1129, exists; or

(9) Conducts business in an unsafe and unsound manner.

History. Code 1981, § 7-1-1126, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1127. Notice of revocation; acceptance of new business; confidentiality; review.

(a) Notice of the department's intention to enter an order revoking a

license of a Georgia state branch or Georgia state agency shall be given to the foreign bank in writing, sent via email to the foreign bank at the email address provided to the department by such foreign bank for receipt of notifications. Within 20 days of the date of issuance of the notice of intention to enter an order of revocation under this article, the foreign bank may request in writing a hearing to contest the order. If a hearing is not requested in writing within 20 days of the date of issuance of such notice of intention, the department shall enter a final order regarding the revocation. A final order of the department revoking a license shall state the grounds upon which it is based and shall be effective on the date of issuance. The department shall promptly send a copy of such order by email to the foreign bank at the email address provided to the department by such foreign bank.

(b) A foreign bank may not accept new business during the pendency of a hearing requested pursuant to subsection (a) of this Code section unless the commissioner gives prior written approval, except that such foreign bank shall comply with any stricter requirements imposed by 12 U.S.C. Section 3105(e) of the International Banking Act.

(c) Information relating to the financial condition and business affairs of the foreign bank, except previously published statements and information, is confidential and shall not be disclosed by the commissioner or an employee of the department except as provided by Code Section 7-1-70.

(d) A decision by the department denying an application for license or of an order revoking a license shall be subject to review in accordance with Code Section 50-13-19.

History. Code 1981, § 7-1-1127, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1128. Effective date of revocation.

Unless stayed by the superior court that has jurisdiction over an appeal under Code Section 50-13-19, a final order of the commissioner revoking a license is effective immediately, and the foreign bank shall immediately cease all activity in this state requiring a license.

History. Code 1981, § 7-1-1128, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1129. Possession by department; receivership proceedings; venue; contesting decision; liquidation and transfer of assets.

(a) If the department finds that any of the factors set forth in Code Section 7-1-150 or 7-1-1126 are true with respect to a foreign bank

licensed to establish and maintain a Georgia state branch or Georgia state agency, the department may by order of the commissioner immediately take possession of the property and business of the foreign bank in this state if that action is necessary or desirable for the protection of the interests of the depositors and creditors of the foreign bank's business in this state or for the protection of the public. The department shall retain possession until the foreign bank resumes business in this state or is finally liquidated, except that the department may permit the foreign bank to resume business in this state on such conditions as the department requires. An order issued under this Code section shall be served on the foreign bank in the manner required by subsection (a) of Code Section 7-1-1127.

(b) As soon as practicable after taking possession of the property and business of a foreign bank pursuant to subsection (a) of this Code section, the department shall initiate a receivership proceeding by filing a copy of the order issued under this Code section in the Superior Court of DeKalb County to be governed by Part 7 of Article 1 of this chapter as if the foreign bank were a Georgia state bank, except as otherwise provided by this Code section. Notwithstanding the priorities established by Part 7 of Article 1 of this chapter, the depositors and creditors of the Georgia state branch or Georgia state agency arising out of transactions with and recorded on the books of the Georgia state branch or Georgia state agency have an absolute preference and priority over the creditors of the foreign bank's offices located outside this state.

(c) An action initiated that seeks to directly or indirectly affect the assets of the Georgia state branch or Georgia state agency is considered to be an intervention in the receivership proceeding. Venue for an action instituted to effect, contest, or otherwise intervene in the liquidation of a Georgia state branch or Georgia state agency is in DeKalb County.

(d) The foreign bank may contest the department's actions as provided in this subsection. On or before the tenth day after the date the department has taken possession of the property and business of a foreign bank pursuant to subsection (a) of this Code section, the foreign bank, acting through a majority of its directors, may intervene in the action filed by the commissioner to challenge the department's closing of the foreign bank's Georgia state branch or Georgia state agency and to enjoin the department or other receiver from liquidating its assets. The court may issue an injunction restraining the department or other receiver from liquidating the foreign bank's assets pending a resolution of the merits of the action. The department or other receiver shall comply with the restraining order but may petition the court for permission to liquidate assets as necessary to prevent their loss or diminution pending the outcome of the injunction. The department or

other receiver shall not be required to post bond. The court shall hear such action as quickly as possible and shall give it priority over other business. The foreign bank or the commissioner or other receiver may appeal the court's judgment as in other civil cases, except that the commissioner or other receiver shall retain all seized foreign bank assets pending a final appellate court order even if the commissioner does not prevail in the superior court. If the department prevails in the superior court, liquidation of the assets of the Georgia state branch or Georgia state agency may proceed unless the superior court or appellate court orders otherwise. If liquidation is enjoined or stayed pending appeal, the superior court retains jurisdiction to permit liquidation of assets as necessary to prevent their loss or diminution pending the outcome of the appeal.

(e) After the commissioner or other receiver has completed the liquidation of the property and business of a foreign bank, the commissioner or other receiver shall transfer any remaining assets to the foreign bank in accordance with the court's orders, except that:

(1) If the foreign bank has an office in another state of the United States that is in liquidation and the assets of the office appear to be insufficient to pay in full the creditors of that office, the court shall order the commissioner or other receiver to transfer to the liquidator of that office the amount of the remaining assets that appears to be necessary to cover the insufficiency; or

(2) If the foreign bank has two or more such offices in liquidation and the amount of remaining assets is less than the aggregate amount of insufficiencies with respect to such offices, the court shall order the commissioner or other receiver to distribute the remaining assets among the liquidators of the offices in the manner the court finds equitable.

History. Code 1981, § 7-1-1129, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1130. Dissolution, termination, or cancellation of foreign corporation; obligations.

(a) If a foreign bank licensed to maintain a Georgia state branch or Georgia state agency in this state is dissolved, has its authority or existence terminated or canceled in the jurisdiction of its incorporation, or has its authority to maintain a Georgia state branch or Georgia state agency terminated by the Board of Governors of the Federal Reserve System under 12 U.S.C. Section 3105(e) of the International Banking Act, an officer, manager, or agent of the foreign bank shall immediately deliver to the department:

(1) A certified copy of:

(A) A certificate of the official responsible for records of banking corporations of the foreign bank's jurisdiction of incorporation attesting to the occurrence of dissolution or of termination or cancellation of its authority or existence;

(B) An order or decree of a court directing the dissolution of the foreign bank or the termination or cancellation of its authority or existence; or

(C) An order of the Board of Governors of the Federal Reserve System terminating its authority under 12 U.S.C. Section 3105(e) of the International Banking Act; and

(2) The documents and information required by subsection (c) of Code Section 7-1-1125.

(b) The filing of the certificate, order, or decree has the same effect provided by Code Section 7-1-1128 as if the license issued under this article were revoked by the department as of the effective date of termination or cancellation specified in the certificate, order, or decree unless the department orders an earlier effective date, subject to the procedural protections of Code Section 7-1-1127.

History. Code 1981, § 7-1-1130, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

Part 3

State Representative Offices

7-1-1131. Establishment of state representative offices; application requirements; annual registration; rules and regulations.

(a) A foreign bank may establish a Georgia state representative office upon approval by the department of an application for registration. Such application shall:

(1) Be accompanied by all registration fees required by rule or regulation;

(2) Be in the form specified by the department;

(3) Be signed and acknowledged by an officer of the foreign bank;

(4) Contain as an exhibit or attachment a copy of the foreign bank's notice or application submitted to the Board of Governors of the Federal Reserve System under 12 U.S.C. Section 3107 of the International Banking Act, and, when issued, the order or notification from the Board of Governors indicating that the representative office has been approved, if such notice or application is required;

(5) Be submitted when the federal notice or application is submitted to the Board of Governors of the Federal Reserve System; and

(6) Directly or in exhibits or attachments contain:

(A) The name of the foreign bank;

(B) The street and mailing address where each Georgia state representative office is to be located in this state and the name of the person who shall be in charge of the business and affairs of the Georgia state representative office;

(C) The location of its initial registered office in this state;

(D) The managerial resources of the foreign bank, including the competence, experience, and integrity of the officers and directors; the integrity of its principal shareholders; and management's experience and capacity to engage in international banking;

(E) A complete and detailed audited statement of the financial condition of the foreign bank as of a date not more than 360 days before the date of the filing; and

(F) Other information the department requires.

(b) Each Georgia state representative office shall submit an annual registration with the department as set forth in the rules and regulations enacted by the department.

(c) The department may adopt rules and regulations prescribing abbreviated registration procedures and standards for foreign banks that have already established an initial Georgia state representative office to establish additional Georgia state representative offices.

(d) A foreign bank that maintains a Georgia state branch, a federal branch, a Georgia state agency, or a federal agency in this state is authorized to establish or maintain one or more Georgia state representative offices.

History. Code 1981, § 7-1-1131, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1132. Location and authority of offices; relocation.

A Georgia state representative office may engage in the activities authorized by this article at each location registered with the department as a representative office. A Georgia state representative office may change its location in this state by filing a letter form application with the department containing the street address and mailing address of the new location. Unless the department denies the application, the

approval to relocate an existing Georgia state representative office under this Code section will be effective at the earlier of:

(1) The date of an approval letter from the department; or

(2) Ten business days following the date of the department's acknowledged receipt of the application.

All relocations shall include a notice to customers posted in a conspicuous place of the affected location as well as on the bank's website at least 30 days before relocating.

History.
Code 1981, § 7-1-1132, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023; Ga. L. 2024, p. 1052, § 1(a)(32)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "shall" for "should" in the undesignated text at the end of the Code section.

7-1-1133. Authorized activities.

A registered Georgia state representative office of a foreign bank may engage in:

(1) Representational and administrative functions in connection with the banking activities of the foreign bank that:

(A) May include soliciting new business for the foreign bank, conducting research, acting as liaison between the foreign bank's head office and customers in the United States, performing preliminary and servicing steps in connection with lending, or performing back-office functions;

(B) May include such other activities as are permitted for representative offices of foreign banks under 12 C.F.R. 211.24(d); and

(C) May include such other activities as are permitted for representative offices of foreign banks pursuant to federal law or regulation, subject to compliance with any related federal conditions or limitations and subject to the notice and objection procedures set forth in Code Section 7-1-296; but

(D) Do not include contracting for any deposit or deposit-like liability, lending money, or engaging in any other banking activity for the foreign bank;

(2) Making credit decisions if:

(A) The foreign bank also operates one or more branches or agencies in the United States;

(B) The loans approved at the representative office are made by a branch or agency of the foreign bank;

(C) The loan proceeds are not disbursed in the representative offices; and

(D) Authorized for representative offices of foreign banks pursuant to federal law or regulation, subject to compliance with any related federal conditions or limitations and subject to the notice and objection procedures set forth in Code Section 7-1-296; and

(3) Other functions for or on behalf of the foreign bank or its affiliates, including operating as a regional administrative office of the foreign bank, but only to the extent that the functions are not banking activities and are not prohibited by applicable federal or state law.

History. Code 1981, § 7-1-1133, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1134. Denial or revocation of licensure.

The department may deny an application for registration or revoke the registration of a representative office if the department by examination or other credible evidence finds that the foreign bank:

(1) Has refused to permit the department to examine the books, papers, accounts, records, or affairs of a Georgia state representative office in accordance with Code Sections 7-1-1102 and 7-1-1103;

(2) Has violated this article, another law or rule applicable to the foreign bank or a Georgia state representative office, or a final and enforceable order of the department;

(3) Has misrepresented or concealed a material fact in the original or subsequent registration applications;

(4) Has violated a condition of an agreement between the foreign bank and the department or other functional regulatory agency;

(5) Has had its authority or existence terminated or canceled in its jurisdiction of incorporation; or

(6) Conducts business in an unsafe and unsound manner.

History. Code 1981, § 7-1-1134, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1135. Notice of revocation or denial; acceptance of new business; confidentiality; review.

(a) Notice of the department's intention to enter an order revoking a

registration or denying an application for registration shall be given to the foreign bank in writing, sent via email to the foreign bank at the email address provided to the department by such foreign bank for receipt of notifications. Within 20 days of the date of issuance of the notice of intention to enter an order of revocation or denial under this article, the foreign bank may request in writing a hearing to contest the order. If a hearing is not requested in writing within 20 days of the date of issuance of such notice of intention, the department shall enter a final order regarding the revocation or denial. Any final order of the department revoking a registration or denying an application for registration shall state the grounds upon which it is based and shall be effective on the date of issuance. The department shall promptly send a copy of such order by email to the foreign bank.

(b) If the Georgia state representative office's registration has been approved and the department issues a subsequent notice of intent to revoke registration, the foreign bank shall not accept new business during the pendency of the hearing unless the commissioner gives prior written approval, except that it shall comply with any stricter requirements imposed by 12 U.S.C. Section 3105(e) of the International Banking Act.

(c) Information relating to the financial condition and business affairs of the foreign bank, except previously published statements and information, is confidential and may not be disclosed by the commissioner or an employee of the department except as provided by Code Section 7-1-70.

(d) A decision by the department denying an application for registration or of an order revoking a registration shall be subject to review in accordance with Code Section 50-13-19.

History. Code 1981, § 7-1-1135, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1136. Cessation of activities.

A foreign bank that has had its Georgia state representative office registration revoked under this part shall cease all activities in this state except to the extent authorized by Code Section 7-1-1101. Continued activity in this state of an unregistered foreign bank is subject to Code Section 7-1-5.

History. Code 1981, § 7-1-1136, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1137. Reporting to department; impact of filings.

(a) If a foreign bank with a registered Georgia state representative

office is dissolved, has its authority or existence terminated or canceled in the jurisdiction of its incorporation, or has its authority to maintain its Georgia state representative office terminated by the Board of Governors of the Federal Reserve System under 12 U.S.C. Section 3107(b) of the International Banking Act, an officer, manager, or agent of the foreign bank shall deliver to the department a certified copy of:

(1) A certificate of the official responsible for records of banking corporations of the foreign bank's jurisdiction of incorporation attesting to the occurrence of dissolution or of termination or cancellation of authority or existence;

(2) An order or decree of a court directing the dissolution of the foreign bank or the termination or cancellation of its authority or existence; or

(3) An order of the Board of Governors of the Federal Reserve System terminating its authority under 12 U.S.C. Section 3107(b) of the International Banking Act.

(b) The filing with the department of such certificate, order, or decree has the same effect as provided in Code Section 7-1-1136 as if the registration made under this article were revoked by the department.

History. Code 1981, § 7-1-1137, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

7-1-1138. Continuing registration.

Every Georgia state representative office registered with the department under the provisions of Code Section 7-1-721 as of June 30, 2023, shall remain registered and be allowed to conduct business in Georgia. Such Georgia state representative offices shall comply with this part and Part 1 of this article.

History. Code 1981, § 7-1-1138, enacted by Ga. L. 2023, p. 651, § 48/HB 55, effective July 1, 2023.

CHAPTER 2

CREDIT UNION DEPOSIT INSURANCE CORPORATION

Sec.		Sec.	
7-2-1.	Incorporation procedures.		sessments; distribution of assets on liquidation.
7-2-2.	Amendments to articles.		
7-2-3.	Adoption and amendment of bylaws.	7-2-9.	Insurance of deposits and shares.
7-2-4.	Powers.	7-2-10.	Conduct of business by incorporators and directors.
7-2-5.	Membership.		
7-2-6.	[Reserved] Membership — Financial institutions which are ineligible to be federally insured or which were chartered prior to July 1, 1981.	7-2-11.	Exclusive supervision by department; rules and regulations.
		7-2-12.	Copies of members' reports sent to corporation; additional examinations or audits; ordering corrective action or revoking membership.
7-2-6.1.	Powers and privileges of members.		
7-2-7.	Membership fees; refunds of fees, assessments, and premiums; distribution of undivided corporate earnings preceding voluntary cessation of business.	7-2-13.	Administrative review of corporation or department decision; exhaustion of remedies.
		7-2-14.	Tax exemption.
7-2-8.	Premiums and special as-		

Cross references.
Credit unions generally, § 7-1-630 et seq.

7-2-1. Incorporation procedures.

(a) Within one year after July 1, 1974, the duly authorized representatives of not less than three credit unions chartered and existing under the laws of this state may petition the Secretary of State for incorporation of a nonprofit credit union deposit insurance corporation, hereinafter referred to as the "corporation." Such petition shall be accompanied by articles of incorporation in triplicate which shall include the following:

(1) The name of the proposed corporation, which shall include the words "deposit insurance corporation," and no corporation other than one incorporated pursuant to this chapter shall use the words in sequence "deposit insurance corporation";

(2) The location of its initial registered office;

(3) The purpose and nature of the business of the corporation, which shall be to aid and assist any member financial institution which is in liquidation or facing liquidation due to insolvency in order that the deposits and shares of any member shall be insured or

guaranteed against loss in such amounts as may from time to time be established by the board of directors of the corporation pursuant to this chapter;

(4) Membership in the corporation, which shall be limited, except as otherwise expressly provided, to financial institutions, approved for membership by the directors of the corporation upon recommendation of the Department of Banking and Finance of this state, hereinafter referred to as the "department"; and

(5) The term of existence of the corporation, which shall be perpetual unless otherwise limited.

(b) Upon receipt of the articles, the Secretary of State shall forward one copy to the department.

(c) Before the articles are approved by the department, an appropriate investigation shall be made by the department for the purpose of determining:

(1) Whether the articles conform to this chapter;

(2) The general character and fitness of the petitioners;

(3) The economic advisability of establishing the proposed corporation; and

(4) Whether such corporation would cause undue harm to a corporation already existent under this chapter.

Upon approval of the articles in writing by the department, such written approval shall be delivered to the Secretary of State.

(d) Upon receipt of the approval of the department, the Secretary of State shall thereupon issue a certificate of incorporation to the petitioners.

History.
Ga. L. 1974, p. 545, § 1; Ga. L. 1981, p. 1241, § 1; Ga. L. 1984, p. 952, § 1.

Law reviews.
For comment, "If It Quacks Like a Duck: In Light of Today's Financial Environment, Should Credit Unions Continue to Enjoy Tax Exemptions?," see 28 Ga. St. U.L. Rev. 1367 (2012).

RESEARCH REFERENCES

Am. Jur. 2d.
18A Am. Jur. 2d, Corporations, § 241.

C.J.S.
18 C.J.S., Corporations, § 47 et seq.

7-2-2. Amendments to articles.

Amendments to the articles of incorporation, adopted by a vote of two-thirds of the member financial institutions present at an annual meeting or a special meeting called for that purpose, shall be filed with

the Secretary of State in the same manner as the original articles and shall become effective upon approval by the department and subsequent notification of the Secretary of State.

History.
Ga. L. 1974, p. 545, § 2; Ga. L. 1984, p. 952, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
18 Am. Jur. 2d, Corporations, § 86 et seq.

C.J.S.
18 C.J.S., Corporations, §§ 57, 58.

7-2-3. Adoption and amendment of bylaws.

(a) At its organizational meeting, the membership of the corporation shall adopt bylaws to govern the operations of the corporation. These bylaws shall be submitted to the department for approval and, if found to be consistent with this chapter, conducive to the purposes for which the corporation was formed, and equitable to all members, the bylaws shall be approved by the department.

(b) The original bylaws shall be adopted by and may thereafter be amended by a vote of at least a majority of the members present and voting at any regular meeting or special meeting called for such purpose. Bylaws may also be amended by the vote of at least two-thirds of the members of the board of directors of the corporation. Amendments adopted by the board may be rescinded at the next regular or special meeting of the members in the same manner as is provided for adoption of amendments by the members.

History.
Ga. L. 1974, p. 545, § 3; Ga. L. 1989, p. 1690, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
18A Am. Jur. 2d, Corporations, §§ 308 et seq., 321, 322.

C.J.S.
18 C.J.S., Corporations, § 157 et seq.

7-2-4. Powers.

The corporation may:

(1) Enter into contracts, including contracts for reinsurance;

(2) Sue and be sued;

(3) Adopt, use, and display a corporate seal;

(4) Advance funds, in accordance with agreed terms and conditions, to aid member financial institutions to operate and to meet liquidity requirements;

(5) Assume control of the property and business of any member financial institution upon the written direction of the department and operate the financial institution in accordance with the recommendations of the department;

(6) Assist in the merger, consolidation, or liquidation of member financial institutions;

(7) Receive money or other property from its member financial institutions or from any corporation, association, or person;

(8) Invest its funds in such manner as permitted to credit unions under the laws of this state and in such other manner as may be approved by the department;

(9) Borrow money from any source upon such terms and conditions as the board of directors may determine;

(10) Purchase in its own name, hold, and convey property of any nature necessary for the convenient transaction of its business;

(11) Receive by assignment or purchase from its members any property of any nature owned by those members;

(12) Sell, assign, mortgage, encumber, or transfer property of any nature;

(13) Declare and pay dividends on membership fees with the approval of the department; and

(14) Adopt and amend bylaws, rules, and regulations carrying out the purposes of the corporation.

History.
Ga. L. 1974, p. 545, § 4; Ga. L. 1984, p. 952, § 3.

OPINIONS OF THE ATTORNEY GENERAL

Scope of power to assist in liquidation of member. — Power of a credit union deposit insurance corporation to assist in liquidation of a member credit union, while otherwise general, does not extend to actions which are inconsistent with the credit union's primary purpose, protection of deposits and shares of credit union members. 1977 Op. Att'y Gen. No. 77-7.

Preferring unsecured creditor violates § 7-1-202(a). — Credit union deposit insurance corporation, acting as receiver or deputy receiver of a member credit union, cannot purchase an unsecured note with assets of a credit union since such purchase would give an unsecured creditor priority over depositors and other more senior claimants, in violation of former Code

1933, § 41A-813 (see now O.C.G.A. § 7-1-202(a)). 1977 Op. Att'y Gen. No. 77-7.

RESEARCH REFERENCES

Am. Jur. 2d.
19 Am. Jur. 2d, Corporations, §§ 1979 et seq., 2071.

C.J.S.
19 C.J.S., Corporations, § 638 et seq.

7-2-5. Membership.

(a) Any financial institution, as defined in Code Section 7-1-4 or chartered under the laws of the United States or of any state or territory of the United States, may become a member of the corporation upon application by its directors, recommendation of the department, and approval of the directors of the corporation.

(b) Before making its recommendation, the department shall consider:

(1) The history, financial condition, and management policies of the applicant;

(2) The economic advisability of insuring the applicant without undue risk to the fund;

(3) The general character and fitness of the applicant's management; and

(4) The convenience and needs of the members to be served by the applicant.

(c) Membership in the corporation may be terminated upon 30 days' written notice to the corporation and after providing evidence satisfactory to the department that alternate, comparable insurance of deposits has been obtained by the financial institution. Upon termination of membership, the financial institution shall be entitled to the refunds set forth in subsection (d) of Code Section 7-2-7.

History.
Ga. L. 1974, p. 545, § 5; Ga. L. 1984, p. 952, § 4.

7-2-6. [Reserved] Membership — Financial institutions which are ineligible to be federally insured or which were chartered prior to July 1, 1981.

History.
Ga. L. 1974, p. 545, § 1; Ga. L. 1981, p. 1241, § 3; and Ga. L. 1981, Ex. Sess., p. 8;

repealed by Ga. L. 1993, p. 917, § 10, effective April 13, 1993.

Editor's notes.

Ga. L. 1993, p. 917, § 10 repealed and reserved this Code section, effective April 13, 1993.

7-2-6.1. Powers and privileges of members.

Any financial institution insured by the corporation shall have the same powers and privileges as any other state-chartered financial institution of the same class even though such other financial institution is insured under some other state or federal program. Such equality of powers shall not relieve the financial institution, whether insured under this chapter or under an alternative state or federal program, from taking appropriate action to amend its articles of incorporation or bylaws or from obtaining appropriate regulatory approvals before exercising such powers and privileges.

History.

Ga. L. 1981, p. 1241, § 4.

7-2-7. Membership fees; refunds of fees, assessments, and premiums; distribution of undivided corporate earnings preceding voluntary cessation of business.

(a) Each financial institution accepted for membership shall be required to pay a membership fee of 1 percent of the deposits and shares of the financial institution up to $1 million, plus one-half of 1 percent of the deposits and shares from $1 million to $5 million, plus one-fourth of 1 percent of the deposits and shares over $5 million. Payment of the membership fee may be made in three equal installments, the first installment being due upon the approval of the application of the member financial institution and being in an amount of not less than $10.00 and the remaining two installments being due annually thereafter in amounts of not less than $10.00 each year.

(b) The membership fee shall be maintained on an annual basis in the same ratio to deposits and shares as the original membership fee bore to the total of deposits and shares at the time the financial institution initially joined the corporation. Such annual adjustments to the membership fee shall be paid or refunded concurrently with the payment of the annual insurance premium and shall be calculated upon the same deposit and share base as is used in the calculation of the annual premium. The board of directors of the corporation with the approval of the department may authorize a different membership fee structure from that set forth in this Code section.

(c) Membership fees, when paid by the individual member financial institution, may be charged to its regular reserve account or undivided

earnings or may be established as an asset or charged in such other manner as may be approved by the department.

(d) The membership fee of each member financial institution may be refunded in whole or in part to the extent that the unencumbered funds of the corporation exceed 2 percent of the aggregate total deposits and shares of the member financial institutions as determined by the most recent call report of condition submitted to the department. Special assessments levied pursuant to subsection (b) of Code Section 7-2-8 may be repaid in such manner as may be approved by the directors of the corporation with approval by the department. Refunds may be paid only to members of the corporation at the time of declaration by the directors of the corporation in proportion to their paid-in membership fees.

(e) Upon termination or revocation of membership, other than through involuntary liquidation, the financial institution shall be entitled to refunds as follows:

(1) Membership fees in full within 30 days;

(2) Pro rata portion of annual premium which is unearned by the corporation in full within 30 days; and

(3) Any special assessment in accordance with its terms, provided that the department may direct that such refunds be disbursed over a period of not more than 24 months at the request of the corporation where such disbursement will not cause an undue financial burden for the member financial institution.

(f) Any financial institution which terminates its membership voluntarily within the 24 months immediately preceding any voluntary cessation of business by the corporation shall be entitled to a pro rata distribution of the undivided earnings of the corporation. Such distribution shall be the lesser of an amount equal to that portion of the retained earnings at the end of the fiscal year immediately preceding the termination of membership determined by the proportion of the terminating members' membership fees to the total membership fees at the end of such fiscal year or the amount which would have been distributed had membership been retained until the final distribution.

History.

Ga. L. 1974, p. 545, § 6; Ga. L. 1981, p. 1241, § 2; Ga. L. 1984, p. 952, § 5; Ga. L. 1989, p. 1690, § 2; Ga. L. 2020, p. 493, § 7/SB 429.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1985, "of" was substituted for "or" following "revocation" in subsection (e).

7-2-8. Premiums and special assessments; distribution of assets on liquidation.

(a) A regular annual premium, not to exceed one-twelfth of 1 percent of the deposits and shares of the member financial institution, shall be levied by the directors of the corporation. Such premium may be raised, lowered, waived, or refunded, in whole or in part, with prior approval by the department, in the event that the total funds held by the corporation justify or require such change. The corporation may charge its financial institutions variable rate premiums based upon determination of risk to the fund, provided that such risk rating is made according to formulas adopted by the directors of the corporation and approved by the department.

(b) In the event of potential impairment of the corporation's funds, special assessments may be levied by the directors of the corporation with the prior approval of the department, provided that such special assessments shall not exceed, in the aggregate, 1 percent of the deposits and shares of each member financial institution. Such special assessments shall be in the form of loans from the member financial institution to the corporation.

(c) Membership fees, annual premiums, and special assessments shall be based upon deposits and shares of member financial institutions as reported to the department in its most recent call report of condition and shall be payable within 30 days of the date on which the corporation notifies its members of any such premium or assessment.

(d) Annual premiums paid under this Code section shall be charged to the operating expenses of each member financial institution.

(e) In the event of liquidation of the corporation, all assets remaining after the payment or provision for payment of all debts and taxes and expenses of liquidation, including distributions to former members as provided for in Code Section 7-2-7, shall be distributed to the then existing member financial institutions in proportion to their membership fees paid into the corporation.

History.
Ga. L. 1974, p. 545, § 7; Ga. L. 1984, p. 952, § 6; Ga. L. 1989, p. 1690, § 3.

RESEARCH REFERENCES

C.J.S.
19 C.J.S., Corporations, § 945 et seq.

7-2-9. Insurance of deposits and shares.

(a) Upon receipt of the first installment of the prescribed member-

ship fee from the financial institutions which have agreed to become members of the corporation as provided in this chapter, the corporation may commence its insurance of the deposits and shares of the member financial institutions.

(b) Each insured financial institution may advise its members and advertise that its deposits and shares are insured by the corporation, in such manner established by the directors of the corporation and approved by the department, upon receipt of a notification from the corporation that it has been accepted for membership in the corporation by its directors and upon payment of any required premiums or fees.

(c) The amount of insurance coverage on deposits and shares provided by the corporation may be increased from time to time by the directors of the corporation with the approval of the department; provided, however, that in no event may the insurance be increased to an amount greater than the largest amount insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(d) The corporation may insure or partially insure the uninsured shares and deposits of any financial institution primarily insured by it or some other governmental or private insurance program, at a cost to be determined by the directors of the corporation with the approval of the department, provided the department approves the financial institution for such coverage. Financial institutions having excess deposit insurance coverage shall not be required to be members of the corporation by virtue of such insurance coverage.

(e) No other forms of insurance except that authorized by this Code section may be sold or offered by the corporation.

History.
Ga. L. 1974, p. 545, § 8; Ga. L. 1984, p. 952, § 7; Ga. L. 1985, p. 149, § 7; Ga. L. 1993, p. 917, § 11.

7-2-10. Conduct of business by incorporators and directors.

The corporation's business shall be conducted by the incorporators, who shall serve until the organizational meeting of the corporation, at which time not less than three directors shall be elected by the members of the corporation in accordance with the bylaws. Thereafter, the corporation's business shall be conducted by the directors.

History.
Ga. L. 1974, p. 545, § 9.

RESEARCH REFERENCES

Am. Jur. 2d.
18B Am. Jur. 2d, Corporations, §§ 1321, 1467 et seq.

C.J.S.
19 C.J.S., Corporations, § 538 et seq.

7-2-11. Exclusive supervision by department; rules and regulations.

(a) The corporation shall not be deemed an insurance company within the meaning of the laws of the State of Georgia relating to insurance or providing for the supervision of insurance companies, but it shall be subject to the exclusive supervision of the department. The department shall exercise the same powers and authority over the corporation as is now or hereafter exercised over banks and credit unions under its jurisdiction and shall issue such rules and regulations as shall be necessary to carry out its responsibilities under this chapter.

(b) Any other company which is engaged in the insurance of deposits in financial institutions in this state when approved by the department based upon the criteria set forth in subsection (c) of Code Section 7-2-1 shall be subject to the jurisdiction of the department to the extent of its deposit insurance activities and to the same extent as a corporation organized pursuant to this chapter. Nothing contained in this chapter shall amend, modify, or otherwise restrict any authority or jurisdiction possessed by the Commissioner of Insurance prior to July 1, 1984. In the event a conflict exists between this chapter and Title 33, the "Georgia Insurance Code," Title 33 shall control.

History.
Ga. L. 1974, p. 545, § 10; Ga. L. 1984, p. 952, § 8; Ga. L. 1985, p. 149, § 7; Ga. L. 2016, p. 390, § 7-23/HB 811; Ga. L. 2017, p. 774, § 7/HB 323; Ga. L. 2024, p. 1052, § 1(a)(33)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, deleted "known as" following "Title 33," in the last sentence in subsection (b).

RESEARCH REFERENCES

Am. Jur. 2d.
10 Am. Jur. 2d, Banks and Financial Institutions, § 20 et seq.

C.J.S.
9 C.J.S., Banks and Banking, §§ 5, 7.

7-2-12. Copies of members' reports sent to corporation; additional examinations or audits; ordering corrective action or revoking membership.

(a) The department shall forward to the corporation copies or summaries of all examination reports of member financial institutions. In

the event a summary is provided, the corporation may request a complete and full report.

(b) The corporation may request the department to conduct additional examinations or to order independent audits of the records of member financial institutions. The department shall cooperate with the corporation upon such a request but shall use its discretion in determining the scope and timing of such additional examinations or audits.

(c) If the directors of the corporation ascertain evidence of carelessness, unsound practices, or mismanagement of any member financial institution which appears to affect adversely the solvency of the financial institution or threatens undue loss to the corporation, the directors may order that corrective action be taken or revoke the membership of the financial institution in the corporation or recommend to the department that the financial institution be liquidated. The department shall be provided a copy of any such order or letter of revocation. In the event of revocation of its membership, the financial institution shall notify all of its members of such revocation and that the deposits and shares are no longer insured by the corporation, provided that, in the event membership is revoked, insurance coverage shall continue in effect for 180 days. No refund required by subsection (e) of Code Section 7-2-7 shall be payable until after insurance coverage is terminated.

(d) If any member financial institution shall fail to pay any assessment, premium, or membership fee lawfully required under this chapter, the directors of the corporation shall notify the department, and the department shall forthwith notify the financial institution in writing. The failure of such financial institution to make such payment within 15 days after the said written notice may subject the financial institution to the sanctions set forth in subsection (c) of this Code section.

History.
Ga. L. 1974, p. 545, § 11; Ga. L. 1984, p. 952, § 9.

7-2-13. Administrative review of corporation or department decision; exhaustion of remedies.

(a) If a financial institution is aggrieved by a decision or order of the corporation or if the corporation is aggrieved by a decision or order of the department, the financial institution or the corporation, as the case may be, shall, upon appropriate petition and after due notice, be entitled to a hearing and administrative review of the action before the department, which may stay enforcement of such actions pending the administrative review.

(b) Judicial review of such decisions or orders, other than decisions or orders to revoke the membership of a financial institution, shall not be available unless the aggrieved party has sought administrative review under this Code section.

History.
Ga. L. 1974, p. 545, § 12; Ga. L. 1984, p. 952, § 10.

7-2-14. Tax exemption.

The corporation shall be exempt from all state and local taxes except real property taxes.

History.
Ga. L. 1974, p. 545, § 13.

CHAPTER 3

INSTALLMENT LOANS

Article 1

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7-3-1. Short title.
7-3-2. Transfer to Department of Banking and Finance.
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7-3-4. Licensing requirement; exemptions.

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7-3-20. Licensing application; fee.
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7-3-47. Confidentiality; disclosure limitations.
7-3-48. Civil liability limited for providing information.
7-3-49. Code Section 7-4-4 not repealed.
7-3-50. Violations; criminal penalties; civil actions; liability.
7-3-51. Rules and regulations.
7-3-52. Limited continuation of licenses.

Cross references.

Payday loans are illegal, § 16-17-1 et seq.

Editor's notes.

Ga. L. 2020, p. 156, § 1/SB 462, not codified by the General Assembly, provides that: "The General Assembly finds and declares that installment lending vitally affects the general economy of Georgia and the public interest and welfare of its citizens; therefore, it is the policy of Georgia and the purpose of this chapter to protect the interest of borrowers and provide for sound, efficient, and responsive regulation of installment lenders."

Ga. L. 2020, p. 156, § 10/SB 462, not codified by the General Assembly, provides that: "This Act shall apply to all installment loan agreements entered into on and after July 1, 2020."

Law reviews.

For article, "Small Loans Under Georgia Laws," see 3 Mercer L. Rev. 227 (1952).

For article, "The Georgia Industrial Loan Act: An Analysis," see 7 Mercer L. Rev. 297 (1956).

For article discussing the Industrial Loan Act with emphasis on defending the debtor from claims, see 24 Mercer L. Rev. 545 (1973).

For article surveying 1976 to 1977 developments in application of the Industrial Loan Act, see 29 Mercer L. Rev. 41 (1977).

For article surveying Georgia cases dealing with commercial law from June 1977 through May 1978, see 30 Mercer L. Rev. 15 (1978).

For article discussing methods of computation of finance charges in Georgia consumer credit contracts, see 30 Mercer L. Rev. 281 (1978).

For note discussing transfer fees in home loan assumptions in reference to the Georgia usury laws, see 9 Ga. L. Rev. 454 (1975).

For note discussing significant judicial, legislative, and administrative developments under the Industrial Loan Act between 1973 and 1978, see 27 Emory L.J. 109 (1978).

For note discussing debtor-creditor relations under the Georgia Industrial Loan Act, see 12 Ga. L. Rev. 814 (1978).

For note, "Gorsuch's Purgatory: Attempting to Define Debt Collector Under the Fair Debt Collection Practices Act," see 35 Ga. St. U.L. Rev. 433 (2019).

For comment on Lewis v. Termplan, Inc., 124 Ga. App. 507, 184 S.E.2d 473 (1971), see 9 Ga. St. B.J. 380 (1973).

For comment on Georgia Inv. Co. v. Norman, 231 Ga. 821, 204 S.E.2d 740 (1974), see 26 Mercer L. Rev. 321 (1974).

JUDICIAL DECISIONS

Analysis

General Consideration
License Requirement
Application

General Consideration

Creditors not to receive illegal charges directly or indirectly. — Creditors are admonished by the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) to draft loan contracts in such a way that illegal charges will not be received either directly or indirectly. General Fin. Corp. v. Sprouse, 577 F.2d 989, 1978 U.S. App. LEXIS 9750 (5th Cir. 1978).

Loan violates the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) if the loan refinances a loan which itself violates that Act. Williams v. Public Fin. Corp., 598 F.2d 349, 1979 U.S. App. LEXIS 13406 (5th Cir. 1979).

Lender cannot recover money lent on refinancing of loan which violates the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.). Williams v. Public Fin. Corp., 598 F.2d 349, 1979 U.S. App. LEXIS 13406 (5th Cir. 1979).

Purpose of the Georgia Industrial Loan Act (see now Georgia Install-

General Consideration (Cont'd)

ment Loan Act, O.C.G.A. § 7-3-1 et seq.) is to eliminate abuses arising from unregulated entities engaging in small loan business. Commercial Credit Plan, Inc. v. Parker, 152 Ga. App. 409, 263 S.E.2d 220, 1979 Ga. App. LEXIS 2945 (1979).

Purpose of the Georgia Industrial Loan Act (see now O.C.G.A. § 7-3-1 et seq.) is to provide a source of regulated lending funds since such need existed for those who had been borrowing at usurious rates from loan sharks, street shylocks, and wage-buyers. Freeman v. Decatur Loan & Fin. Corp., 140 Ga. App. 682, 231 S.E.2d 409, 1976 Ga. App. LEXIS 1600 (1976).

Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) was designed to require creditors to make certain uniform disclosures in consumer credit transactions in order to assure a meaningful disclosure of credit terms so that consumers will be able to compare more readily the various credit terms available to the consumers and avoid uninformed use of credit. Grubb v. Oliver Enters., Inc., 358 F. Supp. 970, 1972 U.S. Dist. LEXIS 11283 (N.D. Ga. 1972).

Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.,) must be strictly construed. General Fin. Corp. v. Sprouse, 577 F.2d 989, 1978 U.S. App. LEXIS 9750 (5th Cir. 1978).

Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., is in derogation of common law and must be strictly construed. Diggs v. Swift Loan & Fin. Co., 154 Ga. App. 389, 268 S.E.2d 433, 1980 Ga. App. LEXIS 2186 (1980).

Chapter to be read liberally and broadly. — Wording and legislative history of the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) make clear that it is to be read liberally and broadly to prevent even the most subtle or indirect methods of assessing usurious rates. Williams v. Public Fin. Corp., 598 F.2d 349, 1979 U.S. App. LEXIS 13406 (5th Cir. 1979).

Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) makes certain financial transactions legal which would otherwise be usurious under former Code 1933, § 57-101 (see now O.C.G.A. § 7-4-2). Lewis v. Termplan, Inc., 124 Ga. App. 507, 184 S.E.2d 473, 1971 Ga. App. LEXIS 995 (1971).

Chapter operates uniformly and in same manner as usury statute. — Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) operates generally upon entire class of subjects with which the statute deals, uniformly throughout the state and in the same manner generally as the usury statute. Talley v. Sun Fin. Co., 223 Ga. 419, 156 S.E.2d 55, 1967 Ga. LEXIS 547 (1967).

Chapter prevails over Uniform Commercial Code. — Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A § 7-3-1 et seq.) is applicable to security agreements and in the event its provisions conflict with the Georgia Uniform Commercial Code, the Industrial (now Installment) Loan Act governs. General Fin. Corp. v. Sprouse, 577 F.2d 989, 1978 U.S. App. LEXIS 9750 (5th Cir. 1978).

Effect of § 7-3-29 on judicial and other interpretations of this chapter. — Former O.C.G.A. § 7-3-29 (now O.C.G.A. § 7-3-50) evidenced a recognition on the part of the General Assembly that the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) was ambiguous in certain sections. It in no way discourages judicial or other valid authority from seeking interpretations of the Act which further its purpose, despite prior inconsistent interpretations. Ford v. Termplan, Inc., 528 F. Supp. 1016, 1981 U.S. Dist. LEXIS 10030 (N.D. Ga. 1981).

Judicial construction of the Retail Installment and Home Solicitation Sales Act, O.C.G.A. § 10-1-1 et seq., enacted at a different time, is weak evidence of legislative intent in enacting the Georgia Industrial Loan Act (see now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq. Ford v. Termplan, Inc., 528 F. Supp. 1016, 1981 U.S. Dist. LEXIS 10030 (N.D. Ga. 1981).

Retail Installment and Home Solicitation Act, O.C.G.A. § 10-1-1 et seq. and the Georgia Industrial Loan Act (see now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., differ in purpose and effect and provisions of one act are not controlling in interpretation of the other. Liberty Loan Corp. v. Childs, 140 Ga. App. 473, 231 S.E.2d 352, 1976 Ga. App. LEXIS 1525 (1976).

Action under Truth-in-Lending Act does not affect attack under this chapter. — Statutory damages sought by defendants in federal court as a violation of the Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., is a legal tort action authorized by federal law; and it is in no wise an estoppel of defendants to contend the loan contract was void under O.C.G.A. Ch. 3, T. 7. Hobbiest Fin. Corp. v. Spivey, 135 Ga. App. 353, 217 S.E.2d 613, 1975 Ga. App. LEXIS 1671 (1975).

Truth-in-Lending Act inapplicable to loans violating Georgia Industrial Loan Act. — Federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., does apply to loans which also violate the Georgia Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq. Williams v. Public Fin. Corp., 598 F.2d 349, 1979 U.S. App. LEXIS 13406 (5th Cir. 1979).

Violation of chapter as affirmative defense. — Party asserting defense of violation of O.C.G.A. § 7-3-1 et seq. has burden of showing that defense affirmatively by record. Grier v. Employees Fin. Servs., 158 Ga. App. 813, 282 S.E.2d 342, 1981 Ga. App. LEXIS 2428 (1981).

Rule of 78's can be used to compute interest rebates. — O.C.G.A. § 7-3-1 et seq. authorizes the lender to use the Rule of 78's to compute interest rebates in refinancing cases and does not require lenders to compute such rebates on a pro rata basis. Varner v. Century Fin. Corp., 253 Ga. 27, 317 S.E.2d 178, 1984 Ga. LEXIS 707 (1984).

Loans which had undergone refinancing were not void under O.C.G.A. § 7-3-1 et seq. merely because the prepaid interest attributable to the original loans was rebated under the terms of those agreements according to the Rule of 78's, instead of by a pro rata method. Varner v. Century Fin. Co., 738 F.2d 1143, 1984 U.S. App. LEXIS 19711 (11th Cir. 1984).

Penalty for omission in original agreement. — A 1979 debt was not uncollectible because the original 1977 agreement violated the Georgia Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., by failing to provide for rebates of unearned credit insurance premiums. However, as a penalty for this violation, the loan company had to forfeit all interest and charges accrued in connection with the 1977 agreement. Varner v. Century Fin. Co., 738 F.2d 1143, 1984 U.S. App. LEXIS 19711 (11th Cir. 1984).

Clause rendering entire balance due upon default is void. — Contract clause that renders entire unpaid balance due and payable upon default of payment is void and unenforceable as providing for acceleration of unearned interest. Blazer Fin. Servs. v. Dukes, 141 Ga. App. 663, 234 S.E.2d 149, 1977 Ga. App. LEXIS 2039 (1977).

Effect of accelerating debt on insurance coverage. — In the absence of any requirement that a lender cancel credit insurance coverage upon acceleration of a debt, there is no violation of this chapter when a lender, pursuant to properly drafted loan documents and in accord with this chapter, accelerates a debt but does not refund insurance premiums on insurance coverage still in effect. Williams v. Charter Credit Co., 179 Ga. App. 721, 347 S.E.2d 635, 1986 Ga. App. LEXIS 2023 (1986).

License Requirement

License is condition precedent to recovery upon obligation incurred under chapter. — It must appear from the allegations of the petition that the payee in the note representing the transaction under the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) was duly licensed to operate thereunder when the obligation was incurred, i.e., when the note was executed. This is required in order to show that plaintiff sues upon a lawful obligation. Bayne v. Sun Fin. Co. No. 1, 114 Ga. App. 27, 150 S.E.2d 311, 1966 Ga. App. LEXIS 647 (1966).

License Requirement (Cont'd)

It is settled that one who seeks to recover money loaned under provisions of the Industrial Loan Act, (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.), must plead and prove that the person was licensed to do business under the act at time the loan was made. Service Loan & Fin. Corp. v. McDaniel, 115 Ga. App. 548, 154 S.E.2d 823, 1967 Ga. App. LEXIS 1167 (1967).

It is a condition precedent to recovery on a note otherwise usurious that the obligee named therein was at the time of execution of the note duly licensed under the provisions of the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.). Hardy v. R & S Fin. Co., 116 Ga. App. 451, 157 S.E.2d 777, 1967 Ga. App. LEXIS 849 (1967).

As a condition precedent to recovery upon an obligation incurred under provisions of the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) it must appear that the obligee was licensed under that Act to engage in the business of making loans, thereunder. Southern Disct. Co. v. Cooper, 130 Ga. App. 223, 203 S.E.2d 237, 1973 Ga. App. LEXIS 1282, 1973 Ga. App. LEXIS 1688 (1973).

There can be no recovery upon obligation incurred under the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) without proof that the obligee in the note sued upon was duly licensed at the time the obligation was incurred. HFC v. Johnson, 119 Ga. App. 49, 165 S.E.2d 864, 1969 Ga. App. LEXIS 972 (1969); Scoggins v. Whitfield Fin. Co., 242 Ga. 416, 249 S.E.2d 222, 1978 Ga. LEXIS 1234 (1978).

Bayne v. Sun Fin. Co. No. 1, 114 Ga. App. 27, 150 S.E.2d 311, 1966 Ga. App. LEXIS 647 (1966).

Failure to plead fact of licensing is an amendable defect. Service Loan & Fin. Corp. v. McDaniel, 115 Ga. App. 548, 154 S.E.2d 823, 1967 Ga. App. LEXIS 1167 (1967).

Application

Question is whether contract could be used to exact illegal charges. — Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) was designed to protect debtors who are often unaware of the debtors' legal rights or complicated rules of construction. The relevant question is not simply whether a violation exists in the contract, when evaluated under general rules of contract construction, but whether the lender might be able to employ certain provisions of the contract to exact illegal charges from unsuspecting debtors. General Fin. Corp. v. Sprouse, 577 F.2d 989, 1978 U.S. App. LEXIS 9750 (5th Cir. 1978).

When the plaintiff contracted for collection of unearned interest, which violates the obligation is void. Guyton v. Martin Fin. Corp., 135 Ga. App. 62, 217 S.E.2d 390, 1975 Ga. App. LEXIS 1561 (1975).

When loan is void, lender forfeits principal, interest, and other charges. — Lender forfeits not only interest and other charges, but forfeits principal as well when the loan is found to be null and void under the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.). Hobbiest Fin. Corp. v. Spivey, 135 Ga. App. 353, 217 S.E.2d 613, 1975 Ga. App. LEXIS 1671 (1975).

Action for money had and received not sustainable when predicated upon a contract void under the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.). Anderson v. G.A.C. Fin. Corp., 135 Ga. App. 116, 217 S.E.2d 605, 1975 Ga. App. LEXIS 1588 (1975).

Reaffirmance of obligation void under the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) is also void. Pinkett v. Credithrift of Am., Inc., 430 F. Supp. 113, 1977 U.S. Dist. LEXIS 16664 (N.D. Ga. 1977).

Lender cannot recover money lent on refinancing of loan which violates

the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.). Williams v. Public Fin. Corp., 598 F.2d 349, 1979 U.S. App. LEXIS 13406 (5th Cir. 1979).

Plaintiff must show chapter applicable. — Plaintiff lender bears burden of establishing that the plaintiff comes within the terms of the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.). Gray v. Quality Fin. Co., 130 Ga. App. 762, 204 S.E.2d 483, 1974 Ga. App. LEXIS 1252 (1974).

Administrative interpretation of chapter is entitled to consideration by court. — Administrative interpretation of this chapter given by the Georgia Industrial Loan Commissioner is entitled to consideration in determination by the court of the manner in which fees and charges allowed by law should be calculated. Belton v. Columbus Fin. & Thrift Co., 127 Ga. App. 770, 195 S.E.2d 195, 1972 Ga. App. LEXIS 1018 (1972); FinanceAmerica Corp. v. Drake, 154 Ga. App. 811, 270 S.E.2d 449, 1980 Ga. App. LEXIS 2402 (1980).

Administrative rulings will be adopted when the rulings conform to meaning which court deems proper. Belton v. Columbus Fin. & Thrift Co., 127 Ga. App. 770, 195 S.E.2d 195, 1972 Ga. App. LEXIS 1018 (1972).

Remedy same for illegal loans and loans based on illegal consideration. — Under Georgia law, public policy dictates that loans based partly on illegal consideration are void and money paid pursuant to such contracts need not be repaid, and since this is the same remedy as provided in this chapter for loans which violate it, the distinction between illegal loans and loans based in part on illegal consideration is of no importance. Williams v. Public Fin. Corp., 598 F.2d 349, 1979 U.S. App. LEXIS 13406 (5th Cir. 1979).

OPINIONS OF THE ATTORNEY GENERAL

One who lends money on wages and salaries is subject to provisions of the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.). 1954-56 Ga. Op. Att'y Gen. 385.

Lenders not subject to license requirement. — Person not engaged in business of making loans, but who makes occasional loans in amounts less than $2,500.00 (now $3,000.00) repayable in monthly, quarterly, or annual installments, may charge interest at 6 percent (now 8 percent) per annum for the entire period of loan and take security therefor, and is not required to obtain a license under this chapter. 1954-56 Ga. Op. Att'y Gen. 392.

Federal savings and loan associations are exempt from chapter. — Consumer loans for amounts less than $3,000.00, with interest charged in excess of 9 percent simple interest, are governed by this chapter, but this chapter grants specific exemptions from its provisions to "banks, trust companies, real estate loan or mortgage companies, federal and Georgia building and loan associations" under former Code 1933, §§ 25-221 and 25-318 (see now O.C.G.A. § 7-3-4). Although federal savings and loan associations are not specifically named as such, they are included in the list of exemptions under that section and, therefore, wholly owned subsidiaries of federal savings and loan associations, created pursuant to federal statute and regulation, are not required to obtain a license under this chapter in order to make loans of less than $3,000.00 at interest rates permitted by Georgia usury statutes. 1978 Op. Att'y Gen. No. 78-12.

Unauthorized transactions. — Georgia Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., and the rules and regulations promulgated thereunder do not allow Industrial Loan Act (now Georgia Installment Loan Act) licensees to transact noncredit insurance through employees or otherwise. 1984 Op. Att'y Gen. No. 84-60.

Industrial loan licensed employee may conduct the business of insurance provided that the person is duly licensed as an insurance agent and

provided that the customer is not misled into thinking that the customer's ability to procure a loan is contingent upon the customer's agreement to purchase this insurance or otherwise to transact business in the industrial loan office. 1984 Op. Att'y Gen. No. U84-54.

RESEARCH REFERENCES

Am. Jur. Proof of Facts.

Violation of the Truth-In-Lending Act and Regulation Z, 73 POF3d 275.

Class Action for Failure to Disclose Under the Truth-In-Lending Act and Regulation Z, 76 POF3d 193.

ALR.

Constitutionality of statutes regulating the business of making small loans, 69 A.L.R. 581; 125 A.L.R. 743; 149 A.L.R. 1424.

Construction and application of provisions of small loan acts as regards maximum amount of loan, 99 A.L.R. 923.

Building and loan association as within statute relating to lenders of money, 99 A.L.R. 1027.

Construction and application of provisions of small loan statutes prohibiting the splitting up or dividing of a loan, or the existence of indebtedness under more than one contract of loan at the same time, 141 A.L.R. 912.

Usury as affected by acceleration clause, 66 A.L.R.3d 650.

ARTICLE 1

GENERAL PROVISIONS

Editor's notes.

This article was designated by Ga. L. 2020, p. 156, § 2/SB 462, effective June 30, 2020.

7-3-1. Short title.

This chapter shall be known and may be cited as the "Georgia Installment Loan Act."

History.

Ga. L. 1955, p. 431, § 1; Ga. L. 1997, p. 143, § 7; Ga. L. 2020, p. 156, § 2/SB 462.

OPINIONS OF THE ATTORNEY GENERAL

"Payday loans" are subject to the Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., notwithstanding the lender's use of token consideration such as catalog coupons or purchase-leaseback arrangements. 2002 Op. Att'y Gen. No. 2002-3.

RESEARCH REFERENCES

ALR.

State regulation of payday loans, 29 A.L.R.6th 461.

What constitutes Truth in Lending Act violation which "was not intentional and resulted from bona fide error not withstanding maintenance of procedures reasonably adapted to avoid any such error" within meaning of § 130(c) of Act (15 USCA § 1640(c)), 153 A.L.R. Fed. 193.

Validity, construction, and application of Truth in Lending Act (TILA) and regu-

lations promulgated thereunder — United States Supreme Court cases, 67 A.L.R. Fed. 2d 567.

7-3-2. Transfer to Department of Banking and Finance.

(a) The powers, functions, and duties of the office of the Commissioner of Insurance relative to this chapter are transferred to the Department of Banking and Finance effective July 1, 2020. All action taken by the office of the Commissioner of Insurance prior to that date shall be considered valid, and the department shall, as of July 1, 2020, assume all ongoing and continuing obligations pursuant to this chapter. All personnel, supplies, records, materials, furniture, furnishings, books, equipment, motor vehicles, and services of the office of the Commissioner of Insurance utilized pursuant to the authority granted under this chapter shall be transferred to the department on July 1, 2020. Any action or investigation pending pursuant to this chapter shall remain in full force and effect and any powers relating to such action or investigation shall be transferred to the department on July 1, 2020.

(b) All rules, orders, and actions adopted by the Commissioner of Insurance pursuant to this chapter shall remain in full force and effect as rules, orders, and actions of the department unless amended, repealed, or superseded by rule, order, or action of the department.

(c) All property, real and personal, funds, accounts receivable, contracts, liabilities, and obligations of the office of the Commissioner of Insurance for effectuating this chapter shall become the property, funds, accounts receivable, contracts, liabilities, and obligations of the department on July 1, 2020. Appropriations to the Commissioner of Insurance for functions transferred to the department pursuant to this Code section shall be transferred as provided in Code Section 45-12-90.

History.
Ga. L. 1955, p. 431, § 2; Ga. L. 1975, p. 393, § 1; Ga. L. 2020, p. 156, § 2/SB 462.

JUDICIAL DECISIONS

Funding agreements were investment contracts, not loans. — After the defendants entered into separate funding agreements with the plaintiffs, the defendant's motion to dismiss a putative class action for damages premised on violations of the Georgia Industrial Loan Act (GILA) (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., was properly granted, but the defendant's motion with regard to the Payday Lending Act (PLA), O.C.G.A. § 16-17-1 et seq., was improperly denied as the funding agreements were not loans, but rather were investments in the plaintiffs' litigation, because the repayment requirement was completely contingent upon the recovery of proceeds from the plaintiffs' related legal claims; thus, instead of being loans that were

regulated by the GILA and the PLA, the funding agreements were investment contracts to which the GILA and the PLA did not apply. Cherokee Funding LLC v. Ruth, 342 Ga. App. 404, 802 S.E.2d 865, 2017 Ga. App. LEXIS 313 (2017), aff'd, 304 Ga. 574, 820 S.E.2d 704, 2018 Ga. LEXIS 681 (2018).

OPINIONS OF THE ATTORNEY GENERAL

Purpose of chapter; banks not subject to regulation by it. — Purpose of the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) is to provide regulation for otherwise unregulated entities engaged in business of making small loans. Banks are otherwise regulated and are, therefore, not subject to regulation under that Act. 1979 Op. Att'y Gen. No. 79-33.

RESEARCH REFERENCES

Am. Jur. 2d.

53A Am. Jur. 2d, Moneylenders and Pawnbrokers, § 1 et seq.

C.J.S.

47 C.J.S., Interest and Usury Consumer Credit, §§ 407, 408.

ALR.

Construction and application of provisions of small loan acts as regards maximum amount of loan, 99 A.L.R. 923.

Construction and application of provisions of small loan statutes prohibiting the splitting up or dividing of a loan, or the existence of indebtedness under more than one contract of loan at the same time, 141 A.L.R. 912.

7-3-3. Definitions.

As used in this chapter, the term:

(1) "Control" or "controlling" means the direct or indirect possession of power to direct or cause the direction of management and policies of a person.

(2) "Covered employee" means any employee of a licensee engaged in any function related to making installment loans or servicing installment loans made by others, excluding loans made by affiliated entities.

(3) "Department" means the Department of Banking and Finance.

(4) "Executive officer" means an individual who performs significant managerial, supervisory, or policy-making functions on behalf of a person, including, but not limited to, the vice presidents, chief executive officer, president, chief financial officer, chief operating officer, secretary, and treasurer.

(5) "Individual" means a natural person.

(6) "Installment lender" or "lender" means any person that advertises, solicits, offers, or makes installment loans or services installment loans made by others, excluding loans made by affiliated entities.

(7) "Installment loan" or "loan" means a contract or agreement to make a loan to an individual in an amount of $3,000.00 or less, including the renewal or refinancing of any such loan.

(8) "License" means an authorization issued by the department or required to be obtained under this chapter to engage in the business of making installment loans.

(9) "Licensee" means a person to whom a license under this chapter has been issued.

(10) "Nationwide Multistate Licensing System and Registry" means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of certain persons engaged in nondepository activities.

(11) "Owner" means a person that:

(A) Owns, directly or indirectly, 10 percent or more interest in a corporation or any other form of business organization;

(B) Owns, directly or indirectly, 10 percent or more of the voting shares of any corporation or any other form of business organization; or

(C) Exerts control, directly or indirectly, over a corporation or any other form of business organization, regardless of whether such person owns or controls such interest through one or more individuals or one or more proxies, powers of attorney, nominees, corporations, associations, limited liability companies, partnerships, trusts, joint stock companies, other entities or devices, or any combination thereof.

(12) "Person" means any individual, sole proprietorship, corporation, limited liability company, partnership, trust, or any other group of individuals, however organized.

(13) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Multistate Licensing System and Registry.

History.

Ga. L. 1955, p. 431, § 4; Ga. L. 1975, p. 393, § 1; Ga. L. 1989, p. 14, § 7; Ga. L. 1997, p. 143, § 7; Ga. L. 2020, p. 156, § 2/SB 462; Ga. L. 2022, p. 220, § 37/HB 891.

Amendments.

The 2022 amendment, effective July 1, 2022, added "or servicing installment loans made by others, excluding loans made by affiliated entities" at the end of paragraph (2) and added "or services installment loans made by others, excluding loans made by affiliated entities" at the end of paragraph (6).

JUDICIAL DECISIONS

Licensee. — Trial court properly dismissed a declaratory judgment action brought by a bank and a cash advance lender, which was operating as an agent for the bank, to stop the Georgia Industrial Loan Commissioner from conducting an investigation of their lending activities because the Commissioner was authorized to conduct an investigation of the two entities' loan activities, in spite of the lender's claim that the bank and the lender were operating under the authority of federal banking law. BankWest, Inc. v. Oxendine, 266 Ga. App. 771, 598 S.E.2d 343, 2004 Ga. App. LEXIS 397 (2004), cert. denied, No. S04C1408, 2004 Ga. LEXIS 731 (Ga. Sept. 7, 2004).

"Loan". — Tax preparer's payment to a taxpayer of a discounted sum in exchange for the right to a refund was not a "loan" but instead constituted a "sale" by the taxpayer of a chose in action. Cullen v. Bragg, 180 Ga. App. 866, 350 S.E.2d 798, 1986 Ga. App. LEXIS 2294 (1986).

Sale/leaseback transactions engaged in by consumer cash advance businesses violated the anti-payday lending statute, O.C.G.A. § 16-17-1 et seq., and the Georgia Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., since the state proved that the purported lease back of personal property to the consumer was not based on the actual appraised market value of the personal property but directly corresponded to the loan amount; the state proved that the businesses were requiring customers to be released from the loan agreement by paying the principal amount advanced to them plus a 25 to 27 percent fee, which amounted to an annual percentage rate of 650 to 702 percent. Clay v. Oxendine, 285 Ga. App. 50, 645 S.E.2d 553, 2007 Ga. App. LEXIS 356 (2007), cert. denied, No. S07C1247, 2007 Ga. LEXIS 556 (Ga. July 12, 2007).

Funding agreements were investment contracts, not loans. — After the defendants entered into separate funding agreements with the plaintiffs, the defendant's motion to dismiss a putative class action for damages premised on violations of the Georgia Industrial Loan Act (now Georgia Installment Loan Act) (GILA), O.C.G.A. § 7-3-1 et seq., was properly granted, but the defendant's motion with regard to the Payday Lending Act (PLA), O.C.G.A. § 16-17-1 et seq., was improperly denied as the funding agreements were not loans, but rather were investments in the plaintiffs' litigation, because the repayment requirement was completely contingent upon the recovery of proceeds from the plaintiffs' related legal claims; thus, instead of being loans that were regulated by the GILA and the PLA, the funding agreements were investment contracts to which the GILA and the PLA did not apply. Cherokee Funding LLC v. Ruth, 342 Ga. App. 404, 802 S.E.2d 865, 2017 Ga. App. LEXIS 313 (2017), aff'd, 304 Ga. 574, 820 S.E.2d 704, 2018 Ga. LEXIS 681 (2018).

OPINIONS OF THE ATTORNEY GENERAL

Industrial loan license was required to make "payday loans" of $3000 or less, unless the lender was exempt under former O.C.G.A. § 7-3-6 (see now O.C.G.A. § 7-3-4). "Payday loans" were subject to the Georgia Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., notwithstanding the lender's use of token consideration such as catalog coupons or purchase-leaseback arrangements. 2002 Op. Att'y Gen. No. 2002-3.

7-3-4. Licensing requirement; exemptions.

(a) No person shall engage in the business of making installment loans or acting as an installment lender in this state unless such person

is licensed in accordance with this chapter or exempt from licensure as provided in subsection (b) of this Code section. No person within the operation of this chapter shall charge, contract for, or receive directly or indirectly on or in connection with any loan, any interest, charge, fee, compensation, or consideration which is greater than the rates for same provided in this chapter.

(b) This chapter shall not apply to:

(1) Businesses chartered or licensed under the authority of any law of this state or of the United States as banks, trust companies, savings and loan associations, savings banks, or credit unions or to the transactions of such businesses;

(2) Banks or credit unions chartered under the authority of any state which have deposits that are federally insured or to the transactions of such businesses;

(3) Pawnbrokers, as defined in Code Section 44-12-130, or to the transactions of pawnbrokers;

(4) The University System of Georgia or its educational units, private colleges and universities in this state and associations thereof, or student loan transactions of such educational entities;

(5) An individual employed by a licensee or any person exempted from the licensing requirements of this chapter when acting within the scope of employment and under the supervision of the licensee or exempted person as an employee and not as an independent contractor;

(6) Any agency, division, or instrumentality of the federal government of the United States of America; the government of the State of Georgia or the government of any other state; or any county or municipal government in the State of Georgia; and the transactions of all such governmental entities;

(7) Retail installment transactions engaged in by retail installment sellers, as those terms are defined in Code Section 10-1-31;

(8) Retail installment transactions engaged in by retail sellers, as those terms are defined in Code Section 10-1-2;

(9) Transactions in which a lender offers a consumer a line of credit of more than $3,000.00 but the consumer utilizes $3,000.00 or less of such line of credit so long as there are no restrictions in place that would limit the consumer's ability to utilize more than $3,000.00 of the line of credit at any one time; or

(10) A tax exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986 that does not impose any interest,

fees, or other charges in connection with installment loans or the servicing of such loans.

History.

Ga. L. 1904, p. 79, § 18; Ga. L. 1920, p. 215, § 19; Code 1933, §§ 25-221, 25-318; Ga. L. 1955, p. 431, § 5; Code 1981, § 7-3-6; Ga. L. 1985, p. 249, § 1; Ga. L. 1997, p. 143, § 7; Ga. L. 2016, p. 390, § 7-4/HB 811; Code 1981, § 7-3-4, as redesignated by Ga. L. 2020, p. 156, § 2/SB 462; Ga. L. 2022, p. 220, § 38/HB 891; Ga. L. 2023, p. 651, § 45/HB 55, effective July 1, 2023.

Amendments.

The 2022 amendment, effective July 1, 2022, inserted "or acting as an installment lender" in the first sentence in subsection (a); deleted "or" from the end of paragraph (b)(4), substituted a semicolon for a period at the end of paragraph (b)(5), and added paragraphs (b)(6) through (b)(9).

The 2023 amendment, effective July 1, 2023, deleted "or" at the end of paragraph (b)(8), substituted "; or" for a period at the end of paragraph (b)(9), and added paragraph (b)(10).

Editor's notes.

Former Code Section 7-3-4, concerning the applicability of the chapter and its effect on existing lenders, was repealed by Ga. L. 2020, p. 156, § 2/SB 462, effective June 30, 2020. This Code section was based on Ga. L. 1955, p. 431, § 3; Ga. L. 1975, p. 393, § 1; Ga. L. 1989, p. 14, § 7.

U.S. Code.

Section 501(c)(3) of the Internal Revenue Code of 1986, referred to in paragraph (b)(10), is codified at 26 U.S.C. Section 501(c)(3).

JUDICIAL DECISIONS

Purpose of Industrial Loan Act; banks not subject to its provisions. — Purpose of the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) is to eliminate abuses which grow from unregulated entities engaging in small loan business. Banks are otherwise regulated and are expressly excluded from regulation by the Georgia Industrial Loan Act and are exempt from its provisions. Marshall v. Fulton Nat'l Bank, 145 Ga. App. 190, 243 S.E.2d 266, 1978 Ga. App. LEXIS 1914, 1978 Ga. App. LEXIS 3230 (1978).

Commissioner's authority to investigate. — Trial court properly dismissed a declaratory judgment action brought by a bank and a cash advance lender, which was operating as an agent for the bank, to stop the Georgia Industrial Loan Commissioner from conducting an investigation of their lending activities because the Commissioner was authorized to conduct an investigation of the two entities' loan activities, in spite of the lender's claim that the bank and the lender were operating under the authority of federal banking law. BankWest, Inc. v. Oxendine, 266 Ga. App. 771, 598 S.E.2d 343, 2004 Ga. App. LEXIS 397 (2004), cert. denied, No. S04C1408, 2004 Ga. LEXIS 731 (Ga. Sept. 7, 2004).

OPINIONS OF THE ATTORNEY GENERAL

Exclusion of state or federally chartered banks from regulation. — Georgia statutes specifically provide that state or federally chartered banks are excluded from regulation under the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) and are not required to obtain a license from the Georgia Industrial Loan Department. 1979 Op. Att'y Gen. No. 79-33.

Section 7-1-292 supports proposition that banks are exempt from regulation. — Further authority for proposition that banks were exempt from regulation under the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et

seq.) and are not required to obtain a license as authority lied in the language of former Code 1933, § 41A-1313 (see now O.C.G.A § 7-1-292). 1979 Op. Att'y Gen. No. 79-33.

Inclusion of federal savings and loan associations. — Federal savings and loan association is solely an invention of federal statute, and can be formed from existing state associations, including state building and loan associations; therefore, the term "Federal and Georgia building and loan association" formerly used in the statutes referred to and included a federal savings and loan association. 1978 Op. Att'y Gen. No. 78-12.

Federal savings and loan associations are exempted. — Consumer loans for amounts less than $3,000.00, with interest charged in excess of 9 percent simple interest would be governed by the Georgia Industrial Loan Act (see now O.C.G.A. § 7-3-1 et seq.), but the Act grants specific exemptions from its provisions to "banks, trust companies, real estate loan or mortgage companies, federal and Georgia building and loan associations". Although federal savings and loan associations are not specifically named as such, they are included in the list of exemptions; therefore, wholly owned subsidiaries of federal savings and loan associations, created pursuant to federal statute and regulation, are not required to obtain a license under the Georgia Industrial Loan Act in order to make loans of less than $3,000.00 at interest rates permitted by Georgia usury statutes. 1978 Op. Att'y Gen. No. 78-12.

Construction with usury laws. — Merchant who makes cash advances of $3,000.00 or less is subject to the provisions of the Georgia Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A § 7-3-1 et seq., rather than O.C.G.A § 7-4-2(a)(2), regarding legal rate of interest, unless the merchant charges 8 percent simple interest per annum or less. 1984 Op. Att'y Gen. No. 84-79.

ARTICLE 2

OPERATING PROCEDURES

Editor's notes.

This article was designated by Ga. L. 2020, p. 156, § 2/SB 462, effective June 30, 2020.

7-3-10. False advertising prohibited.

No person shall advertise, display, distribute, or broadcast in any manner whatsoever any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for loans subject to this chapter.

History.

Ga. L. 1920, p. 215, § 12; Code 1933, § 25-312; Ga. L. 1955, p. 431, § 14; Code 1981, § 7-3-13; Code 1981, § 7-3-10, as redesignated by Ga. L. 2020, p. 156, § 2/SB 462.

Editor's notes.

Former Code Section 7-3-10, concerning a license being required for each location, its display, duration, annual fees, and moving an office within the county, was repealed by Ga. L. 2020, p. 156, § 2/SB 462, effective June 30, 2020. The former Code Section was based on Ga. L. 1904, p. 79, § 1; Civil Code 1910, § 3450; Ga. L. 1920, p. 215, §§ 7, 8, 9; Code 1933, §§ 25-205, 25-307, 25-308, 25-309; Ga. L. 1955, p. 431, § 9; Ga. L. 1963, p. 370, § 2; Ga. L. 1964, p. 288, § 4; Ga. L. 1989, p. 14, § 7; Ga. L. 1992, p. 2725, § 2.

7-3-11. Maximum loan amount, period, and charges; deferments.

Every authorized licensee location under this chapter may lend any sum of money not to exceed $3,000.00, with the term for any individual loan not to exceed a period of 36 months and 15 days or less and may charge, contract for, collect, and receive interest and fees and may require the fulfillment of conditions on such loans as provided in this Code section:

(1) **Interest.** A licensee may charge, contract for, receive, and collect interest at a rate not to exceed 10 percent per annum of the face amount of the contract, whether repayable in one single payment or repayable in monthly or other periodic installments. On loan contracts repayable in 18 months or less, the interest may be discounted in advance; and, on contracts repayable over a greater period, the interest may be added to the principal amount of the loan. On all contracts, interest or discount shall be computed proportionately on equal calendar months;

(2) **Loan fee.** In addition thereto, a licensee may charge, contract for, receive, or collect at the time the loan is made a fee in an amount not greater than 8 percent of the first $600.00 of the face amount of the contract plus 4 percent of the excess; provided, however, that such fee shall not be charged or collected on that part of a loan which is used to pay or apply on a prior loan or installment of a prior loan from the same licensee to the same borrower made within the immediately preceding six-month period; provided, however, that if the loan balance is $300.00 or less, the said period shall be two months, not six months; provided, further, that nothing contained in this paragraph and paragraph (1) of this Code section shall be construed to permit charges, interest, or fees of any nature whatsoever in the aggregate in excess of the charges, interest, and fees which would constitute a violation of Code Section 7-4-18 and this chapter shall in no way affect Code Section 7-4-18. If a borrower prepays his or her entire loan to a licensee and within the following 15 days obtains a new loan from that licensee and if this is done within the six-month period or the two-month period above described, as may be applicable, the fee may be charged only on the excess by which the face amount of the new contract exceeds the amount which the borrower repaid to that licensee within the said 15 day period;

(3) **Insurance premiums.** A licensee may charge and collect from the borrower premiums actually paid or to be paid for insurance obtained for the borrower. A licensee may accept as security on any loan or advance made under this chapter any one or any combination of the following:

(A) Insurance on tangible property against substantial risks or loss;

(B) Reasonable insurance on the life and health of the principal party; or

(C) Reasonable insurance against accident of the principal party;

provided, however, that any such insurance shall be reasonably related to the type and value of the property insured and to the amount and term of the loan and shall be obtained from an insurance company authorized to conduct such business in the State of Georgia and at rates lawfully filed by such company with the Commissioner of Insurance and through a regular insurance agent licensed by the Commissioner of Insurance; provided, further, that the amount of life, health, or accident insurance required as security for loans made under this chapter shall not exceed the amount of the loan, including charges, to be secured; and the premiums on such insurance required of the principal party obligated shall be limited to premiums reasonably based upon reliable actuarial experience and sound insurance practice; and the Commissioner of Insurance is authorized and directed to promulgate rules and regulations to effectuate this provision related to insurance obtained by the borrower in accordance with the spirit and intent thereof. It shall be the duty of the Commissioner of Insurance to determine and promulgate by rule and regulation the rates and maximum premiums permissible to be charged for life, health, and accident insurance required as security for a loan made under this chapter and to make regulations incident thereto necessary to effectuate the same; such premiums, when thus established and as changed from time to time in the manner aforesaid, shall be the maximum effective and permissible charges under this paragraph. Premiums paid or to be paid pursuant to the authority of this paragraph shall not constitute interest. The insurance company in turn may pay to the party writing the insurance policy sold in connection with the loan a fee or commission in an amount which is reasonable in relationship to the transaction and in no event in excess of the amount of fee or commission customarily paid within the industry where comparable insurance is sold in a transaction not involving credit, as determined by the Commissioner of Insurance;

(4) **Late charge.** A licensee may charge and collect from the borrower a late or delinquent charge of $10.00 or an amount equal to 5¢ for each $1.00 of any installment which is not paid within five days from the date such payment is due, whichever is greater, provided that this late or delinquent charge shall not be collected more than once for the same default; and

(5) **Maintenance charge.** In addition thereto, a licensee may contract for, charge, receive, and collect a maintenance charge of

$3.00 for each month in the term of the loan contract on each loan made, whether repayable in one single payment or repayable in weekly, monthly, or other periodic installments. Refunds of unearned maintenance charges shall be made in accordance with the method prescribed in Code Section 7-3-14, and such maintenance charges will be subject to paragraph (4) of this Code section. Nothing contained in Code Section 7-4-18, as now or hereafter amended, shall be construed to apply to this paragraph; and loans made in conformity with this paragraph shall in no way constitute a violation of Code Section 7-4-18, as now or hereafter amended.

(6) **Deferment.**

(A) **Hardship deferment:** Nothing in this article shall be construed as prohibiting any licensee and borrower from contracting to defer periodic payments consisting of principal payments, interest, fees, premiums, and charges provided that no additional interest, fees, premiums, or charges are incurred or otherwise imposed as a result of such deferment. Nothing in subparagraph (B) of this paragraph shall be construed as limiting the duration of a hardship deferment or the number of hardship deferments that can be granted during a loan term.

(B) **Convenience deferment:** A licensee and a borrower may, at any time, contract to defer all of or part of one or more unpaid installments, and the licensee may make and collect a charge therefor, subject to the following provisions:

(i) A convenience deferment may be for any duration agreed upon by the licensee and the borrower but shall not exceed four months. A licensee may agree to multiple convenience deferments during the loan term provided that the total duration of all convenience deferments does not exceed four months;

(ii) A licensee may charge a fee for the deferment. The deferment fee shall not exceed an amount equal to the result of applying the interest rate provided in the original loan agreement to the amount deferred for the deferment period. The deferment fee shall be calculated without regard to the difference in lengths of months by counting each day of the deferment period as one-thirtieth of a month. The fee may be collected at the time it is assessed or at any later date as agreed upon by the licensee and the borrower; provided, however, that the deferment fee is earned pro rata during the deferment period and is fully earned on the last day of the deferment period;

(iii) A licensee shall not charge any fees, premiums, interest, or charges other than the deferment fee for the duration of the

deferment period and such fees, premiums, interest, or charges other than the deferment fee shall not accrue during the deferment period;

(iv) If a licensee renews or refinances an installment loan within three months after the end of the convenience deferment period, the licensee must refund or credit the entire convenience deferment fee to the borrower;

(v) If a licensee enters into a convenience deferment agreement with a borrower and the licensee enters into a hardship deferment agreement with the borrower within three months of the end of the convenience deferment period, the licensee must refund or credit the entire convenience deferment fee to the borrower; and

(vi) If a loan is prepaid during a deferment period, the licensee shall refund or credit to the borrower any unearned portion of the deferment fee as calculated pursuant to division (ii) of this subparagraph in addition to any other refund or credit due to the borrower for prepayment.

(C) Any deferment agreement shall be evidenced in writing and shall include:

(i) The amount or amounts deferred;

(ii) The length of the deferment period, including the due date for the borrower's next payment;

(iii) The amount of the deferment fee, if applicable; and

(iv) Where any credit insurance or ancillary product with a specific term was purchased by the borrower, the following disclosure to the borrower: "You have purchased a credit insurance product(s) and/or [identify the specific ancillary product] in connection with this loan. The deferment agreed to herein will not extend the term of coverage of those products."

(D) Whenever a licensee enters into a deferment agreement with the borrower hereunder, the deferment shall not be considered to be an improper extension of the loan term, and the original loan term shall be extended by the period deferred. For purposes of granting a deferment, licensees may extend the term of the loan beyond the maximum term limit of 36 months and 15 days.

(E) A licensee shall not offer or require a borrower to obtain credit insurance or any other ancillary product for the extension of the original loan term due to a deferment.

(F) After the conclusion of a deferment period, the borrower shall resume payments in the same amounts and intervals as set forth in the original loan agreement. Licensees shall not require borrowers to make a lump sum repayment.

(G) Licensees shall maintain a monthly journal of loans that were deferred by identifying the specific borrower that entered into the deferment agreement, the type of deferment granted, and the status of such deferment.

History.

Ga. L. 1904, p. 79, §§ 10, 12; Civil Code 1910, §§ 3458, 3459, 3461; Ga. L. 1920, p. 215, §§ 13, 14; Code 1933, §§ 25-213, 25-214, 25-216, 25-301, 25-313, 25-315, 25-317; Ga. L. 1935, p. 394, § 1; Ga. L. 1955, p. 431, § 15; Ga. L. 1964, p. 288, § 5; Ga. L. 1975, p. 393, §§ 2, 3; Ga. L. 1977, p. 288, § 1; Ga. L. 1980, p. 509, §§ 1, 3; Code 1981, § 7-3-14; Ga. L. 1981, p. 621, § 1; Ga. L. 1989, p. 14, § 7; Ga. L. 1997, p. 143, § 7; Ga. L. 2001, p. 205, § 1; Code 1981, § 7-3-11, as redesignated by Ga. L. 2020, p. 156, § 2/SB 462; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2021, p. 323, § 37/HB 111; Ga. L. 2022, p. 220, § 39/HB 891; Ga. L. 2023, p. 651, § 46/HB 55, effective July 1, 2023; Ga. L. 2024, p. 1052, § 1(a)(34)/SB 448, effective July 1, 2024.

Amendments.

The 2022 amendment, effective July 1, 2022, inserted "authorized" and "location" and substituted "to exceed $3,000.00, with the term for any individual loan not to exceed" for "exceeding $3,000.00 for" in the introductory language of this Code section.

The 2023 amendment, effective July 1, 2023, substituted "the interest may" for "the interest shall" in the second sentence of paragraph (1).

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "however, that if" for "however, if" in paragraph (2).

Editor's notes.

Former Code Section 7-3-11, concerning failure to begin business or suspending activities after license issued, was repealed by Ga. L. 2020, p. 156, § 2/SB 462, effective June 30, 2020. The former Code section was based on Ga. L. 1964, p. 288, § 3; Ga. L. 1989, p. 14, § 7.

Law reviews.

For article, "Acceleration Clauses in Georgia: Consumer Installment Contracts and the Federal Truth-In-Lending Act," see 27 Mercer L. Rev. 969 (1976).

For article discussing methods of computation of finance charges in Georgia consumer credit contracts, see 30 Mercer L. Rev. 281 (1978).

For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001).

JUDICIAL DECISIONS

Analysis

General Consideration
Interest
Loan Fee
Face Amount of Contract
Acceleration of Interest
Insurance
Late Charges

General Consideration

Editor's notes. — In light of subsections (g) and (h) of O.C.G.A § 7-3-29, decisions rendered prior to

amendment of that section by Ga. L. 1980, p. 1784, §§ 1, 2 have been included in the annotations for this Code section.

Purpose. — In enacting O.C.G.A. § 7-3-14 (now O.C.G.A. § 7-3-11), the General Assembly was concerned with the possible exorbitant and unmerited exaction of profits by the original lender in a renewal or refinancing. Although there is nothing to indicate that the General Assembly specifically considered the "anti-competition" problem, the clear thrust and underlying policy of this legislation is to provide some protection to debtors in small loan transactions, while there is no indication that solicitude for second lenders was even a minor policy consideration. Ford v. Termplan, Inc., 528 F. Supp. 1016, 1981 U.S. Dist. LEXIS 10030 (N.D. Ga. 1981).

Policy consideration underlying usury laws. — Purpose of the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) is to define and prevent usury. One consideration underlying the usury laws is that a creditor should not avail oneself of the necessitous condition of one's debtor to exact burdensome and oppressive terms. Securities Inv. Co. v. Pearson, 111 Ga. App. 761, 143 S.E.2d 36, 1965 Ga. App. LEXIS 1089 (1965).

Loan may not exceed three years. — It is immaterial whether interest is charged for less than 24 months (now 36 months and 15 days); former Code 1933, § 25-315 plainly stated that the loan may not exceed two years (now three years, 15 days). Abrams v. Commercial Credit Plan, Inc., 128 Ga. App. 520, 197 S.E.2d 384, 1973 Ga. App. LEXIS 1535 (1973).

Section prohibits loans to a borrower which exceed $3,000.00. — When a statute provides that every licensee thereunder may loan any sum of money not exceeding $3,000.00 it means that the company cannot be a creditor to any particular person, firm, or corporation at any one time for an amount in excess of this maximum. It may make any number of loans, so long as the debtors are different persons. Securities Inv. Co. v. Pearson, 111 Ga. App. 761, 143 S.E.2d 36, 1965 Ga. App. LEXIS 1089 (1965).

When state law is inconsistent with truth in lending law. — State law is inconsistent with requirements of truth in lending law if it requires creditor to make disclosures different from those required by federal law as to form, content, terminology, or time of delivery. Blalock v. Aetna Fin. Co., 511 F. Supp. 33, 1980 U.S. Dist. LEXIS 16492 (N.D. Ga. 1980).

Use of out-of-state banks by loan companies. — Loan companies were not entitled to declaratory judgment relief on the companies' claim that the companies were not in violation of the Georgia Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., for certain practices the companies were allegedly engaged in because the companies were using an out-of-state bank to make the companies' loans through that bank, and, thus, were not subject to the Act as the industrial loan commissioner had not ruled on whether the practice of using an out-of-state bank exempted the companies from the Act, which meant the companies had not exhausted the administrative remedies before seeking judicial relief. USA Payday Cash Advance Ctrs. v. Oxendine, 262 Ga. App. 632, 585 S.E.2d 924, 2003 Ga. App. LEXIS 971 (2003), cert. denied, No. S03C1748, 2003 Ga. LEXIS 1037 (Ga. Nov. 17, 2003).

Refinancing by original lender. — In a refinancing by an original lender, when both sides must agree to an extension of credit and the lender presumably is not losing profits, there is no reason to depart from the general mandate of O.C.G.A. §§ 7-3-14 and 7-3-15 (see now O.C.G.A. §§ 7-3-11 and 7-3-12). The law already provides for "add on" interest, earned uniformly on the entire original amount of the loan, without regard to installment reductions in the outstanding balance. Ford v. Termplan, Inc., 528 F. Supp. 1016, 1981 U.S. Dist. LEXIS 10030 (N.D. Ga. 1981).

Renewal by original lender less costly than by second lender. — Law distinguishes between original and second lenders with the result that a renewal or refinancing by an original lender is less costly than if effected by a second lender. Ford v. Termplan, Inc., 528 F. Supp. 1016, 1981 U.S. Dist. LEXIS 10030 (N.D. Ga. 1981).

Summary judgment properly denied. — In a class action suit seeking to hold a lender liable for payday loans,

General Consideration (Cont'd)

the trial court did not err in concluding that genuine issues of material fact existed as to whether the lender was the true lender of the loans made after May 14, 2004, because evidence was presented sufficient to create a genuine issue of material fact regarding whether the lender actually received only a 49 percent economic interest for the lender's services and even if the lender did so, whether the lender nevertheless, by contrivance, device, or scheme, attempted to avoid the provisions of O.C.G.A. § 16-17-2(a). Ga. Cash Am. v. Greene, 318 Ga. App. 355, 734 S.E.2d 67, 2012 Ga. App. LEXIS 914 (2012), cert. denied, No. S13C0436, 2013 Ga. LEXIS 165 (Ga. Feb. 18, 2013).

Interest

Former Code 1933, § 25-315 (see now O.C.G.A. § 7-3-11) was mandatory as to interest on contracts repayable over more than 18 months. Slatter v. Aetna Fin. Co., 377 F. Supp. 806, 1974 U.S. Dist. LEXIS 7848 (N.D. Ga. 1974), rev'd, 526 F.2d 642, 1976 U.S. App. LEXIS 13061 (5th Cir. 1976).

Advance discounts of interest. — O.C.G.A. § 7-3-14 (see now O.C.G.A. § 7-3-11) does not provide a flexibility period for loans qualifying for the advance discount and a loan due in 18 months and 15 days exceeds the limit authorized by the statute. United States Life Credit Corp. v. Johnson, 161 Ga. App. 864, 290 S.E.2d 280, 1982 Ga. App. LEXIS 1990 (1982).

Note on which interest was deducted in advance void. — When in suit by licensee against borrower the note attached to the petition shows that the loan was for a period exceeding 18 months and shows on the loan's face that interest was deducted in advance rather than added to the loan, such deduction resulted in a charge exceeding that authorized in former Code 1933, § 25-315 and rendered the note void. Community Fin. Co. v. Lloyd, 114 Ga. App. 230, 150 S.E.2d 845, 1966 Ga. App. LEXIS 693 (1966).

Interest included in loan cannot be discounted in advance. — When the maximum interest for the 24-month note had already been calculated and included in the loan it could not be discounted in advance, and an attempt to accelerate and claim unearned interest on otherwise unmatured installments was usurious and an instrument authorizing its collection is void. Lawrimore v. Sun Fin. Co., 131 Ga. App. 96, 205 S.E.2d 110, 1974 Ga. App. LEXIS 1340, 1974 Ga. App. LEXIS 1867, 1974 Ga. App. LEXIS 1885, aff'd, 232 Ga. 637, 208 S.E.2d 454, 1974 Ga. LEXIS 1039 (1974) (decided prior to 1980 amendment of § 7-3-29 (now O.C.G.A. § 7-3-50)).

Starting point of a loan is the date of execution regardless of when the first payment is made or when the interest begins to run; a lender could not legally discount interest on a loan in advance under O.C.G.A. § 7-3-14 (now O.C.G.A. § 7-3-11), though the loan contract required repayment over an 18-month period, when the first monthly installment was due more than a month after the execution of the loan. Brown v. Termplan, Inc., 693 F.2d 1047, 1982 U.S. App. LEXIS 23385 (11th Cir. 1982).

Former Code 1933, § 25-315 (see now O.C.G.A. § 7-3-11) allowed interest to be charged only on an amount that was borrowed. Consolidated Credit Corp. v. Peppers, 144 Ga. App. 401, 240 S.E.2d 922, 1977 Ga. App. LEXIS 2710 (1977), overruled, Financeamerica Corp. v. Drake, 154 Ga. App. 811, 270 S.E.2d 449, 1980 Ga. App. LEXIS 2402 (1980).

Loan violated section. — Loan instrument violated former Code 1933, § 25-315 (see now O.C.G.A. § 7-3-11) by calculating and including more than the maximum interest which could be charged for a 24-month (now 36-month) period. Hobbiest Fin. Corp. v. Spivey, 135 Ga. App. 353, 217 S.E.2d 613, 1975 Ga. App. LEXIS 1671 (1975).

Sale/leaseback transactions deemed illegal payday loans. — Sale/leaseback transactions engaged in by consumer cash advance businesses violated the anti-payday lending statute, O.C.G.A. § 16-17-1 et seq., and the Georgia Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., since the state proved that the

purported lease back of personal property to the consumer was not based on the actual appraised market value of the personal property but directly corresponded to the loan amount; the state proved that the businesses were requiring customers to be released from the loan agreement by paying the principal amount advanced to them plus a 25 to 27 percent fee, which amounted to an annual percentage rate of 650 to 702 percent. Clay v. Oxendine, 285 Ga. App. 50, 645 S.E.2d 553, 2007 Ga. App. LEXIS 356 (2007), cert. denied, No. S07C1247, 2007 Ga. LEXIS 556 (Ga. July 12, 2007).

Maximum interest rate calculated on total amount financed plus loan fee is not usurious. Jones v. Community Loan & Inv. Corp., 526 F.2d 642, 1976 U.S. App. LEXIS 13061 (5th Cir. 1976).

Collection of unearned interest is not per se improper under Georgia law. Barrett v. Vernie Jones Ford, Inc., 395 F. Supp. 904, 1975 U.S. Dist. LEXIS 13508 (N.D. Ga. 1975).

Notes complying with section. — Notes providing for pro rata rebate of interest upon default and acceleration comply with O.C.G.A. § 7-3-14 (now O.C.G.A. § 7-3-11). Scroggins v. Whitfield Fin. Co., 157 Ga. App. 655, 278 S.E.2d 411, 1981 Ga. App. LEXIS 1954 (1981).

Loan Fee

Limitation on loan fees. — There is a limit on the loan fees an original lender can charge when part or all of a prior loan is repaid and has made no similar provision for a second lender. There is no reason to believe that the General Assembly evaluated its priorities in a different fashion in enacting O.C.G.A. § 7-3-14 (now O.C.G.A. § 7-3-11). Ford v. Termplan, Inc., 528 F. Supp. 1016, 1981 U.S. Dist. LEXIS 10030 (N.D. Ga. 1981).

Misleading listing in disclosure statement. — Disclosure statement with two identical subheadings labelled "LOAN FEE," under which two different amounts were listed, violated the federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., because there was no indication that the prepaid finance charge was the total of these two items. Varner v. Century Fin. Co., 738 F.2d 1143, 1984 U.S. App. LEXIS 19711 (11th Cir. 1984).

Lender is not obligated to disclose the sum of four and eight percent fees. Carroll v. Termplan, Inc., 476 F. Supp. 727, 1979 U.S. Dist. LEXIS 10537 (N.D. Ga. 1979).

Method of determination. — While O.C.G.A. § 7-3-14(2) (now O.C.G.A. § 7-3-11(2)) provides a two-tier computation for determining the maximum allowable loan fee, nothing requires that the loan fee actually charged be determined by this method, nor is a licensee required to disclose the method of computing the loan fee. Briscoe v. First Nat'l Bank & Trust Co., 167 Ga. App. 886, 307 S.E.2d 767, 1983 Ga. App. LEXIS 2652 (1983).

Fee exceeded that allowed by act. — Including interest in computational base used to calculate loan fee on note of more than 18 months results in fee exceeding that permitted by this act. Consolidated Credit Corp. v. Peppers, 144 Ga. App. 401, 240 S.E.2d 922, 1977 Ga. App. LEXIS 2710 (1977), overruled, Financeamerica Corp. v. Drake, 154 Ga. App. 811, 270 S.E.2d 449, 1980 Ga. App. LEXIS 2402 (1980).

Lender may charge interest on loan fees. — Since lender is entitled to fees for making loan, and does not receive the fees at that time, but by means of installment payments during the term of the loan, the lender is entitled to charge interest thereon. Lee v. Beneficial Fin. Co., 159 Ga. App. 205, 282 S.E.2d 770, 1981 Ga. App. LEXIS 2549 (1981).

Interest on amount borrowed not includable in computational base for loan fee. — Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., does not permit lenders to charge borrowers interest on interest by including interest on an amount borrowed in a computational base used to calculate the loan fee to be paid by borrowers. Sanders v. Liberty Loan Corp., 153 Ga. App. 859, 267 S.E.2d 286, 1980 Ga. App. LEXIS 2010, rev'd, 246 Ga. 292, 271 S.E.2d 218, 1980 Ga. LEXIS 1086 (1980), overruled, Financeamerica Corp. v. Drake, 154 Ga. App. 811, 270 S.E.2d 449, 1980 Ga. App. LEXIS 2402 (1980).

Fee authorized under former Code 1933, § 25-315 (see now O.C.G.A.

Loan Fee (Cont'd)

§ **7-3-11) constitutes prepaid finance charge** within meaning of Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., and Regulation Z, 12 C.F.R. § 226.8. Grubb v. Oliver Enters., Inc., 358 F. Supp. 970, 1972 U.S. Dist. LEXIS 11283 (N.D. Ga. 1972).

Loan fees must be disclosed. — In Georgia, a consumer lender may exact loan fees of not more than eight percent of first $600.00 of face amount of contract plus four percent of any excess, and such charges, if made, must be disclosed in truth in lending disclosure statements as a prepaid finance charge. Ector v. Southern Disct. Co., 499 F. Supp. 284, 1980 U.S. Dist. LEXIS 13834 (N.D. Ga. 1980).

Acceleration clause not providing for rebate of unearned charges is usurious and note, security deed, and foreclosure thereunder are null and void. Clyde v. Liberty Loan Corp., 249 Ga. 78, 287 S.E.2d 551, 1982 Ga. LEXIS 749 (1982).

Face Amount of Contract

Face amount of contract means amount borrower must borrow to obtain amount desired. Consolidated Credit Corp. v. Peppers, 144 Ga. App. 401, 240 S.E.2d 922, 1977 Ga. App. LEXIS 2710 (1977), overruled, Financeamerica Corp. v. Drake, 154 Ga. App. 811, 270 S.E.2d 449, 1980 Ga. App. LEXIS 2402 (1980); Carter v. Swift Loan & Fin. of Columbus, Inc., 148 Ga. App. 358, 251 S.E.2d 379, 1978 Ga. App. LEXIS 3151 (1978), overruled, Financeamerica Corp. v. Drake, 154 Ga. App. 811, 270 S.E.2d 449, 1980 Ga. App. LEXIS 2402 (1980); Wessinger v. Kennesaw Fin. Co., 151 Ga. App. 660, 261 S.E.2d 649, 1979 Ga. App. LEXIS 2738 (1979), overruled, Financeamerica Corp. v. Drake, 154 Ga. App. 811, 270 S.E.2d 449, 1980 Ga. App. LEXIS 2402 (1980); Ector v. Southern Disct. Co., 484 F. Supp. 654, 1979 U.S. Dist. LEXIS 10645 (N.D. Ga. 1979).

Face amount of contract means amount borrowed in both paragraphs (1) and (2) of former Code 1933, § 25-315 (see now O.C.G.A. § 7-3-11). FinanceAmerica Corp. v. Drake, 154 Ga. App. 811, 270 S.E.2d 449, 1980 Ga. App. LEXIS 2402 (1980).

Face amount of contract may be determined by adding together amounts of all constituent discounted elements that the debtor must borrow in order to have the amount the debtor desires in hand or, assuming all elements have been calculated properly, by taking the final payback figure and subtracting therefrom the amount of all nondiscounted elements. Lee v. Beneficial Fin. Co., 159 Ga. App. 205, 282 S.E.2d 770, 1981 Ga. App. LEXIS 2549 (1981).

Face amount of contract or amount borrowed may be determined by striking from total payback figure amount of interest to be paid under contract and amount of monthly maintenance charge. Carter v. Swift Loan & Fin. of Columbus, Inc., 148 Ga. App. 358, 251 S.E.2d 379, 1978 Ga. App. LEXIS 3151 (1978), overruled, Financeamerica Corp. v. Drake, 154 Ga. App. 811, 270 S.E.2d 449, 1980 Ga. App. LEXIS 2402 (1980); Wessinger v. Kennesaw Fin. Co., 151 Ga. App. 660, 261 S.E.2d 649, 1979 Ga. App. LEXIS 2738 (1979), overruled, Financeamerica Corp. v. Drake, 154 Ga. App. 811, 270 S.E.2d 449, 1980 Ga. App. LEXIS 2402 (1980).

Phrase "FAC, face amount of contract" has the same meaning in both O.C.G.A. § 7-3-14(1) and (2) (now O.C.G.A. § 7-3-11) which is amount necessary for borrower to borrow in order to obtain amount desired. Lee v. Beneficial Fin. Co., 159 Ga. App. 205, 282 S.E.2d 770, 1981 Ga. App. LEXIS 2549 (1981).

Amount of loan fee is a constituent element of FAC, face amount of contract under both O.C.G.A. § 7-3-14(1) and (2) (now O.C.G.A. § 7-3-11). Lee v. Beneficial Fin. Co., 159 Ga. App. 205, 282 S.E.2d 770, 1981 Ga. App. LEXIS 2549 (1981).

Amount borrowed in discount loans includes principal and interest. — Amount borrowed equals total payback figure only for discount loans in which both principal and interest are borrowed. Consolidated Credit Corp. v. Peppers, 144 Ga. App. 401, 240 S.E.2d 922, 1977 Ga. App. LEXIS 2710 (1977), overruled, Financeamerica Corp. v. Drake, 154 Ga. App. 811, 270 S.E.2d 449, 1980 Ga. App. LEXIS 2402 (1980).

Amount necessary to borrow does not include interest. — When note is for

more than 18 months, the amount necessary for the borrower to borrow does not include interest on the note. Consolidated Credit Corp. v. Peppers, 144 Ga. App. 401, 240 S.E.2d 922, 1977 Ga. App. LEXIS 2710 (1977), overruled, Financeamerica Corp. v. Drake, 154 Ga. App. 811, 270 S.E.2d 449, 1980 Ga. App. LEXIS 2402 (1980).

Interest on Georgia Industrial Loan Act (now Georgia Installment Loan Act) loan of greater than 18 months is not discounted and it is therefore not necessary for the debtor to borrow nondiscounted interest in order to obtain the amount the debtor desires in hand; thus, the amount of that nondiscounted interest does not become an element of computational (FAC) face amount of contract base from which either interest or a loan fee is calculated. Lee v. Beneficial Fin. Co., 159 Ga. App. 205, 282 S.E.2d 770, 1981 Ga. App. LEXIS 2549 (1981).

Interest discounted in advance is computational element. — When interest on Georgia Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., loan of 18 months or less is discounted or deducted in advance and it therefore becomes necessary for the debtor to "borrow" discounted interest in order to obtain total amount the debtor desires in hand, amount of that discounted interest becomes element of computational (FAC) face amount of contract base from which interest under O.C.G.A. § 7-3-14(1) (now O.C.G.A. § 7-3-11(1)) and a loan fee under § 7-3-14(2) (now O.C.G.A. § 7-3-11(2)) are derived. Lee v. Beneficial Fin. Co., 159 Ga. App. 205, 282 S.E.2d 770, 1981 Ga. App. LEXIS 2549 (1981).

When loan is repayable in 18 months or less and when interest is discounted, the "face amount" of the contract is also synonymous with the total payback amount of the loan. Briscoe v. First Nat'l Bank & Trust Co., 167 Ga. App. 886, 307 S.E.2d 767, 1983 Ga. App. LEXIS 2652 (1983).

Interest is not borrowed on nondiscount loans. — Interest is not borrowed on nondiscount loans; thus, amount borrowed equals the total payback figure minus interest. Consolidated Credit Corp. v. Peppers, 144 Ga. App. 401, 240 S.E.2d 922, 1977 Ga. App. LEXIS 2710 (1977), overruled, Financeamerica Corp. v. Drake, 154 Ga. App. 811, 270 S.E.2d 449, 1980 Ga. App. LEXIS 2402 (1980).

Maintenance charge is not element of computational face amount. — Maintenance charge under O.C.G.A. § 7-3-14(5) (now O.C.G.A. § 7-3-11(5)) "for each month in the term of the loan contract" is not a discountable element which can be deducted in advance so as to constitute an amount which the debtor has to borrow in order to obtain an amount the debtor desires in hand and, therefore, it does not become an element of computational face amount of contract base. Lee v. Beneficial Fin. Co., 159 Ga. App. 205, 282 S.E.2d 770, 1981 Ga. App. LEXIS 2549 (1981).

Inclusion of nondiscountable interest in face amount of contract computational base results in excessive loan fee. Lee v. Beneficial Fin. Co., 159 Ga. App. 205, 282 S.E.2d 770, 1981 Ga. App. LEXIS 2549 (1981).

Acceleration of Interest

Acceleration clauses are not per se invalid. Bragg v. HFC, 140 Ga. App. 75, 230 S.E.2d 55, 1976 Ga. App. LEXIS 1352 (1976).

Acceleration clause providing for any required refund of interest is valid. — Language of loan contract to effect that default will render entire sum remaining at once due and payable is objectionable as permitting recovery of unearned interest; when, however, a complementing clause is added, limiting accelerated sum to such amount less any required refund of interest, the usurious objection no longer applies. Bragg v. HFC, 140 Ga. App. 75, 230 S.E.2d 55, 1976 Ga. App. LEXIS 1352 (1976).

When acceleration clause renders note usurious, note is unenforceable. — If effect of an acceleration clause is to render note as a whole usurious, the note is unenforceable in Georgia courts. Barrett v. Vernie Jones Ford, Inc., 395 F. Supp. 904, 1975 U.S. Dist. LEXIS 13508 (N.D. Ga. 1975) (decided prior to

Acceleration of Interest (Cont'd)

amendment of § 7-3-29 (now O.C.G.A. § 7-3-50)).

Acceleration clause which includes unearned interest voids the contract. — Acceleration clause in Industrial Loan Act (now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq., contract which upon default permits collection of entire balance due on contract without excluding unearned interest is violative of act and voids contract. Diggs v. Swift Loan & Fin. Co., 154 Ga. App. 389, 268 S.E.2d 433, 1980 Ga. App. LEXIS 2186 (1980) (decided prior to 1980 amendment of § 7-3-29 (now O.C.G.A. § 7-3-50)).

When acceleration of a debt, combined with a claim of unearned interest, renders obligation usurious, the obligation becomes void under provisions of the Industrial Loan Act (now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq. Barrett v. Vernie Jones Ford, Inc., 395 F. Supp. 904, 1975 U.S. Dist. LEXIS 13508 (N.D. Ga. 1975) (decided prior to 1980 amendment of § 7-3-29 (now O.C.G.A. § 7-3-50)).

Provision rendering remaining installments immediately due and payable renders obligation usurious. — Provision rendering all remaining installments at once due and collectible is a contract for collection of usurious interest which voids the obligation. Allen v. Alco Fin., Inc., 131 Ga. App. 545, 206 S.E.2d 547, 1974 Ga. App. LEXIS 1462 (1974) (decided prior to 1980 amendment of § 7-3-29 (now O.C.G.A. § 7-3-50)).

Acceleration clause enforceable unless rendering note usurious. — Acceleration clause not providing for rebate of unearned interest is enforceable absent finding that clause, as applied, renders note violative of state usury laws. Once such finding has been made, however, the note becomes void. Barrett v. Vernie Jones Ford, Inc., 395 F. Supp. 904, 1975 U.S. Dist. LEXIS 13508 (N.D. Ga. 1975) (decided prior to 1980 amendment of § 7-3-29 (now O.C.G.A. § 7-3-50)).

Usurious collection voids obligation whether or not creditor attempts enforcement. — Provision in note authorizing usurious collection alone is sufficient to void obligation, even when creditor does not attempt enforcement. Barrett v. Vernie Jones Ford, Inc., 395 F. Supp. 904, 1975 U.S. Dist. LEXIS 13508 (N.D. Ga. 1975) (decided prior to 1980 amendment of § 7-3-29 (now O.C.G.A. § 7-3-50)).

Acceleration clause which includes unearned interest is void. — Under Georgia Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., loan agreement which provided that the lender, under certain conditions, could accelerate payment of entire unpaid balance of loan, including unearned interest, is void, not merely voidable; lender has no legally enforceable right to recover either principal or interest. Pinkett v. Credithrift of Am., Inc., 430 F. Supp. 113, 1977 U.S. Dist. LEXIS 16664 (N.D. Ga. 1977) (decided prior to 1980 amendment of § 7-3-29 (now O.C.G.A. § 7-3-50)).

Lender may not accelerate unearned interest if the lender wishes to recover principal and earned interest. Bragg v. HFC, 140 Ga. App. 75, 230 S.E.2d 55, 1976 Ga. App. LEXIS 1352 (1976) (decided prior to 1980 amendment of § 7-3-29).

Insurance

Insurance charges authorized under former Code 1933, § 25-315(3) (see now O.C.G.A. § 7-3-11) do not render loan usurious. McDonald v. G.A.C. Fin. Corp., 115 Ga. App. 361, 154 S.E.2d 825, 1967 Ga. App. LEXIS 1107 (1967).

Subparagraph (3)(B) applies only to credit insurance. — O.C.G.A. § 7-3-14(3)(B) (now O.C.G.A. § 7-3-11) applies only to insurance purchased "as security on any loan," i.e., credit insurance. Dixon v. S & S Loan Serv. of Waycross, Inc., 754 F. Supp. 1567, 1990 U.S. Dist. LEXIS 18853 (S.D. Ga. 1990).

Section does not prohibit writing of level term life insurance on loans made under the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.). Mason v. Service Loan & Fin. Co., 128 Ga. App. 828, 198 S.E.2d 391, 1973 Ga. App. LEXIS 1635 (1973).

Effect of accelerating debt on insurance coverage. — In the absence

of any requirement that a lender cancel credit insurance coverage upon acceleration of a debt, there is no violation of the Industrial Loan Act (now Georgia Installment Loan Act) (ILA), O.C.G.A. § 7-3-1 et seq., when a lender, pursuant to properly drafted loan documents and in accord with the ILA, accelerates a debt but does not refund insurance premiums on insurance coverage still in effect. Williams v. Charter Credit Co., 179 Ga. App. 721, 347 S.E.2d 635, 1986 Ga. App. LEXIS 2023 (1986).

Late Charges

Former Code 1933, § 25-315(4) (see now O.C.G.A. § 7-3-11) specified the only penalty which may be collected for late payment. Lewis v. Termplan, Inc., 124 Ga. App. 507, 184 S.E.2d 473, 1971 Ga. App. LEXIS 995 (1971).

OPINIONS OF THE ATTORNEY GENERAL

Former Code 1933, § 25-315 (see now O.C.G.A. § 7-3-11(1)) applied to banks since the statute set the maximum loan fee by regulating when the fee may be charged. 1980 Op. Att'y Gen. No. 80-116.

Section incorporated into National Bank Act and Chapter 7-1 of this title. — Effect of 12 U.S.C. § 85 and former Code 1933, § 41A-1313 (see now O.C.G.A. § 7-1-292) was incorporation by reference into National Bank Act and Financial Institutions Code (see now O.C.G.A. § 7-1-1 et seq.) respectively, those provisions of this chapter dealing with interest and fees which could be charged on certain designated types of loans. 1979 Op. Att'y Gen. No. 79-33.

Bank may again charge loan fees authorized by O.C.G.A. § 7-3-14(2) (now O.C.G.A. § 7-3-11(2)) if loan with maturity date in excess of six months made pursuant to the Georgia Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., is renewed after the loan has been in existence in excess of six months. 1982 Op. Att'y Gen. No. 82-43.

Legislative intent regarding borrower's insurance. — Language of former Code 1933, § 25-315 (see now O.C.G.A. § 7-3-11) made clear the legislative intent that insurance must be for the borrower's benefit; the borrower's insurance would, therefore, cover not only the amount owing on the loan, but also any equity the borrower might have in the property insured. 1963-65 Ga. Op. Att'y Gen. 131.

Licensee cannot charge borrower for insurance policy-writing fee. — No statutory provision permits licensee to charge borrower for policy-writing fee; language of former Code 1933, § 25-315(3) clearly prohibited any charge in connection with insurance obtained as security on a loan other than actual established premium, and former Code 1933, §§ 25-214, 25-216, and 25-313 (see now O.C.G.A. § 7-3-12) clearly prohibits any charges other than those set out in this chapter. 1963-65 Ga. Op. Att'y Gen. 428.

Late charge not considered interest and fees. — Late charge under former Code 1933, § 25-315(4) (see now O.C.G.A. § 7-3-11), being a penalty assessment for failure to meet payment when due, was not considered as interest and fees and was not limited by 5 percent per month maximum which can be charged as interest and fees under former Code 1933, § 25-315(1) and (2). 1957 Ga. Op. Att'y Gen. 158.

"Loan" synonymous with "note." — "Loan" in this context should be interpreted as synonymous with "note," and thus two 90-day periods may not be cumulated to allow additional loan fee on second renewal. 1980 Op. Att'y Gen. No. 80-116.

Interest charge for partial 30-day periods permissible. — So long as interest of 10 percent per annum is not exceeded, banks may charge interest for partial 30-day periods. 1980 Op. Att'y Gen. No. 80-116.

If a second imposition of fee permitted by O.C.G.A. § 7-3-14(2) (now O.C.G.A. § 7-3-11(2)) would result in a violation of usury provisions of O.C.G.A. § 7-4-18 such a second imposition would be illegal. 1982 Op. Att'y Gen. No. 82-43.

Calculation of refund of unearned maintenance charges. — Calculation of a refund of unearned maintenance charges in connection with the prepayment or refinancing of a loan transaction is to be determined by the "Rule of 78s" as required by O.C.G.A. § 7-3-14(5) (now O.C.G.A. 7-3-11). 1990 Op. Att'y Gen. No. 90-45.

RESEARCH REFERENCES

Am. Jur. 2d.

44B Am. Jur. 2d, Interest and Usury, § 156 et seq. 53A Am. Jur. 2d, Moneylenders and Pawnbrokers, § 1 et seq.

C.J.S.

47 C.J.S., Interest and Usury Consumer Credit, §§ 428 et seq., 436, 444, 445.

ALR.

Usury: expenses or charges incident to loan of money, 21 A.L.R. 797; 53 A.L.R. 743; 63 A.L.R. 823; 105 A.L.R. 795; 52 A.L.R.2d 703.

Construction, application, and effect of provisions of small loan acts regarding fees, charges, in addition to interest, 143 A.L.R. 1323.

Retrospective application and effect of statutory provision for interest or changed rate of interest, 4 A.L.R.2d 932; 40 A.L.R.4th 147; 41 A.L.R.4th 694.

Usury: expenses or charges incident to loan of money, 52 A.L.R.2d 703.

Taking or charging interest in advance as usury, 57 A.L.R.2d 630.

Construction and application of provision of small loan statute limiting time period for loan contracts, 58 A.L.R.2d 1263.

What is "compound interest" within meaning of statutes prohibiting the charging of such interest, 10 A.L.R.3d 421.

Right of holder of commercial paper to interest or finance charges applicable to period after acceleration of maturity of obligation because of debtor's default, 63 A.L.R.3d 10.

Validity and construction of provision imposing "late charge" or similar exaction for delay in making periodic payments on note, mortgage, or installment sale contract, 63 A.L.R.3d 50.

Reformation of usurious contract, 74 A.L.R.3d 1239.

Validity and construction of state statute or rule allowing or changing rate of prejudgment interest in tort action, 40 A.L.R.4th 147.

Retrospective application and effect of state statute or rule allowing interest or changing rate of interest on judgments or verdicts, 41 A.L.R.4th 694.

7-3-12. Limitation on further charges.

No licensee shall charge, contract for, or receive any other or further amount in connection with any loans authorized by this chapter in addition to those provided in Code Section 7-3-11, except the actual lawful fees paid to a public official or agency of the state for filing, recording, or, on loans over $100.00, the amount of the lawful premiums, no greater than such fees, actually paid for insurance against the risk of nonrecording or releasing any instrument securing the loan; the court costs and attorney fees authorized by law incurred in the collection of any contract in default; and the actual and reasonable expenses of repossessing, storing, and selling any collateral pledged as security for any contract in default. No licensee shall divide into separate parts any contract for the purpose or with the effect of obtaining charges in excess of those authorized by this chapter.

History.

Ga. L. 1904, p. 79, §§ 10, 12; Civil Code 1910, §§ 3459, 3461; Ga. L. 1920, p. 215, § 13; Code 1933, §§ 25-214, 25-216, 25-

313, 25-316; Ga. L. 1935, p. 394, § 2; Ga. L. 1955, p. 431, § 16; Code 1981, § 7-3-15; Code 1981, § 7-3-12, as redesignated by Ga. L. 2020, p. 156, § 2/SB 462.

Editor's notes.

Former Code Section 7-3-12, concerning books, records, and reports, was repealed by Ga. L. 2020, p. 156, § 2/SB 462, effective June 30, 2020. The former Code section was based on Ga. L. 1904, p. 79, § 6; Civil Code 1910, §§ 3454, 3455; Ga. L. 1920, p. 215, § 11; Code 1933, §§ 25-209, 25-210, 25-310; Ga. L. 1955, p. 431, § 10; Ga. L. 1989, p. 14, § 7.

JUDICIAL DECISIONS

Editor's notes. — In light of subsections (g) and (h) of O.C.G.A. § 7-3-29, decisions rendered prior to amendment of that section by Ga. L. 1980, p. 1784, §§ 1, 2, have been included in the annotations for this Code section.

Lender may not contract for any interest or charges not specifically authorized by the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.). General Fin. Corp. v. Sprouse, 577 F.2d 989, 1978 U.S. App. LEXIS 9750 (5th Cir. 1978).

Waiver of homestead exemption did not constitute a further charge within meaning of former Code 1933, § 25-316 (see now O.C.G.A. § 7-3-12). Lowe v. Termplan, Inc., 144 Ga. App. 671, 242 S.E.2d 268, 1978 Ga. App. LEXIS 1740 (1978).

Title fee disbursed to third party constitutes an additional charge which was prohibited by former Code 1933, § 25-316 and thus renders loan contract between the parties null and void. Kennesaw Fin. Co. v. Mirabelli, 143 Ga. App. 254, 238 S.E.2d 256, 1977 Ga. App. LEXIS 2274 (1977) (decided prior to 1980 amendment to § 7-3-50).

Notary fees to lender's employee are prohibited charges. — When loan company receives benefit from collection of notary fees at least indirectly, in that the job held by an employee is attractive and easier to fill with a qualified person by reason of additional compensation or supplement to regular salary in the form of notary fees, notary fees constitute "any other or further amount" under former Code 1933, § 25-316 (see now O.C.G.A. § 7-3-12). Georgia Inv. Co. v. Norman, 231 Ga. 821, 204 S.E.2d 740, 1974 Ga. LEXIS 1254 (1974).

Loan including every legally permissible charge becomes usurious by notary fee. — When, after charging the borrower every charge legally permissible under the terms of the Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., a lender disburses $1.00 of the amount loaned to the borrower to an employee of lender as a notary public fee, such disbursement, not being permitted by the Act, results in usurious interest being charged to the borrower. Georgia Inv. Co. v. Norman, 231 Ga. 821, 204 S.E.2d 740, 1974 Ga. LEXIS 1254 (1974).

Acceleration of remaining installments, including unearned interest, renders contract void. — When contract provides for acceleration upon the debtor's default of all remaining installments of the loan, which installments include unearned interest, the contract was null and void under former Code 1933, § 25-316 (see now O.C.G.A. § 7-3-12). Anderson v. G.A.C. Fin. Corp., 135 Ga. App. 116, 217 S.E.2d 605, 1975 Ga. App. LEXIS 1588 (1975) (decided prior to 1980 amendment of § 7-3-50).

Acceleration clause in Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., contract which upon default permits collection of entire balance due on contract without excluding unearned interest is violative of the Act and voids the contract. Diggs v. Swift Loan & Fin. Co., 154 Ga. App. 389, 268 S.E.2d 433, 1980 Ga. App. LEXIS 2186 (1980) (decided prior to 1980 amendment of § 7-3-50).

Provision for acceleration of unearned interest is a contract authorizing collection of more than is provided or approved by the Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., and thus authorizes a result contrary to its terms, and is in violation of the Act; the loan is void. Frazier v. Courtesy Fin. Co., 132 Ga. App. 365, 208 S.E.2d 175, 1974 Ga. App. LEXIS 1691 (1974) (decided prior to 1980 amendment of § 7-3-50).

Loan contract usurious. — Loan contract providing for eight percent interest to be paid after maturity is not in violation of interest provisions of the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.), but, when combined with an acceleration clause, exceeds the sum lawfully allowed to be charged. Hardy v. G.A.C. Fin. Corp., 131 Ga. App. 282, 205 S.E.2d 526, 1974 Ga. App. LEXIS 1403, aff'd, 232 Ga. 632, 208 S.E.2d 453, 1974 Ga. LEXIS 1036 (1974).

Accelerated collection voids obligation. — Provision in 24-month note authorizing accelerated collection is sufficient to void the obligation. Lawrimore v. Sun Fin. Co., 131 Ga. App. 96, 205 S.E.2d 110, 1974 Ga. App. LEXIS 1340, 1974 Ga. App. LEXIS 1867, 1974 Ga. App. LEXIS 1885, aff'd, 232 Ga. 637, 208 S.E.2d 454, 1974 Ga. LEXIS 1039 (1974).

Contract provision authorizing collection of unearned interest voids obligation. — It makes no difference whether collection of the unearned interest was sought or not; provision in loan agreement authorizing collection of unearned interest alone voids obligation. Brock v. Liberty Loan Co., 135 Ga. App. 62, 217 S.E.2d 389, 1975 Ga. App. LEXIS 1560 (1975).

Refinancing by original lender. — In a refinancing by an original lender, when both sides must agree to an extension of credit and the lender presumably is not losing profits, there is no reason to depart from the general mandate of O.C.G.A. §§ 7-3-14 and 7-3-15 (see now O.C.G.A. §§ 7-3-11 and 7-3-12). This chapter provides for "add on" interest, earned uniformly on the entire original amount of the loan, without regard to installment reductions in the outstanding balance. Ford v. Termplan, Inc., 528 F. Supp. 1016, 1981 U.S. Dist. LEXIS 10030 (N.D. Ga. 1981).

Nonfiling insurance premium validly charged. — See Pinkston v. Security Fin. Corp., 183 B.R. 986, 1995 Bankr. LEXIS 853 (Bankr. S.D. Ga. 1995).

OPINIONS OF THE ATTORNEY GENERAL

Effect of Uniform Commercial Code on nonrecording insurance premiums. — Nonrecording insurance premiums, subject otherwise to rate approvals and regulations by insurance department would be lawful after January 1, 1964, provided they do not exceed amount of recording fees set out in the Uniform Commercial Code. 1963-65 Ga. Op. Att'y Gen. 335.

Licensee may not charge borrower a policy-writing fee. — No provision in the Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) permits a licensee to charge a borrower a policy-writing fee; the language of former Code 1933, §§ 25-213, 25-214, 25-216, 25-301, 25-313, 25-315, and 25-317 (see now O.C.G.A. § 7-3-11(3)) clearly prohibited any charge in connection with insurance obtained as security on a loan other than the actual established premium, and former Code 1933, § 25-316 (see now O.C.G.A. § 7-3-12) clearly prohibited any charges other than those set out in the Act. 1963-65 Ga. Op. Att'y Gen. 428.

RESEARCH REFERENCES

Am. Jur. 2d.

53A Am. Jur. 2d, Moneylenders and Pawnbrokers, § 34 et seq.

C.J.S.

47 C.J.S., Interest and Usury Consumer Credit, §§ 428 et seq., 436, 444, 445.

ALR.

Usury: expenses or charges incident to loan of money, 21 A.L.R. 797; 53 A.L.R. 743; 63 A.L.R. 823; 105 A.L.R. 795; 52 A.L.R.2d 703.

Note or other obligation payable on demand for an amount in excess of amount actually loaned as usurious, 127 A.L.R. 460.

Construction, application, and effect of provisions of small loan acts regarding fees, charges, in addition to interest, 143 A.L.R. 1323.

Usury: expenses or charges incident to loan of money, 52 A.L.R.2d 703.

What is "compound interest" within meaning of statutes prohibiting the charging of such interest, 10 A.L.R.3d 421.

Enforceability of provision in loan commitment agreement authorizing lender to charge standby fee, commitment fee, or similar deposit, 93 A.L.R.3d 1156.

7-3-13. Licensee's compliance when purchasing notes and other documents.

If a licensee purchases or receives by transfer or assignment any note, bill of sale to secure debt, title retention contract, conditional sales contract, or any other similar contract that would otherwise be governed by this chapter, the licensee shall comply with the provisions of this chapter when making a loan for the purpose of paying off all or any part of such instrument.

History.

Ga. L. 1964, p. 288, § 7; Code 1981, § 7-3-16; Code 1981, § 7-3-13, as redesignated by Ga. L. 2020, p. 156, § 2/SB 462.

Editor's notes.

Ga. L. 2020, p. 156, § 2/SB 462, effective June 30, 2020, redesignated former Code Section 7-3-13 as present Code Section 7-3-10.

RESEARCH REFERENCES

Am. Jur. 2d.

53A Am. Jur. 2d, Moneylenders and Pawnbrokers, § 27 et seq.

ALR.

Finance charge in connection with conditional sale contract as usury, 143 A.L.R. 238.

7-3-14. Payment before maturity; refund of prepaid interest; continuing insurance.

Notwithstanding the provisions of any contract to the contrary, a borrower may at any time prepay all or any part of the unpaid balance to become payable under any installment loan. If the borrower prepays the loan in full before maturity, the licensee shall refund to the borrower a portion of the prepaid interest, calculated in complete even months (odd days omitted), as follows: the amount of the refund shall represent at least as great a proportion of the total interest as the sum of the periodical time balance after the date of prepayment bears to the sum of all periodical time balances under the schedule of payments in the original contract. Where the amount of the refund due to anticipation of payment is less than $1.00, no refund need be made. If the

borrower has been required to purchase insurance coverage other than insurance coverage in a blanket policy when the borrower has paid no acquisition cost, the borrower shall have the option to continue such insurance in force for the balance of the policy period, with all rights transferred to the borrower or his or her assigns, in which event no refund of insurance premiums shall be made.

History.

Ga. L. 1955, p. 431, § 17; Code 1981, § 7-3-17; Code 1981, § 7-3-14, as redesignated by Ga. L. 2020, p. 156, § 2/SB 462.

Editor's notes.

Ga. L. 2020, p. 156, § 2/SB 462, effective June 30, 2020, redesignated former Code Section 7-3-14 as present Code Section 7-3-11.

Law reviews.

For article discussing methods of computation of finance charges in Georgia consumer credit contracts, see 30 Mercer L. Rev. 281 (1978).

JUDICIAL DECISIONS

Section compensates lender for profits lost when loan prepaid. — In enacting O.C.G.A. § 7-3-17 (now O.C.G.A. § 7-3-14), the General Assembly made a specific exception to the general limitation of O.C.G.A. § 7-3-14 (now O.C.G.A. § 7-3-11) on interest and to the general prohibition in O.C.G.A. § 7-3-15 (now O.C.G.A. § 7-3-11) on further charges, with a view toward compensating a lender for lost profits when a debtor voluntarily repays the debtor's loan. Ford v. Termplan, Inc., 528 F. Supp. 1016, 1981 U.S. Dist. LEXIS 10030 (N.D. Ga. 1981).

Section applicable to prepaid interest and insurance but makes no mention of loan fee charges. — Georgia law provides a specific refund system upon prepayment of loans. It applies to prepaid interest and insurance charges but makes no mention of a loan fee charge. Jones v. Community Loan & Inv. Corp., 526 F.2d 642, 1976 U.S. App. LEXIS 13061 (5th Cir. 1976).

Rule of 78's violates this section. — Given the purpose of the Industrial Loan Act (now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq., the strict construction which Georgia courts have applied to it, its general limitation on interest rates charged on such small loans in O.C.G.A. § 7-3-14 (now O.C.G.A. § 7-3-11), its general prohibition in O.C.G.A. § 7-3-15 (now former O.C.G.A. § 7-3-18) on charges in excess of those authorized, and the commission regulations, which, according to accepted interpretive principles, appear to exclude anything but pro rata computations of interest on rebates and refinancing, it would seem that the use of the Rule of 78's to compute the interest rebate and the refinancing of a loan agreement pursuant to that Act violates O.C.G.A. § 7-3-17 (now O.C.G.A. § 7-3-14). Ford v. Termplan, Inc., 528 F. Supp. 1016, 1981 U.S. Dist. LEXIS 10030 (N.D. Ga. 1981).

Determination of refund by Rule of 78's is permitted. — Computation of refunds of unearned interest according to Rule of 78's when borrower pays time balance in full before maturity is permitted. Pollard v. Congress Fin. Corp., 153 Ga. App. 357, 265 S.E.2d 296, 1980 Ga. App. LEXIS 1805 (1980). (But see, Ford v. Termplan, Inc., 528 F. Supp. 1016 (N.D. Ga. 1981)).

Rule of 78's applicable in refinancing situation. — One statute the General Assembly has written to allow for use of the Rule of 78's in situations involving the prepayment of all or any part of the unpaid balance of an installment contract prior to maturity should be held applicable when a borrower retires one note held by a particular lender by using the proceeds of a second note from the same lender. The General Assembly's decision to allow more than a pro rata loss of interest in prepayment situations indicates the General Assembly's desire to allow a similar loss by the borrower in a refinancing situation since both

transactions are initiated by the borrower and are evidences of the borrower's failure to fulfill the borrower's contractual obligation to repay the lender pursuant to the initial installment contract. That failure has caused the General Assembly to exact a penalty against the borrower in the form of allowing a creditor's use of the Rule of 78's in a prepayment situation, and in the absence of a clear statement to the contrary, the same penalty should be exacted against the refinancing borrower. Simpson v. Termplan, Inc., 535 F. Supp. 36, 1981 U.S. Dist. LEXIS 17335 (N.D. Ga. 1981). (But see, Ford v. Termplan, Inc., 528 F. Supp. 1016 (N.D. Ga. 1981)).

Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., authorizes the lender to use the Rule of 78's to compute interest rebates in refinancing cases and the Act does not require lenders to compute such rebates on a pro rata basis. Varner v. Century Fin. Corp., 253 Ga. 27, 317 S.E.2d 178, 1984 Ga. LEXIS 707 (1984). (But see, Ford v. Termplan, Inc., 528 F. Supp. 1016 (N.D. Ga. 1981)).

Nothing less than refund of all unearned interest permitted when creditor accelerates. — When there is not a prepayment, the Rule of 78's cannot be used to compute interest refund and when acceleration was made at half-way point in contract but less than 50 percent of total interest charged was refunded, nothing less than a refund of all unearned interest when the creditor accelerates can be permitted. Garrett v. G.A.C. Fin. Corp., 129 Ga. App. 96, 198 S.E.2d 717, 1973 Ga. App. LEXIS 895 (1973).

RESEARCH REFERENCES

Am. Jur. 2d.

53A Am. Jur. 2d, Moneylenders and Pawnbrokers, § 34 et seq.

ALR.

Personal liability for repayment of loan or advance under contract which expressly provides for repayment from proceeds of crop or other property and contains no express promise for repayment otherwise, 111 A.L.R. 1062.

7-3-15. Delivery of copy of contract or itemized statement; receipts.

In addition to any applicable disclosure requirements, at the time the installment loan is made, each licensee under this chapter shall deliver to the borrower or, if there are multiple borrowers, to one of the borrowers a copy of the loan contract or a written itemized statement in the English language showing in clear terms the date and amount of the loan, a schedule of the payments or a description thereof, the type of security for the loan, the licensee's name, unique identifier, business address, the actual amount of cash advanced to or on behalf of the borrower, the amount of each class of insurance carried and the premiums paid thereon, and the amount of interest and fees. Each licensee shall give a receipt for every cash payment made.

History.

Ga. L. 1904, p. 79, §§ 6, 7; Civil Code 1910, § 3454; Ga. L. 1920, p. 215, § 14; Code 1933, §§ 25-209, 25-314; Ga. L. 1955, p. 431, § 19; Code 1981, § 7-3-18; Code 1981, § 7-3-15, as redesignated by Ga. L. 2020, p. 156, § 2/SB 462.

Editor's notes.

Ga. L. 2020, p. 156, § 2/SB 462, effective June 30, 2020, redesignated former Code Section 7-3-15 as present Code Section 7-3-12.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former Acts 1920, p. 222 are included in the annotations for this Code section.

Act is applicable to loan contracts, not merely notes. — Statutory language of the Georgia Industrial Loan Act, (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) refers to loan contracts and not merely notes. General Fin. Corp. v. Sprouse, 577 F.2d 989, 1978 U.S. App. LEXIS 9750 (5th Cir. 1978).

Substantial compliance with section may suffice. — Although renewal note was not made out with as much particularity as was required by Acts 1920, p. 222, it may nevertheless affirmatively appear that there was substantial compliance with that Act and that the borrowers had been furnished relevant information. Dean v. Avco Fin. Servs., Inc., 128 Ga. App. 256, 196 S.E.2d 415, 1973 Ga. App. LEXIS 1453 (1973) (decided under former Acts 1920, p. 222).

Burden was on lender to show full compliance with terms of former Acts 1920, p. 222, otherwise the transaction was void. Dean v. Avco Fin. Servs., Inc., 128 Ga. App. 256, 196 S.E.2d 415, 1973 Ga. App. LEXIS 1453 (1973) (decided under Acts 1920, p. 222).

Burden is upon lender to bring in any other writings. — If there were other writings between the parties, it is incumbent upon the lender to come up with those writings or suffer judgment. HFC v. Rogers, 137 Ga. App. 315, 223 S.E.2d 462, 1976 Ga. App. LEXIS 2431 (1976).

Inconsistency between state disclosure requirements and Truth-in- Lending Act. — State law is inconsistent with requirements of Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., to extent that it requires a creditor to make disclosures different from the federal requirements with respect to form or terminology. Gresham v. Termplan, Inc., 480 F. Supp. 149, 1979 U.S. Dist. LEXIS 8649 (N.D. Ga. 1979), aff'd, 648 F.2d 312, 1981 U.S. App. LEXIS 12173 (5th Cir. 1981).

State law is inconsistent with requirements of truth in lending law if the state law requires a creditor to make disclosures different from those required by federal law as to form, content, terminology, or time of delivery. Blalock v. Aetna Fin. Co., 511 F. Supp. 33, 1980 U.S. Dist. LEXIS 16492 (N.D. Ga. 1980).

Mingling of state disclosures and federal regulations. — Mingling of inconsistent state disclosures with terminology required by federal regulations is not permissible. Gresham v. Termplan, Inc., 480 F. Supp. 149, 1979 U.S. Dist. LEXIS 8649 (N.D. Ga. 1979), aff'd, 648 F.2d 312, 1981 U.S. App. LEXIS 12173 (5th Cir. 1981).

Permissible method for making disclosures under inconsistent state and federal requirements. See Gresham v. Termplan, Inc., 480 F. Supp. 149, 1979 U.S. Dist. LEXIS 8649 (N.D. Ga. 1979), aff'd, 648 F.2d 312, 1981 U.S. App. LEXIS 12173 (5th Cir. 1981).

Clerical error in loan document as to insurance. — Clerical error on loan document as to nature of insurance did not violate the Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., when the loan document expressly provided that the agreement consisted of both the loan document and the disclosure statement. Jenkins v. Commercial Credit Plan, Inc., 204 Ga. App. 444, 419 S.E.2d 484, 1992 Ga. App. LEXIS 862 (1992), cert. denied, No. S92C1174, 1992 Ga. LEXIS 683 (Ga. Sept. 11, 1992).

RESEARCH REFERENCES

C.J.S.

47 C.J.S., Interest and Usury Consumer Credit, §§ 436 et seq., 451.

ALR.

Validity, construction, and application of Truth in Lending Act (TILA) and

regulations promulgated thereunder — United States Supreme Court cases, 67 A.L.R. Fed. 2d 567.

7-3-16. Additional loan fees; interest; penalties.

(a) On and after July 1, 2022, in addition to all other fees, license fees, fines, or other charges now or hereafter levied or assessed, there is imposed on each loan made pursuant to this chapter a fee of 0.125 percent of the gross loan amount. Such per loan fee shall become due on the making of any such loan, including, but not limited to, the closing of a loan, the renewal or refinancing of a loan, or a modification of a loan which results in the execution of a new or amended loan agreement.

(b) Such per loan fee is levied and assessed against the person so licensed and shall be paid by such person and shall not be added in any manner as an additional fee or charge against the borrower. Such per loan fee shall be remitted to the department at the time and in the manner specified by rules and regulations of the department.

(c) In the event any person fails or refuses to remit the fees required by this Code section within the time prescribed, the fees shall bear interest at the rate of 1 percent per month. Interest shall begin to accrue from the date the fees are due until the date the fees are paid. For purposes of this Code section, any period of less than one month shall be considered to be one month.

(d) In the event any person fails or refuses to remit the per loan fees required by this Code section within the time prescribed, there shall be added to the fees a penalty equivalent to 25 percent of the fees due, but in no case shall the penalty so added be less than $5.00. In the event any person fraudulently remits the incorrect fees, there shall be added to the fees a penalty equivalent to 50 percent of the fees due, but in no case shall the penalty so added be less than $5.00.

(e) The 2022 revisions of Code Sections 7-3-16, 7-3-17, and 7-3-18 shall not affect the fees, taxes, and related interest and penalties owed pursuant to the earlier versions of such Code sections for any time prior to July 1, 2022.

(f) The department and its authorized examiners and employees shall have the right to inspect all records of any person licensed pursuant to this chapter, and the department is authorized to promulgate rules and regulations relative to the enforcement of this Code section.

History.
Code 1981, § 7-3-16, enacted by Ga. L. 2022, p. 220, § 40/HB 891; Ga. L. 1955, Ex. Sess., p. 57, § 1; Ga. L. 1956, p. 86, § 2; Ga. L. 1997, p. 143, § 7; Code 1981, § 7-

3-19; Code 1981, § 7-3-16, as redesignated by Ga. L. 2020, p. 156, § 2/SB 462.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2022, "per loan fees" was substituted for "per loans fees" in the first sentence of subsection (d) and "July 1, 2022" was substituted for "the effective date of this Act" at the end of subsection (e).

Editor's notes.

Ga. L. 2020, p. 156, § 2/SB 462, effective June 30, 2020, redesignated former Code Section 7-3-16 as present Code Section 7-3-13.

Ga. L. 2022, p. 220, § 40/HB 891, repealed former Code Section 7-3-16, relating to tax on interest, levy, and penalty for tax to charges, and enacted the present Code section. The former Code section was based on Ga. L. 1955, Ex. Sess., p. 57, § 1; Ga. L. 1956, p. 86, § 2; Ga. L. 1997, p. 143, § 7; Code 1981, § 7-3-19; Code 1981, § 7-3-16, as redesignated by Ga. L. 2020, p. 156, § 2/SB 462.

RESEARCH REFERENCES

ALR.

Constitutionality of statutes imposing duty on borrower to collect and pay over the tax imposed on the lender or owner of the obligations, 60 A.L.R. 742.

Classification of money lenders for purposes of taxation, 93 A.L.R. 209.

7-3-17. Closing fees; refund or credit; pro rata basis.

Notwithstanding the provisions of subsection (b) of Code Section 13-1-14, when any installment loan upon which a closing fee has been charged by a licensee is prepaid by any means within 90 days of the date of the loan, the borrower shall be entitled to a refund or credit of the closing fee, calculated as follows: the installment lender shall determine, on a daily pro rata basis over the original term of the loan, the amount of the closing fee that has accumulated prior to the prepayment. The installment lender shall refund or credit the borrower with the pro rata amount that has not accumulated prior to the prepayment; provided, however, that the installment lender may retain from the collected closing fee the greater of the accumulated pro rata closing fee or $25.00.

History.

Code 1981, § 7-3-17, enacted by Ga. L. 2024, p. 354, § 1-37/HB 876, effective July 1, 2024.

Effective date.

This Code section became effective July 1, 2024.

Editor's notes.

This Code section formerly pertained to tax on interest, payment, inspection of records, and rules and regulations. The former Code section was based on Ga. L. 1955, Ex. Sess., p. 57, § 2; Ga. L. 1956, p. 86, § 2; Ga. L. 1975, p. 1247, § 2; Ga. L. 1989, p. 14, § 7; Ga. L. 2004, p. 631, § 7; Code 1981, § 7-3-20; Code 1981, § 7-3-17, as redesignated by Ga. L. 2020, p. 156, § 2/SB 462; and was repealed by Ga. L. 2022, p. 220, § 41/HB 891, effective July 1, 2022.

7-3-18. [Reserved] Tax on interest — Penalties for late or fraudulent tax payments.

History.
Ga. L. 1955, Ex. Sess., p. 57, § 3; Code 1981, § 7-3-21; Code 1981, § 7-3-18, as redesignated by Ga. L. 2020, p. 156, § 2/SB 462; repealed by Ga. L. 2022, p. 220, § 42/HB 891, effective July 1, 2022.
Editor's notes.
Ga. L. 2020, p. 156, § 2/SB 462, effective June 30, 2020, redesignated former Code Section 7-3-18 as present Code Section 7-3-15.
Ga. L. 2022, p. 220, § 42/HB 891 repealed and reserved this Code section, effective July 1, 2022.

ARTICLE 3

LICENSING

7-3-20. Licensing application; fee.

(a) Each applicant for an original or renewal license shall:

(1) Submit an application in writing, under oath, and in such form as the department may prescribe;

(2) Furnish to the Nationwide Multistate Licensing System and Registry the following information:

(A) The legal name and principal business address of the person applying for the license;

(B) The names and the residence and business addresses of each director, owner, and executive officer of the applicant;

(C) The address of each location where the applicant will engage in the business of making installment loans in this state;

(D) Any name, subject to approval by the department, under which the applicant will engage in the business of making installment loans in this state; and

(E) The name and address of the initial registered agent and registered office for service of process in this state;

(3) Submit such other data, financial statements, and pertinent information as the department may require with respect to the applicant or its directors, owners, or executive officers; and

(4) Pay a nonrefundable supervision fee established by rules and regulations of the department.

(b) A person applying for an original license shall pay a nonrefundable investigation fee established by rules and regulations of the department.

History.
Code 1981, § 7-3-20, enacted by Ga. L. 2020, p. 156, § 2/SB 462.
Editor's notes.
Ga. L. 2020, p. 156, § 2/SB 462, effective June 30, 2020, redesignated former Code Section 7-3-20 as present Code Section 7-3-17.

7-3-21. Bond requirements.

(a) An applicant shall provide with its application a corporate surety bond issued by a bonding company or insurance company authorized to do business in this state and approved by the department.

(b) The bond shall:

(1) Be in a form satisfactory to the department;

(2) Be in the aggregate amount of $25,000.00 for the primary location to be operated by a licensee plus $5,000.00 for each additional location to be operated by such licensee, provided that no licensee shall be required to have a bond that exceeds a total amount of $100,000.00;

(3) Run to the State of Georgia for the benefit of the department or any claimant against a licensee arising out of the licensee's business of making installment loans;

(4) Require a licensee to pay any and all money for the benefit of any person damaged by noncompliance of the licensee with this chapter, with rules, regulations, or orders issued by the department pursuant to this chapter, or with any condition of the bond; and

(5) Require a licensee to pay any and all money that may become due and owing to any creditor of or claimant against the licensee arising out of the licensee's business of making installment loans.

(c) Payments due under the bond shall include money owed to the department for fees and related interest and penalties under Code Section 7-3-16 and fines or penalties for noncompliance of the licensee with this chapter or rules, regulations, or orders issued pursuant to this chapter.

(d) Claimants or creditors against the licensee may bring an action directly on the bond.

(e) In no event shall the aggregate liability of the surety exceed the principal sum of the face amount of the bond.

(f) In the event that the principal sum of the bond is reduced by one or more recoveries or payments thereon, a licensee shall:

(1) Provide a new or additional bond so that the total or aggregate principal sum of such bond or bonds equals the sum required under subsection (b) of this Code section; or

(2) Provide an endorsement duly executed by the corporate surety reinstating the bond to the required principal sum thereof.

(g) A bond shall not be canceled by either the licensee or the corporate surety except upon notice to the department electronically through the Nationwide Multistate Licensing System and Registry, and such cancellation shall be effective no sooner than 30 days after receipt by the department of such notice and only with respect to any breach of condition occurring after the effective date of such cancellation.

History.
Code 1981, § 7-3-21, enacted by Ga. L. 2020, p. 156, § 2/SB 462; Ga. L. 2022, p. 220, § 43/HB 891.
Amendments.
The 2022 amendment, effective July 1, 2022, substituted "fees and related interest and penalties under Code Section 7-3-16" for "fees, taxes and related interest and penalties under Code Sections 7-3-16, 7-3-17, and 7-3-18," in subsection (c).
Editor's notes.
Ga. L. 2020, p. 156, § 2/SB 462, effective June 30, 2020, redesignated former Code Section 7-3-21 as present Code Section 7-3-18.

7-3-22. Investigations of applicants; license nontransferable; expiration and annual renewal.

(a) The department shall conduct an investigation of every applicant for licensure to determine the financial responsibility, experience, character, general fitness, and eligibility for licensure of such applicant. The department may issue the applicant a license if the department determines to its general satisfaction that:

(1) The applicant is financially sound and responsible and able to engage in the business of making installment loans in an honest, fair, and efficient manner and with the confidence and trust of the community;

(2) Approval of the application will promote the convenience and advantage of the community in which the applicant proposes to operate; and

(3) All conditions for licensure set forth in this chapter and in the rules and regulations of the department have been satisfied.

(b) No license shall be transferable or assignable.

(c) Each license shall expire on December 31 of each year, and application for renewal shall be made annually on or before December 1 of each year.

History.
Code 1981, § 7-3-22, enacted by Ga. L. 2020, p. 156, § 2/SB 462.
Editor's notes.
Former Code Section 7-3-22, concerning examinations, investigations, and hearings, was repealed by Ga. L. 2020, p. 156, § 2/SB 462, effective June 30, 2020. The former Code section was based on Ga. L. 1904, p. 79, § 8; Civil Code 1910,

§ 3456; Ga. L. 1920, p. 215, § 10; Code 1933, §§ 25-211, 25-310; Ga. L. 1955, p. 431, § 11; Ga. L. 1963, p. 370, § 3; Ga. L. 1975, p. 393, § 1; Ga. L. 1989, p. 14, § 7.

7-3-23. Use of Nationwide Multistate Licensing System and Registry.

(a) The department is authorized to:

(1) Participate in the Nationwide Multistate Licensing System and Registry to facilitate the sharing of information and standardization of the licensing and application processes for persons subject to this chapter;

(2) Enter into operating agreements, information sharing agreements, interstate cooperative agreements, and other contracts necessary for the department's participation in the Nationwide Multistate Licensing System and Registry;

(3) Disclose or cause to be disclosed without liability, via the Nationwide Multistate Licensing System and Registry, applicant and licensee information, including, but not limited to, violations of this chapter and enforcement actions, to facilitate regulatory oversight;

(4) Request that the Nationwide Multistate Licensing System and Registry adopt an appropriate privacy, data security, and security breach notification policy that is in full compliance with existing state and federal law; and

(5) Establish and adopt, by rule and regulation, requirements for participation by applicants and licensees in the Nationwide Multistate Licensing System and Registry, upon the department's determination that each requirement is consistent with both the public interest and the purposes of this chapter.

(b) The department shall enact rules and regulations establishing a process whereby licensees may challenge information entered by the department into the Nationwide Multistate Licensing System and Registry.

(c) Regardless of its participation in the Nationwide Multistate Licensing System and Registry, the department shall retain full and exclusive authority over determinations of whether to grant, renew, suspend, or revoke licenses issued under this chapter. Nothing in this Code section shall be construed to reduce or otherwise limit such authority.

(d) Information disclosed through the Nationwide Multistate Licensing System and Registry is deemed to be disclosed directly to the department and subject to Code Section 7-1-70. Such information shall not be disclosed to the public and shall remain privileged and confidential pursuant to Code Section 7-1-70.

(e) Applicants and licensees shall be required to pay the charges associated with their utilization of the Nationwide Multistate Licensing System and Registry.

History.
Code 1981, § 7-3-23, enacted by Ga. L. 2020, p. 156, § 2/SB 462.
Editor's notes.
Former Code Section 7-3-23, concerning cease and desist orders and enjoining violations, was repealed by Ga. L. 2020, p. 156, § 2/SB 462, effective June 30, 2020. The former Code section was based on Ga. L. 1957, p. 331, § 2; Ga. L. 1989, p. 14, § 7; Ga. L. 1997, p. 143, § 7.

ARTICLE 4

OBLIGATIONS OF LICENSEES

Editor's notes.
This article was designated by Ga. L. 2020, p. 156, § 2/SB 462, effective June 30, 2020.

7-3-30. Requirements of licensees; maintenance of records.

(a) Each licensee shall:

(1) Conspicuously post a copy of its license in each location where the licensee engages in installment lending;

(2) Submit to the Nationwide Multistate Licensing System and Registry timely reports of condition, which shall be in such form and shall contain such information as the department may require;

(3) Clearly label all advertisements and any other documents required by rules and regulations of the department with its unique identifier;

(4) Make, keep, and use in its business such books, accounts, and records as the department may require; and

(5) Make available to the department, upon request, any books, accounts, records, files, documents, evidence, or other information relating to the business of making installment loans.

(b) Each licensee shall preserve any books, accounts, and records required to be made, kept, or used pursuant to this Code section or rules and regulations of the department for five years or such greater period of time as prescribed by rules and regulations of the department to the licensee.

(c) A licensee may maintain any books, accounts, and records required to be made, kept, or used pursuant to this Code section:

(1) In photographic, electronic, or other similar form; and

(2) At a location outside of this state so long as such records are

transmitted to a location designated by the department within ten days of the date of a written request by the department.

History.
Code 1981, § 7-3-30, enacted by Ga. L. 2020, p. 156, § 2/SB 462.

7-3-31. Notification requirements.

(a) A licensee shall send written notice to the department within ten days of the following:

(1) Any knowledge or discovery that any of the licensee's owners, executive officers, directors, trustees, agents, or covered employees has been convicted of a felony as described in subsection (a) of Code Section 7-3-42;

(2) Any knowledge or discovery that any of the licensee's owners, executive officers, directors, trustees, agents, or covered employees has committed fraud, engaged in dishonest activities, or made any misrepresentation;

(3) The discharge of a covered employee for actual or suspected misrepresentations, dishonest acts, or fraudulent acts;

(4) Any knowledge or discovery of an administrative, civil, or criminal action initiated by any governmental entity against the licensee;

(5) Any knowledge or discovery of a criminal action initiated by any governmental entity for misrepresentations, dishonest acts, or fraudulent acts against any owner, executive officer, director, trustee, agent, or covered employee of a licensee; and

(6) The filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. Sections 101 through 110, for bankruptcy reorganization or the filing of a petition by or against the licensee for receivership or the making of a general assignment for the benefit of its creditors.

(b) A licensee shall send written notice to the department within 30 days of the following:

(1) The commencement of any action brought against it relating to its business of installment lending in Georgia;

(2) The commencement of any action by any creditor or claimant relating to its business of installment lending in Georgia or involving a claim against the bond filed with the department pursuant to Code Section 7-3-21;

(3) The entry of any judgment against the licensee related to its business of installment lending in Georgia; and

(4) Any change in the address of its principal place of business or registered agent for service in Georgia.

(c) The corporate surety that issued a licensee a bond pursuant to Code Section 7-3-21 shall send written notice to the department via registered or certified mail or statutory overnight delivery within ten days of paying any claim or judgment to any creditor or claimant with details sufficient to identify the claimant and the claim or judgment so paid.

History.
Code 1981, § 7-3-31, enacted by Ga. L. 2020, p. 156, § 2/SB 462; Ga. L. 2022, p. 220, § 44/HB 891.

Amendments.
The 2022 amendment, effective July 1, 2022, in subsection (c), inserted "via registered or certified mail or statutory overnight delivery" and added "with details sufficient to identify the claimant and the claim or judgment so paid" at the end; and deleted former subsection (d), which read: "Any notice sent pursuant to this Code section shall be sent by registered or certified mail or statutory overnight delivery and include sufficient details for the department to identify any relevant creditor or claimant, claim, cause of action, judgment, payment, or prohibited act.".

7-3-32. Locations; managers; change in control; approval of department.

(a) A licensee shall not engage in the business of installment lending at a location in this state unless the licensee has first received written approval from the department. Applications or renewals for such additional locations shall be made in writing on a form prescribed by the department and accompanied by a nonrefundable fee in an amount established by rules and regulations of the department.

(b) Each manager of a licensee's location in Georgia shall be approved in writing by the department. A licensee may allow an individual to begin working as a new location manager prior to such approval, provided that the licensee submits an application for approval within 15 days of the new location manager beginning work as a location manager. If the department denies approval of such new location manager, the licensee shall immediately remove the individual upon notice of such denial.

(c) No person shall become an owner of any licensee through acquisition or other change in control or become an executive officer of a licensee unless the person has first received written approval from the department. To apply for such approval, the person shall:

(1) Submit an application to the department in such form as the department may prescribe;

(2) Provide such other information as the department may require concerning the financial responsibility, background, experience,

and activities of the applicant or its directors, owners, and executive officers; and

(3) Pay a nonrefundable application fee as prescribed by rule and regulation of the department.

(d) The department may prescribe by rule and regulation additional requirements for approval of an application submitted pursuant to this Code section.

(e) The department shall approve an application properly submitted pursuant to this Code section if it finds that the applicant and its directors, owners, and executive officers have the financial responsibility, character, reputation, experience, and general fitness to warrant a belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with the law.

(f) This Code section shall not apply to:

(1) The acquisition of an interest in a licensee by merger or consolidation with a person licensed pursuant to this article or a person exempt from the licensure requirements of this article under Code Section 7-3-4;

(2) The acquisition of an interest in a licensee by merger or consolidation with a person affiliated through common ownership with the licensee; or

(3) The acquisition of an interest in a licensee by a person by bequest, descent, or survivorship or by operation of law.

(g) Any person acquiring an interest in a licensee in a transaction which is exempt pursuant to subsection (f) of this Code section shall send written notice to the department of such acquisition within 30 days of the closing of such transaction.

History.
Code 1981, § 7-3-32, enacted by Ga. L. 2020, p. 156, § 2/SB 462.

7-3-33. Unreasonable collection tactics.

No licensee or employee or agent thereof shall willfully use any unreasonable collection tactics. Unreasonable collection tactics shall include, but not be limited to, any conduct by the licensee or any employee or agent thereof which:

(1) Causes the borrower or any member of his or her family to suffer bodily injury or physical harm;

(2) Constitutes a willful or intentional trespass by force of the borrower's home or personal property without process of law;

(3) Holds up the borrower to public ridicule or unreasonably degrades the borrower in the presence of neighbors or business associates;

(4) Involves use of printed material which simulates or resembles a summons, warrant, or other legal process; or

(5) Although otherwise lawful, occurs at an unreasonable hour of the night. Attempts to make collections by means of personal visits, telephone calls, and the like shall be deemed to occur at an unreasonable hour of the night if they occur between the hours of 10:00 P.M. and 5:00 A.M.

History.
Ga. L. 1964, p. 288, § 6; Code 1981, § 7-3-25; Ga. L. 1989, p. 14, § 7; Ga. L. 1997, p. 143, § 7; Code 1981, § 7-3-33, as redesignated by Ga. L. 2020, p. 156, § 2/SB 462.

RESEARCH REFERENCES

Am. Jur. 2d.
51 Am. Jur. 2d, Licenses and Permits, § 4 et seq.
C.J.S.
47 C.J.S., Interest and Usury Consumer Credit, §§ 424, 425.
ALR.
Usury: expenses or charges incident to loan of money, 21 A.L.R. 797; 53 A.L.R. 743; 63 A.L.R. 823; 105 A.L.R. 795; 52 A.L.R.2d 703.
Usury: expenses or charges incident to loan of money, 52 A.L.R.2d 703.
Use of criminal process to collect debt as abuse of process, 27 A.L.R.3d 1202.
Unsolicited mailing, distribution, house call, or telephone call as invasion of privacy, 56 A.L.R.3d 457.
Liability of creditor for excessive attachment or garnishment, 56 A.L.R.3d 493.
Recovery by debtor, under tort of intentional or reckless infliction of emotional distress for damages resulting from debt collection methods, 87 A.L.R.3d 201.
Validity, construction, and application of state statutes prohibiting abusive or coercive debt collection practices, 87 A.L.R.3d 786.
Method employed in collecting debt due client as ground for disciplinary action against attorney, 93 A.L.R.3d 880.
Validity, construction, and application of state criminal statute forbidding use of telephone to annoy or harass, 95 A.L.R.3d 411.
What constitutes "debt" for purposes of Fair Debt Collection Practices Act (15 USCA § 1692a(5)), 159 A.L.R. Fed. 121.

ARTICLE 5

REGULATION BY DEPARTMENT

Editor's notes.
This article was designated by Ga. L. 2020, p. 156, § 2/SB 462, effective June 30, 2020.

7-3-40. Investigations and examinations; payment of fees; cooperation by licensee.

(a) The department is authorized to investigate and examine the affairs, businesses, premises, and records of any applicant, licensee, or

any other installment lender as often as it deems necessary to carry out the purposes of this chapter, regardless of whether such applicant, licensee, or other installment lender acts or claims to act under any other licensing or registration requirement of this state. The department may conduct such investigation outside of this state if it deems necessary.

(b) The department may conduct an investigation or examination pursuant to this Code section at least once every 60 months; provided, however, that the department may alter the frequency or scope of investigations or examinations through rules and regulations or waive an investigation or examination if it determines that, based on records submitted to the department and the past history of operations in this state, such investigation or examination is unnecessary.

(c) A licensee or other installment lender shall pay a fee as prescribed by rule or regulation of the department to cover the cost of an investigation or examination.

(d) In carrying out an investigation or examination pursuant to this Code section, the department shall be authorized to:

(1) Conduct an on-site examination of any applicant, licensee, or other installment lender at any location without prior notice;

(2) Access, receive, and use any books, accounts, records, files, documents, evidence, or other information, including, but not limited to:

(A) Criminal, civil, and administrative history information, including information related to charges that did not result in a conviction;

(B) Personal history and experience information, including, but not limited to, independent credit reports obtained from a consumer reporting agency described in the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681a; and

(C) Any other documents, information, or evidence the department deems relevant to the investigation or examination, regardless of the location, possession, control, or custody of such documents, information, or evidence;

(3) Enter into agreements or relationships with other government officials or regulatory authorities to improve efficiencies and reduce regulatory burden by sharing resources, documents, records, information, or evidence or by utilizing standardized or uniform methods or procedures;

(4) Accept and rely on investigation or examination reports made by other government officials or regulatory authorities within or

outside this state, provided that such reports provide information necessary to fulfill the responsibilities of the department under this chapter;

(5) Accept and incorporate in any report of the department audit reports or portions of audit reports made by an independent certified public accountant on behalf of an applicant or licensee;

(6) Require or permit any person to file a statement in writing as to all the facts and circumstances concerning any matter to be investigated pursuant to this chapter;

(7) Request any financial data relevant to the business of making installment loans;

(8) Administer oaths, call any party to testify under oath, and require the attendance of witnesses;

(9) Require the production of books, accounts, records, files, documents, and papers;

(10) Take the depositions of witnesses; and

(11) Issue subpoenas for any witness or for the production of documentary evidence.

(e) Each licensee or person subject to this chapter shall make available to the department, upon request, any books, accounts, records, files, documents, evidence, or other information relating to the activities of engaging in the business of making installment loans.

(f) No licensee or person subject to investigation or examination under this chapter shall knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, accounts, records, files, documents, evidence, or other information.

History.
Code 1981, § 7-3-40, enacted by Ga. L. 2020, p. 156, § 2/SB 462.

7-3-41. Subpoena powers and procedures.

(a) A subpoena issued pursuant to Code Section 7-3-40 may be served by:

(1) Registered or certified mail or statutory overnight delivery, return receipt requested, to the addressee's business or personal mailing address;

(2) Examiners appointed by the department; or

(3) The sheriff of the county where such witness resides or is

found or where the person in custody of any books, accounts, records, files, documents, or papers resides or is found.

(b) The department may issue and apply to enforce subpoenas in this state at the request of any governmental agency, department, organization, or entity regulating the making of installment loans in another state if the activities constituting the alleged violation for which the information is sought would be a violation of this chapter if the alleged activities had occurred in this state.

(c) If any person refuses to obey a subpoena issued under this chapter, a superior court of appropriate jurisdiction, upon application by the department, may issue to the person an order requiring such person to appear before the court to show cause why such person should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished as contempt by the court.

History.
Code 1981, § 7-3-41, enacted by Ga. L. 2020, p. 156, § 2/SB 462.

7-3-42. Felony convictions; criminal background checks.

(a) The department shall not issue a license and may revoke a license if it finds that the applicant or licensee or any director, trustee, owner, executive officer, or covered employee of the applicant or licensee has been convicted of a felony in any jurisdiction or of a crime which, if committed within this state, would constitute a felony under the laws of this state. For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty or nolo contendere to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered or an adjudication or sentence was otherwise withheld or not entered on that charge, unless and until such plea of guilty or nolo contendere or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender without adjudication of guilt have been successfully completed and documented or unless the person convicted of the crime shall have received a pardon therefor from the President of the United States or the governor or other pardoning authority in the jurisdiction where the conviction occurred.

(b) The department shall be authorized to obtain criminal history record checks with respect to any applicant or licensee, any owner of the applicant or licensee, and any individual who is a director, trustee,

executive officer, or covered employee of the applicant or licensee. Such criminal history record checks may be requested by the department through the Georgia Crime Information Center and the Federal Bureau of Investigation, and the department shall have the authority to receive the results of such checks. In connection with an application under this article, the department may use the Nationwide Multistate Licensing System and Registry as a channeling agent for the submission of fingerprints to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check and the receipt of such checks by the department. Fees required for a criminal history record check by the Georgia Crime Information Center or the Federal Bureau of Investigation shall be paid by the applicant or licensee.

(c) Upon receipt of fingerprints, fees, and other required information, the Georgia Crime Information Center shall promptly transmit fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the department in writing of any finding or if there are no such findings.

(d) All criminal history record checks received by the department shall be used by the department for the exclusive purpose of carrying out the responsibilities of this article, shall not be a public record, shall be confidential and privileged, and shall not be disclosed to any other person or agency except to any person or agency which otherwise has a legal right to inspect such records. All such records received by the department shall be maintained in conformity with the requirements of the Georgia Crime Information Center and the Federal Bureau of Investigation, as applicable.

(e) Every applicant and licensee shall be authorized and required to obtain and maintain the results of criminal history record checks on covered employees. Such criminal background checks shall be commercial background checks. Applicants and licensees shall be responsible for any applicable fees charged by the company performing the criminal background checks. An applicant or licensee may only employ an individual whose criminal history has been checked and has been found to be in compliance with all lawful requirements prior to the initial date of hire. This provision shall not apply to directors, owners, or executive officers of applicants or licensees, whose backgrounds shall have been investigated through the department before taking office, beginning employment, or securing ownership. The department shall be entitled to review the files of any applicant or licensee to determine whether the required commercial background checks have been conducted and

whether all covered employees are qualified. Notwithstanding the requirement that applicants and licensees conduct such commercial background checks, the department shall retain the right to obtain conviction data on covered employees of applicants and licensees pursuant to subsection (b) of this Code section.

(f) Upon request by the department, an applicant or licensee shall take all steps necessary to have an international criminal history record check performed on any directors, owners, executive officers, and covered employees of applicants and licensees. The results of such international criminal history record check shall be provided to the department.

History.

Code 1981, § 7-3-42, enacted by Ga. L. 2020, p. 156, § 2/SB 462; Ga. L. 2023, p. 651, § 47/HB 55, effective July 1, 2023.

Amendments.

The 2023 amendment, effective July 1, 2023, deleted "agent," following "trustee," in the first sentence of subsection (a); in subsection (b), deleted "agent," following "officer," in the first sentence and added the present third sentence; in subsection (c), deleted "one set of" following "promptly transmit" and deleted "retain the other set and promptly" following "report and shall" in the first sentence; in subsection (d), deleted "or by the applicant or licensee" following "received by the department" and substituted "the department for the exclusive" for "the party requesting such records for the exclusive" in the first sentence and, in the second sentence, substituted "by the department" for "by the requesting party" and added ", as applicable" at the end; in subsection (e), rewrote the second and third sentences, which read: "Such checks shall be handled by the Georgia Crime Information Center pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information Center. Applicants and licensees shall be responsible for any applicable fees charged by the Georgia Crime Information Center.", and added the last two sentences; and deleted subsection (g), which read: "Applicants and licensees shall have the primary responsibility for obtaining criminal history record checks on covered employees. The department shall be entitled to review the files of any applicant or licensee to determine whether the required record checks have been run and whether all covered employees are qualified. The department shall be authorized to discuss the status of covered employee criminal history record checks with applicants and licensees. Notwithstanding any other provisions of this article, the department shall retain the right to obtain criminal history record checks on covered employees of applicants and licensees."

7-3-43. Grounds for denial, suspension, and revocation of license.

(a) The department may suspend or revoke a license if it finds that any ground exists which would require or warrant the denial of an application for the issuance or renewal of a license.

(b) The department may deny an application or suspend or revoke a license upon a finding that an applicant or a licensee has:

(1) Committed any fraud, engaged in any dishonest activities, or made any misrepresentation;

(2) Violated any provision of this chapter, any rule, regulation, or order issued by the department pursuant to this chapter, or any other law in the course of its business of making installment loans;

(3) Made a false statement or failed to give a true reply in an application;

(4) Demonstrated incompetency or untrustworthiness to act as an installment lender;

(5) Failed to pay within 30 days after it became final a judgment recovered in any court in an action arising out of the licensee's business of making installment loans;

(6) Purposely withheld, deleted, destroyed, or altered information requested by the department or made misrepresentations to the department;

(7) Operated in an unsafe or unsound manner; or

(8) Failed or refused to remit the fee required by Code Section 7-3-16 within the required time period.

(c) The department shall not issue a license and shall revoke a license if it determines that the applicant or licensee is not financially sound or responsible or not able to engage in the business of making installment loans in an honest, fair, and efficient manner and with the confidence and trust of the community.

(d) The department shall not issue a license and may suspend or revoke a license if an applicant or licensee was subject to, or employs any person subject to, a final cease and desist order or license revocation under this chapter within the preceding five years. Each applicant or licensee shall, before hiring an employee, examine the Nationwide Multistate Licensing System and Registry to determine that such employee is not subject to a cease and desist order or license revocation.

(e) The department shall not issue a license and may suspend or revoke a license if it finds that any owner, director, trustee, or executive officer of the applicant or licensee has been in one or more of those roles for a licensee whose application has been denied or revoked or suspended within the preceding five years.

History.
Code 1981, § 7-3-43, enacted by Ga. L. 2020, p. 156, § 2/SB 462; Ga. L. 2022, p. 220, § 45/HB 891.

Amendments.
The 2022 amendment, effective July 1, 2022, substituted "fee" for "tax" in paragraph (b)(8).

7-3-44. Denial, suspension, and revocation of license; notice; hearings; review; effect.

(a) Notice of the department's intention to enter an order denying an

application or suspending or revoking a license shall be sent to the applicant or licensee in writing by registered or certified mail or statutory overnight delivery addressed to the principal business address of such applicant or licensee. If a person refuses to accept service of such notice, the notice shall be served by the department under any other method of lawful service, and the person shall be liable to the department for a sum equal to the actual costs incurred to serve the notice. Such liability shall be paid upon notice and demand by the department and shall be assessed and collected in the same manner as other fees or fines administered by the department.

(b) Within 20 days of the date of the notice issued pursuant to subsection (a) of this Code section, the applicant or licensee may request in writing a hearing to contest the order. If no such hearing is requested, the department shall enter a final order stating the grounds for the denial, suspension, or revocation. Such final order shall be effective on the date of issuance, and the department shall promptly mail a copy thereof to the principal business address of such applicant or licensee.

(c) A decision by the department denying an application for licensure or an order of the department suspending or revoking a license shall be subject to review in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that judicial review shall be available solely in the superior court of the county of domicile of the department.

(d) The department may pursue any administrative action initiated under this chapter against an applicant or licensee to its conclusion, regardless of whether the applicant or licensee withdraws its application or whether a licensee does not renew or surrenders its license.

(e) The suspension, revocation, or expiration of a license shall not alter, ameliorate, or void the duties, defenses, and liabilities of either a borrower or a licensee under any existing agreement or contract entered into by the licensee prior to such suspension, revocation, or expiration.

History.
Code 1981, § 7-3-44, enacted by Ga. L. 2020, p. 156, § 2/SB 462.

7-3-45. Cease and desist orders; hearings; review.

(a) The department may issue an order requiring a person to cease and desist immediately from unauthorized activities whenever it shall appear to the department that:

(1) Except as provided in paragraphs (2) and (3) of this subsection,

a person has violated any law of this state or any rule, regulation, or order of the department. This includes, but is not limited to, a person engaging in any activity that would subject a licensee to suspension or revocation of its license under Code Section 7-3-43, whether or not such person is licensed. Such cease and desist order shall be final 20 days from the date of issuance unless the person to whom it is issued requests a hearing in writing within such 20 day period;

(2) A person without a license is engaging in or has engaged in activities requiring licensure under this chapter. Such cease and desist order shall be final 30 days from the date of issuance without the opportunity for an administrative hearing. If such person obtains a license or submits to the department evidence of licensure or exemption from licensure within the 30 day period, the department shall rescind the order; or

(3) A licensee has received a notice of bond cancellation under Code Section 7-3-21. Such cease and desist order shall be final 20 days from the date of issuance without the opportunity for an administrative hearing. If the required bond is reinstated or replaced and documentation evidencing such is submitted to the department within the 20 day period, the department shall rescind the order. In the event such cease and desist order becomes final, the license shall expire.

(b) Any cease and desist order authorized by this Code section shall be in writing, sent by registered or certified mail or statutory overnight delivery, and addressed to the person's business address or, if the person is an individual, to either the business address or the individual's personal address. Any cease and desist order sent to the person's address that is returned to the department as "refused" or "unclaimed" shall be deemed as received and lawfully served.

(c) Any hearing authorized under paragraph (1) of subsection (a) of this Code section shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(d) Judicial review of a final decision of the department issued pursuant to paragraph (1) of subsection (a) of this Code section shall be in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that judicial review shall be available solely in the superior court of the county of domicile of the department.

(e) Judicial review of a final decision of the department issued pursuant to paragraph (2) or (3) of subsection (a) of this Code section shall be in accordance with Code Section 7-1-90, except that judicial review shall be available solely in the superior court of the county of domicile of the department.

History.
Code 1981, § 7-3-45, enacted by Ga. L. 2020, p. 156, § 2/SB 462; Ga. L. 2022, p. 220, § 46/HB 891.

Amendments.
The 2022 amendment, effective July 1, 2022, added the second sentence in paragraph (a)(1).

7-3-46. Failure to comply with order; civil action; penalties.

(a) Whenever a person fails to comply with the terms of a final order or decision of the department issued pursuant to this chapter, the department may, through the Attorney General, petition any superior court of this state having jurisdiction over one or more defendants for an order directing such person to obey the order of the department within a period of time as shall be fixed by the court. Upon the filing of such petition, the court shall allow a motion to show cause why it should not be granted. After a hearing upon the merits or after failure of such person to appear when ordered, the court shall grant the petition of the department upon a finding that the order of the department was properly issued.

(b) Any person who violates the terms of any final order or decision issued pursuant to this chapter shall be liable for a civil penalty not to exceed $1,000.00. Each day the violation continues shall constitute a separate offense. In determining the amount of the penalty, the department shall take into account the appropriateness of the penalty relative to the size of the financial resources of such person, the good faith efforts of such person to comply with the order, the gravity of the violation, the history of previous violations by such person, and such other factors or circumstances that contributed to the violation. The department may reduce any penalty which is subject to imposition or has been imposed pursuant to this Code section. Such penalty shall be final except as to judicial review as provided in Code Section 7-1-90, except that judicial review shall be available solely in the superior court of the county of domicile of the department.

(c) The department may bring an appropriate civil action to enforce any provision of this chapter or any rule, regulation, decision, or order issued pursuant to this chapter, whether by injunction or otherwise, in the superior court of this state having jurisdiction over one or more of the defendants.

(d) The department may prescribe by rule and regulation administrative fines for violations of this chapter or of rules, regulations, decisions, or orders issued pursuant to this chapter.

History.
Code 1981, § 7-3-46, enacted by Ga. L. 2020, p. 156, § 2/SB 462.

7-3-47. Confidentiality; disclosure limitations.

(a) Except as provided in this Code section, information obtained by the department pursuant to this chapter, which shall include any information disclosed through the Nationwide Multistate Licensing System and Registry, is confidential as provided in Code Section 7-1-70.

(b) In addition to the exceptions set forth in subsection (b) of Code Section 7-1-70, the department is authorized to share information obtained under this chapter with other regulatory or law enforcement authorities. In the case of such sharing, the safeguards to confidentiality already in place within such agencies or authorities shall be deemed adequate. A designated employee or agent of the department may disclose such information as is necessary to conduct a civil or administrative investigation or proceeding related to the business of making installment loans.

(c) The department is authorized to make the following information available to the public on the department's website, upon receipt by the department of a written request, or in the Nationwide Multistate Licensing System and Registry:

(1) The name, business address, telephone number, facsimile number, and unique identifier of a licensee;

(2) The names and titles of the executive officers of a licensee;

(3) The names of the owners of a licensee;

(4) The name, business address, telephone number, and facsimile number of all locations of a licensee;

(5) The terms of or a copy of any bond filed by a licensee;

(6) Information concerning any violation of this chapter or any rule, regulation, or order issued pursuant to this chapter, provided that such information is derived from a final order of the department;

(7) The imposition of an administrative fine or penalty under this chapter; and

(8) The address of a licensee's registered agent for service of process in this state.

History.
Code 1981, § 7-3-47, enacted by Ga. L. 2020, p. 156, § 2/SB 462.

7-3-48. Civil liability limited for providing information.

(a) Except in the case of malice, fraud, or bad faith, no person shall be subject to civil liability arising out of furnishing the department with

information required pursuant to this chapter. No civil cause of action of any nature shall arise against such person:

(1) For any information relating to suspected prohibited conduct furnished to or received from law enforcement officials, their agents, or employees or furnished to or received from other regulatory authorities;

(2) For any information furnished to or received from other persons subject to the provisions of this chapter; or

(3) For any information furnished in complaints filed with the department.

(b) Neither the department nor its employees or agents shall be subject to civil liability, and no civil cause of action of any nature shall exist against the department or its employees or agents arising out of the performance of activities or duties pursuant to this chapter or by publication of any report of activities under this Code section.

History.
Code 1981, § 7-3-48, enacted by Ga. L. 2020, p. 156, § 2/SB 462.

7-3-49. Code Section 7-4-4 not repealed.

Nothing in this chapter shall be construed as repealing Code Section 7-4-4.

History.
Ga. L. 1955, p. 431, § 22; Code 1981, § 7-3-28; Code 1981, § 7-3-49, as redesignated by Ga. L. 2020, p. 156, § 2/SB 462.

7-3-50. Violations; criminal penalties; civil actions; liability.

(a) Any person, including the executive officers, directors, trustees, owners, agents, and employees of such person, that willfully engages in the business of making installment loans without a license or an exemption pursuant to Code Section 7-3-4 shall be guilty of a felony and punished as provided in Code Section 7-1-845.

(b) Any person who makes a false statement under oath in an application for a license under this chapter or who engages in the business of making installment loans while the license of such person under this chapter is suspended shall be guilty of a misdemeanor.

(c) Any contract made under this chapter by a person guilty of a felony or misdemeanor under subsection (a) or (b) of this Code section shall be null and void.

(d) Any installment lender who fails to comply with this chapter shall be liable to the borrower or borrowers thereon for a single penalty in an amount equal to twice the amount of all interest and loan fees

charged to said borrower or borrowers on the most recent loan made by the lender to said borrower or borrowers; provided, however, that the liability under this subsection shall not be less than $100.00.

(e) A licensee shall have no liability under subsection (d) of this Code section if, within 15 days after discovering an error or violation and prior to the institution of an action under this Code section or the receipt of written notice of the error or violation, the lender notifies the person concerned of the error or violation and makes any necessary adjustments in the appropriate account to ensure that such person will not be required to pay charges in excess of those permitted by this chapter.

(f) A licensee shall not be liable for a violation of this chapter if the licensee shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide clerical or typographical error, notwithstanding the maintenance of procedures reasonably adopted to avoid any such error, and makes any necessary adjustments in the appropriate account to ensure that no borrower will be required to pay charges in excess of those permitted by this chapter.

(g) A claim of violation of this chapter against a licensee may be asserted in an individual action only and may not be the subject of a class action under Code Section 9-11-23 or any other provision of law. A claim of violation of this chapter against an unlicensed lender may be asserted in a class action under Code Section 9-11-23 or any other provision of law.

(h) If a contract is made in good faith in conformity with an interpretation of this chapter by the appellate courts of this state or in a rule or regulation promulgated by the department, no provision in this Code section imposing any penalty shall apply, notwithstanding that, after such contract is made, such rule or regulation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(i) Any installment lender who shall knowingly and willfully with intent to defraud a borrower make a contract in violation of this chapter shall be guilty of a misdemeanor, and the contract so made shall be null and void.

History.

Ga. L. 1904, p. 79, § 14; Ga. L. 1920, p. 215, §§ 13, 17, 18; Code 1933, §§ 25-217, 25-313, 25-317, 25-9902; Ga. L. 1935, p. 394, § 2; Ga. L. 1955, p. 431, § 20; Ga. L. 1978, p. 1033, § 1; Ga. L. 1980, p. 1784, §§ 1, 2; Code 1981, § 7-3-29; Ga. L. 1989, p. 14, § 7; Ga. L. 2004, p. 60, § 1; Code 1981, § 7-3-50, as redesignated by Ga. L. 2020, p. 156, § 2/SB 462.

Law reviews.

For comment on Georgia Inv. Co. v. Norman, 231 Ga. 821, 204 S.E.2d 740 (1974), see 26 Mercer L. Rev. 321 (1974).

For article surveying 1976 to 1977 developments in application of the

Industrial Loan Act (now Georgia Installment Loan Act), see 29 Mercer L. Rev. 41 (1977).

For article surveying Georgia cases in the area of trial practice and procedure from June 1977 through May 1978, see 30 Mercer L. Rev. 239 (1978).

For article discussing methods of computation of finance charges in Georgia consumer credit contracts, see 30 Mercer L. Rev. 281 (1978).

For article surveying Georgia cases in the area of commercial law from June 1979 through May 1980, see 32 Mercer L. Rev. 11 (1980).

For survey article on commercial law, see 34 Mercer L. Rev. 31 (1982).

For article on 2004 amendment of this Code section, see 21 Ga. St. U.L. Rev. 59 (2004).

Cross references.

Illegal payday loans, § 16-17-1 et seq.

JUDICIAL DECISIONS

Analysis

General Consideration
Acceleration of Interest

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, and in light of subsection (h) of O.C.G.A. § 7-3-50, decisions rendered prior to amendment of this Code section by Ga. L. 1980, p. 1784, §§ 1, 2 have been included in the annotations for this Code section.

Construction. — This law, being in derogation of common law, must be strictly construed. Landmark Fin. Corp. v. Cox, 2 B.R. 739, 1980 U.S. Dist. LEXIS 17788 (S.D. Ga. 1980).

Georgia courts have strictly construed the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) since its provisions are in derogation of common law. Moore v. Beneficial Fin. Co., 158 Ga. App. 535, 281 S.E.2d 293, 1981 Ga. App. LEXIS 2297 (1981).

Forfeitures and penalties are not favored and statutes relating to them must be strictly construed, and in manner as favorable to person against whom forfeiture or penalty would be exacted as is consistent with fair principles of interpretation. Landmark Fin. Corp. v. Cox, 2 B.R. 739, 1980 U.S. Dist. LEXIS 17788 (S.D. Ga. 1980).

Section does not discourage judicial or other interpretation of chapter. — O.C.G.A. § 7-3-29 (now O.C.G.A. § 7-3-50) evinces a recognition on the part of the General Assembly that the Georgia Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., is ambiguous in certain sections. It in no way discourages judicial or other valid authority from seeking interpretations of that Act which further its purpose, despite prior inconsistent interpretations. Ford v. Termplan, Inc., 528 F. Supp. 1016, 1981 U.S. Dist. LEXIS 10030 (N.D. Ga. 1981).

Contracts violating act are null and void. — As originally enacted, this section provided that contracts violating this act were null and void. Landmark Fin. Corp. v. Cox, 2 B.R. 739, 1980 U.S. Dist. LEXIS 17788 (S.D. Ga. 1980).

The 1978 additions to the penalty provision did not eliminate the null and void language. In describing the purpose of these additions, the General Assembly stated that the former provisions (see now O.C.G.A. § 7-3-50(f)) were intended to exempt from certain penalties contracts made in reliance upon certain rules, regulations, or interpretations of the act. Landmark Fin. Corp. v. Cox, 2 B.R. 739, 1980 U.S. Dist. LEXIS 17788 (S.D. Ga. 1980).

Legislative intent. — Payday Lending Act, O.C.G.A. § 16-17-1 et seq., and the Georgia Industrial Loan Act, (now Georgia Installment Loan Act) O.C.G.A. § 7-3-1 et seq., specifically O.C.G.A. § 7-3-50, establish the Georgia General Assembly's intent to preserve class actions as a remedy for those aggrieved by payday lenders. Enforcing the class action

waiver in this contractual action would undermine the purpose and spirit of Georgia's statutory scheme; therefore, the class action waiver was unenforceable. Davis v. Oasis Legal Fin. Operating Co., LLC, 936 F.3d 1174, 2019 U.S. App. LEXIS 26064 (11th Cir. 2019).

Recovery of principal in action on "null and void" loan contract. — Lender as licensee may recover principal amount of loan in action solely on loan contract when such contract is considered "null and void" under O.C.G.A. § 7-3-50 as a result of inclusion of usurious amount of interest even though a lender does not seek recovery of principal in cause of action for money had and received. United States Life Credit Corp. v. Johnson, 248 Ga. 852, 287 S.E.2d 1, 1982 Ga. LEXIS 716 (1982).

"Null and void" provision does not work penalty of forfeiture of principal as well as interest. Moore v. Beneficial Fin. Co., 158 Ga. App. 535, 281 S.E.2d 293, 1981 Ga. App. LEXIS 2297 (1981).

Former provisions (see now O.C.G.A. § 7-3-50(f)) did not bear upon method of enforcement but rather conforms with general purpose of penalty provision to deter lender abuse. Landmark Fin. Corp. v. Cox, 2 B.R. 739, 1980 U.S. Dist. LEXIS 17788 (S.D. Ga. 1980).

Chapter is applicable to loan contracts, not merely notes. — Statutory language of the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) refers to loan contracts and not merely notes. General Fin. Corp. v. Sprouse, 577 F.2d 989, 1978 U.S. App. LEXIS 9750 (5th Cir. 1978).

Subsection (c) of section cannot be retroactively applied to sanction loan fees which are excessive and which were contained in loan contracts made before the March 14, 1978, effective date of section. Sanders v. Liberty Loan Corp., 153 Ga. App. 859, 267 S.E.2d 286, 1980 Ga. App. LEXIS 2010, rev'd, 246 Ga. 292, 271 S.E.2d 218, 1980 Ga. LEXIS 1086 (1980), overruled, Financeamerica Corp. v. Drake, 154 Ga. App. 811, 270 S.E.2d 449, 1980 Ga. App. LEXIS 2402 (1980).

Interaction of Industrial Loan Act and Truth-in-Lending Act. — Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) penalties do not condition or limit application of federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq. Williams v. Public Fin. Corp., 609 F.2d 1179, 1980 U.S. App. LEXIS 21230 (5th Cir. 1980).

Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) and federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., provide separate remedies for separate wrongs. The former limits what a lender subject to its provisions can charge for use of its money; the latter is designed to penalize and deter an independent wrong arising from nondisclosure. Williams v. Public Fin. Corp., 609 F.2d 1179, 1980 U.S. App. LEXIS 21230 (5th Cir. 1980).

Lenders violating Industrial Loan Act, (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) and federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., are subject to penalties of both. Williams v. Public Fin. Corp., 609 F.2d 1179, 1980 U.S. App. LEXIS 21230 (5th Cir. 1980).

Charge of notary fee is a violation of Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) and entitles borrower to have contract declared null and void. Motor Fin. Co. v. Harris, 150 Ga. App. 762, 258 S.E.2d 628, 1979 Ga. App. LEXIS 2369 (1979).

Violation of chapter's regulations subject lender to administrative penalties; loan remains enforceable. — Loans which violate the Industrial Loan Act (see now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., were void under former Code 1933, §§ 25-217, 25-313, 25-317, and 25-9902 (see now O.C.G.A. § 7-3-50); United States Courts of Appeals have held that violations of the regulations subject lender only to administrative penalties, and that the loan remains enforceable. Robinson v. Central Loan & Fin. Corp., 609 F.2d 170, 1980 U.S. App. LEXIS 21624 (5th Cir. 1980) (decided prior to 1980 amendment of this section).

Borrower may only recover money paid which exceeds actual cash advance. — Borrower may only recover moneys paid to the lender under contracts

General Consideration (Cont'd)

violative of the Industrial Loan Act (now Georgia Installment Loan Act), O.C.G.A. § 7-3-1 et seq., in excess of cash actually advanced to the borrower. Motor Fin. Co. v. Harris, 150 Ga. App. 762, 258 S.E.2d 628, 1979 Ga. App. LEXIS 2369 (1979) (decided prior to 1980 amendment of this section).

No recovery permitted on loan which is usurious on face. — If note or loan contract made under Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) shows on its face that it is infected with usury it is absolutely void and there can be no recovery on it. Robinson v. Colonial Disct. Co., 106 Ga. App. 274, 126 S.E.2d 824, 1962 Ga. App. LEXIS 691 (1962) (decided prior to 1980 amendment of this section).

Amendment of complaint. — When creditor demanded usurious interest, amendment to the creditor's complaint does not erase objection of usuriousness. Liberty Loan Corp. v. Childs, 140 Ga. App. 473, 231 S.E.2d 352, 1976 Ga. App. LEXIS 1525 (1976).

Good faith offer by lender suing on loan which violated Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) to amend complaint to correct excessive time price differential had no effect on penalty provisions. Douglas v. Dixie Fin. Corp., 139 Ga. App. 251, 228 S.E.2d 144, 1976 Ga. App. LEXIS 1760 (1976).

Forfeiture of interest, but not principal. — Lender who violates the Georgia Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) shall forfeit all interest and other charges, but not the principal sum advanced to borrower. Southern Disct. Co. v. Ector, 246 Ga. 30, 268 S.E.2d 621, 1980 Ga. LEXIS 1005 (1980); United States Life Credit Corp. v. Johnson, 161 Ga. App. 864, 290 S.E.2d 280, 1982 Ga. App. LEXIS 1990 (1982).

Forfeiture of interest and other charges may be avoided. Southern Disct. Co. v. Ector, 246 Ga. 30, 268 S.E.2d 621, 1980 Ga. LEXIS 1005 (1980) (decided prior to 1980 amendment of this section).

Acceleration of Interest

Acceleration clauses are not per se invalid. Bragg v. HFC, 140 Ga. App. 75, 230 S.E.2d 55, 1976 Ga. App. LEXIS 1352 (1976).

Collection of unearned interest is not per se improper under Georgia law. Barrett v. Vernie Jones Ford, Inc., 395 F. Supp. 904, 1975 U.S. Dist. LEXIS 13508 (N.D. Ga. 1975).

Acceleration clause enforceable unless rendering note usurious. — Acceleration clause not providing for rebate of unearned interest is enforceable absent finding that clause, as applied, renders note violative of state usury laws. Once such finding has been made, however, the note becomes void. Barrett v. Vernie Jones Ford, Inc., 395 F. Supp. 904, 1975 U.S. Dist. LEXIS 13508 (N.D. Ga. 1975) (decided prior to 1980 amendment of this section).

Acceleration clause which includes unearned interest voids the contract. — Provision for acceleration of unearned interest is a contract authorizing collection of more than is provided or approved by the Industrial Loan Act, (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) and thus authorizes a result contrary to its terms, and is in violation of the Act; thus, the loan is void. Frazier v. Courtesy Fin. Co., 132 Ga. App. 365, 208 S.E.2d 175, 1974 Ga. App. LEXIS 1691 (1974) (decided prior to 1980 amendment of this section).

When acceleration of a debt, combined with a claim of unearned interest, renders obligation usurious, the obligation becomes void under the provisions of the Industrial Loan Act, (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.). Barrett v. Vernie Jones Ford, Inc., 395 F. Supp. 904, 1975 U.S. Dist. LEXIS 13508 (N.D. Ga. 1975) (decided prior to 1980 amendment of this section).

Acceleration clause in Industrial Loan Act, (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) contract which upon default permits the collection of entire balance due on contract without excluding unearned interest, is violative of the Act and voids contract. Diggs v.

Swift Loan & Fin. Co., 154 Ga. App. 389, 268 S.E.2d 433, 1980 Ga. App. LEXIS 2186 (1980) (decided prior to 1980 amendment of this section).

When acceleration clause renders note usurious, note is unenforceable. — If effect of an acceleration clause is to render note as a whole usurious, the note is unenforceable in Georgia courts. Barrett v. Vernie Jones Ford, Inc., 395 F. Supp. 904, 1975 U.S. Dist. LEXIS 13508 (N.D. Ga. 1975) (decided prior to 1980 amendment of this section).

Invalid acceleration clause in security agreement portion of contract voids obligation. — Provision found in security agreement portion of loan contract providing for acceleration of unaccrued interest voids contract notwithstanding presence of valid acceleration provision in note portion of contract. General Fin. Corp. v. Sprouse, 577 F.2d 989, 1978 U.S. App. LEXIS 9750 (5th Cir. 1978).

Provision authorizing usurious collection voids obligation even though not enforced. — Provision in note authorizing usurious collection alone is sufficient to void obligation even when the creditor does not attempt enforcement. Barrett v. Vernie Jones Ford, Inc., 395 F. Supp. 904, 1975 U.S. Dist. LEXIS 13508 (N.D. Ga. 1975) (decided prior to 1980 amendment of this Code section).

Accelerated unearned interest usurious. — When the plaintiff accelerated and claimed unearned interest on unmatured installments, this amount was usurious. Liberty Loan Corp. v. Childs, 140 Ga. App. 473, 231 S.E.2d 352, 1976 Ga. App. LEXIS 1525 (1976).

RESEARCH REFERENCES

Am. Jur. 2d.

53A Am. Jur. 2d, Moneylenders and Pawnbrokers, § 34 et seq.

C.J.S.

47 C.J.S., Interest and Usury Consumer Credit, § 460 et seq.

ALR.

Constitutionality of statutes regulating the business of making small loans, 69 A.L.R. 581; 125 A.L.R. 743; 149 A.L.R. 1424.

Doctrine of in pari delicto as applied to borrower seeking affirmative relief from loan contract made in violation of small loan act, 142 A.L.R. 644.

Usury as affected by acceleration clause, 66 A.L.R.3d 650.

What constitutes Truth in Lending Act violation which "was not intentional and resulted from bona fide error not withstanding maintenance of procedures reasonably adapted to avoid any such error" within meaning of § 130(c) of Act (15 USCA § 1640(c)), 153 A.L.R. Fed. 193.

Validity, construction, and application of Truth in Lending Act (TILA) and regulations promulgated thereunder — United States Supreme Court cases, 67 A.L.R. Fed. 2d 567.

7-3-51. Rules and regulations.

Without limiting the power conferred by Chapter 1 of this title, the department may make reasonable rules and regulations, not inconsistent with law, for the interpretation and enforcement of this chapter.

History.

Code 1981, § 7-3-51, enacted by Ga. L. 2020, p. 156, § 2/SB 462.

7-3-52. Limited continuation of licenses.

Every license in force and effect under the former provisions of this chapter on June 30, 2020, shall remain in full force and effect on July

1, 2020, and all such existing licensees shall be required to renew their licenses pursuant to Code Sections 7-3-20 and 7-3-22.

History.
Code 1981, § 7-3-52, enacted by Ga. L. 2020, p. 156, § 2/SB 462.

CHAPTER 4

INTEREST AND USURY

Article 1

In General

Sec.

7-4-1. Usury.

7-4-2. Legal rate of interest; maximum rate of interest generally; certain items not considered interest.

7-4-3. Finance charges on certain retail installment contracts; contract provisions related to manufactured homes; violations.

7-4-4. Advertisement of rates of interest or finance charge.

7-4-5. Failure to include required contract provisions for manufactured homes; violation of advertising restrictions.

7-4-6. [Reserved] No limit on interest rate payable by profit corporations or persons on nonconsumer loans in excess of $3,000.00.

7-4-7. [Reserved] No limit on interest rate on loans of $100,000.00 or more.

7-4-8. Commission to third person does not make lawful interest usurious.

7-4-9. Back interest may be stipulated in contract and recovered.

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7-4-15. When interest runs on liquidated demands; promissory notes payable on demand.

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Cross references.

Duty of Department of Banking and Finance to receive and investigate complaints and allegations regarding violations of interest and usury laws, § 7-1-99.

Illegal payday loans, § 16-17-1 et seq.

Interest rate management agreements, § 36-82-250 et seq.

Law reviews.

For note discussing the law of usury in Georgia, see 12 Ga. L. Rev. 814 (1972).

For note discussing transfer fees in home loan assumptions in reference to the Georgia usury laws, see 9 Ga. L. Rev. 454 (1975).

For article discussing developments in

Georgia usury law in 1976 to 1977, see 29 Mercer L. Rev. 41 (1977).

For annual survey of commercial law, see 35 Mercer L. Rev. 53 (1983).

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For survey article on commercial law, see 44 Mercer L. Rev. 99 (1992).

For note, "State-Imposed Interest Rate Ceilings and Home Equity Loan Scandal in Georgia," see 11 Ga. St. U.L. Rev. 591 (1995).

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O.C.G.A. § 7-4-1 et seq. represents clarification of public policy of state that usury is not to be tolerated, and courts should therefore be chary in permitting this policy to be thwarted. Eiberger v. West, 247 Ga. 767, 281 S.E.2d 148, 1981 Ga. LEXIS 880 (1981).

Effect of usury statute's repeal. — Usury statute in effect at the time a loan is secured is no defense to an action by the creditor to secure repayment of the debt when the usury statute is repealed before the defense of usury is raised. Fountain v. Dixie Fin. Corp., 252 Ga. 543, 314 S.E.2d 906, 1984 Ga. LEXIS 753 (1984).

RESEARCH REFERENCES

Am. Jur. Proof of Facts.

Class Action for Failure to Disclose under the Truth-In-Lending Act and Regulation Z, 76 POF3d 193.

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Affirmative liability for usurious penalty or excess interest paid under usurious contract in event of assignment or transfer, 78 A.L.R. 408.

Usury: liability for the statutory penalty of persons other than the offending lender in a usurious loan transaction, 4 A.L.R.3d 650.

Provision for interest after maturity at a rate in excess of legal rate as usurious or otherwise illegal, 28 A.L.R.3d 449.

Usury in connection with loan calling for variable interest rate, 18 A.L.R.4th 1068.

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Law reviews.

For article, "Small Loans Under Georgia Laws," see 3 Mercer L. Rev. 227 (1952).

For note, "Price-Fixing in Georgia," see 3 Mercer L. Rev. 314 (1952).

For comment discussing the acceleration of a loan repayment to collect unearned interest as violative of the Georgia Industrial Loan Act (Ch. 3, T. 7), in light of Lewis v. Termplan, Inc., 124 Ga. App. 507, 184 S.E.2d 473 (1971), see 9 Ga. St. B.J. 380 (1973).

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Doctrine of estoppel applies when usurious note was prepared by borrower and presented to unwary lender. Eiberger v. West, 247 Ga. 767, 281 S.E.2d 148, 1981 Ga. LEXIS 880 (1981).

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Effect on indebtedness originally valid of usurious forbearance, renewal, or extension, 3 A.L.R. 877.

Annual rests on book accounts, 5 A.L.R. 551.

Negotiable instruments law as affecting defense of usury, 5 A.L.R. 1447; 95 A.L.R. 735.

Waiver of usury by renewal or other executory agreement, 13 A.L.R. 1213; 74 A.L.R. 1184.

Payment of or offer to pay principal and legal interest as condition of relief in equity against usurious contract, 17 A.L.R. 123; 70 A.L.R. 693; 135 A.L.R. 808; 166 A.L.R. 458.

Right to interest for period before advances under a loan to be advanced to the borrower in installments, 40 A.L.R. 825.

Rate of interest chargeable against guardians, executors or administrators, and trustees, 55 A.L.R. 950; 112 A.L.R. 833; 156 A.L.R. 936.

Usury: expenses or charges (including taxes) incident to loan of money, 63 A.L.R. 823; 105 A.L.R. 795; 52 A.L.R.2d 703.

Right of holder of preferred claim to interest after appointment of receiver or declared bankruptcy or insolvency, where assets are insufficient to pay principal of all claims, 69 A.L.R. 1210.

Usurious loan agreement as affecting collateral transaction or instrument not otherwise usurious, 75 A.L.R. 1344.

Statutes in relation to interest as obnoxious to constitutional provision against impairing obligation of contracts, 87 A.L.R. 462.

Obligations covering deferred payments of purchase money, or extension thereof, as loan or forbearance within usury laws, 91 A.L.R. 1105.

Judgment as res judicata of usury notwithstanding question as to usury was not raised, 98 A.L.R. 1027.

Validity, construction, and effect of express agreement releasing cause of action or defense based on exaction of usury, 99 A.L.R. 600.

What amounts to sale of credit as distinguished from a loan as regards usury law, 104 A.L.R. 245.

Parol evidence rule as affecting extrinsic evidence to show or to negative usury, 104 A.L.R. 1261.

Validity and effect of provision in contract disclaiming usurious intention, or otherwise attempting in anticipation to have the contract interpreted or modified so as to avoid imputation of usury, 109 A.L.R. 1471.

Right to equitable relief from usury as affected by laches, 111 A.L.R. 126.

Usury as affected by provision for sinking fund, 119 A.L.R. 1490.

Right of junior mortgagee to attack senior mortgage for usury, 121 A.L.R. 879.

Usury as affected by repayment, or borrower's option to repay, loan before maturity, 130 A.L.R. 73; 75 A.L.R.2d 1265.

Campaign or concerted action in interest of public by bar association or other group against usurious or illegal practices, or for the investigation of business or other activities with which such practices may be associated, 132 A.L.R. 1177.

Who other than borrower may avail himself of latter's right to recover back usurious payments or penalties therefor, 134 A.L.R. 1335.

Payment of or offer to pay principal and legal interest as condition of relief in equity against usurious contract, 135 A.L.R. 808; 166 A.L.R. 458.

Constitutionality, construction, and application of statutes regarding rate of interest during "emergency", 147 A.L.R. 1023.

Usury as predicable upon transaction in form a sale or exchange of commercial paper or other choses in action, 165 A.L.R. 626.

Construction and application of provision of "small loan" statute against payment of interest in advance, 166 A.L.R. 433.

Rate of interest after maturity on obligation which fixes rate of interest expressly until maturity, 16 A.L.R.2d 902.

What statute of limitations governs action or claim for affirmative relief against usurious obligation or to recover usurious payment, 48 A.L.R.2d 401.

Quantum, degree, or weight of evidence to sustain usury charge, 51 A.L.R.2d 1087.

Usury: expenses or charges (including taxes) incident to loan of money, 52 A.L.R.2d 703.

Usury as affected by repayment of, or borrower's option to repay, loan before maturity, 75 A.L.R.2d 1265.

Usury: requiring borrower to pay for insurance as condition of loan, 91 A.L.R.2d 1344.

Usury: charging borrower for or with expense or trouble of procuring money loaned, 91 A.L.R.2d 1389.

Advance in price for credit sale as compared with cash sale as usury, 14 A.L.R.3d 1065.

Agreement for share in earnings of or income from property in lieu of, or in addition to, interest as usurious, 16 A.L.R.3d 475.

Borrower's initiation of, or fraud contributing to, usurious transaction as affecting rights or remedies of the parties, 16 A.L.R.3d 510.

Usury as affected by acceleration clause, 66 A.L.R.3d 650.

Contingency as to borrower's receipt of money or other property from which loan is to be repaid as rendering loan usurious, 92 A.L.R.3d 623.

Leaving part of loan on deposit with lender as usury, 92 A.L.R.3d 769.

Prejudgment interest awards in divorce cases, 62 A.L.R.4th 156.

7-4-1. Usury.

The term "usury" means reserving and taking or contracting to reserve and take, either directly or indirectly, a greater sum for the use of money than the lawful interest.

History.

Orig. Code 1863, § 2023; Code 1868, § 2024; Code 1882, § 2051; Civil Code 1895, § 2877; Civil Code 1910, § 3427; Code 1933, § 57-102.

Law reviews.

For note discussing the reservation of interest at highest lawful rate as constituting usury, see 1 Ga. L. Rev. No. 2 p. 38 (1927).

For note discussing whether a holder in due course takes free of claims of violations of the usury laws, see 12 Ga. L. Rev. 814 (1978).

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General Consideration

Policy of state. — It is the policy of laws of this state to inhibit taking of usury under every and any pretense or contrivance whatsoever. McGehee v. Petree, 165 Ga. 492, 141 S.E. 206, 1928 Ga. LEXIS 18 (1928); Public Fin. Corp. v. State, 67 Ga. App. 635, 21 S.E.2d 476, 1942 Ga. App. LEXIS 488 (1942).

Construction and application of section with § 7-4-18. — Former Code 1933, §§ 57-102, 57-117 and 57-9901 (see now O.C.G.A. §§ 7-4-1 and 7-4-18) are to be construed and applied as one law. Wall v. Lewis, 192 Ga. 652, 16 S.E.2d 430, 1941 Ga. LEXIS 544 (1941).

"Usury." — Usury is excess over legal interest charged by lender to borrower for use of lender's money. Sledd v. Pilot Life Ins. Co., 52 Ga. App. 326, 183 S.E. 199, 1935 Ga. App. LEXIS 159 (1935).

Four requisites of usurious transactions. — There are four requisites of every usurious transaction: (1) a loan or forebearance of money, either express or implied; (2) upon understanding that principal shall or may be returned; (3) that for such loan or forebearance a greater profit than is authorized by law shall be paid or is agreed to be paid; and (4) that the contract was made with intent to violate the law. Bailey v. Newberry, 52 Ga. App. 693, 184 S.E. 357, 1935 Ga. App. LEXIS 5 (1935).

Substance of transaction is focus in determining whether transaction is usurious. — It is duty of court to look, not

at form and words, but at substance of transaction. Rushing v. Worsham & Co., 102 Ga. 825, 30 S.E. 541, 1898 Ga. LEXIS 770 (1898); Young v. First Nat'l Bank, 22 Ga. App. 58, 95 S.E. 381, 1918 Ga. App. LEXIS 147 (1918).

Usurious original transaction infects renewal. — Contract for usurious loan not purged of usury by renewal note when original contract continues. Hammond v. Buys, 1 Ga. 416, 1846 Ga. LEXIS 91 (1846).

If there was usury in the original loan which was not purged out when renewal was given, they are contaminated just as original contract was, and all payments made in interval are to be treated not as payments of usury, but payments made on original debt. Archer v. McCray, 59 Ga. 546, 1877 Ga. LEXIS 329 (1877); McGee v. Long, 83 Ga. 156, 9 S.E. 1107, 1889 Ga. LEXIS 24 (1889); Lockwood v. Muhlberg, 124 Ga. 660, 53 S.E. 92, 1906 Ga. LEXIS 579 (1906).

When original transaction was usurious, the usury infects any renewal note for the same debt or any part thereof, if the usury was never purged. Hartsfield Co. v. Watkins, 67 Ga. App. 411, 20 S.E.2d 440, 1942 Ga. App. LEXIS 431 (1942).

Usurious contract not cured by compromise and settlement for less. — Since usury consists not only in reserving and taking but in contracting to reserve and take more than legal rate, fact that agreed excess was compromised and settled for a less amount would not free a transaction from usury. Lankford v. Holton, 187 Ga. 94, 200 S.E. 243, 1938 Ga. LEXIS 774 (1938).

When undisputed pleadings show usurious scheme, judgment on pleadings appropriate. — When facts show without dispute a device to extract more than legal rate of interest for use of money, such question need not be submitted to the jury. Accordingly, when undisputed pleadings show such a scheme, it is not error for the trial court to grant the plaintiff's motion for judgment on the pleadings under provisions of § 12(c) of the Civil Practice Act (see now O.C.G.A. § 9-11-12(c)). Cook v. Young, 225 Ga. 26, 165 S.E.2d 727, 1969 Ga. LEXIS 362 (1969).

If usury is found, all usurious interest is void. Gilbert v. Cherry, 136 Ga. App. 417, 221 S.E.2d 472, 1975 Ga. App. LEXIS 1370 (1975).

Usury laws did not apply to an investment contract. — Trial court properly granted summary judgment to a purchaser in a breach of contract suit against a developer as the award the purchaser obtained, which included interest, was not usurious under O.C.G.A. § 7-4-1 as the developer failed to show that the contract involved was a loan to which the usury laws applied as the record established it as an investment contract. Golden Atlanta Site Dev., Inc. v. Tilson, 299 Ga. App. 646, 683 S.E.2d 166, 2009 Ga. App. LEXIS 917 (2009).

Intent

Essential element is intent, at time contract is executed, to take unlawful interest. — To constitute usury, it is essential that there be, at the time the contract is executed, an intent on the part of the lender to take or charge, for use of money, a higher rate of interest than that allowed by law. Bellerby v. Goodwyn, 112 Ga. 306, 37 S.E. 376, 1900 Ga. LEXIS 133 (1900); Loganville Banking Co. v. Forrester, 143 Ga. 302, 84 S.E. 961, 1915 Ga. LEXIS 408 (1915); Harrison v. Arrendale, 113 Ga. App. 118, 147 S.E.2d 356, 1966 Ga. App. LEXIS 990 (1966); Williams v. First Bank & Trust Co., 154 Ga. App. 879, 269 S.E.2d 923, 1980 Ga. App. LEXIS 2428 (1980); McCrory v. Young, 158 Ga. App. 678, 282 S.E.2d 163, 1981 Ga. App. LEXIS 2368 (1981).

Mistake or inadvertence does not make a loan usurious. — To constitute usury it is essential that there be, at the time the contract is executed, an intent on the part of the lender to take or charge for use of money a higher rate of interest than that allowed by law. If the intent be to take only legal interest, a slight and trifling excess, due to mistake or inadvertence, will not taint the transaction with usury. Cook v. Young, 225 Ga. 26, 165 S.E.2d 727, 1969 Ga. LEXIS 362 (1969).

Mistake in calculation or by inadvertence, not shown to be part of a usurious design or otherwise intentional, does not

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make a loan usurious. Sumner v. Adel Banking Co., 244 Ga. 73, 259 S.E.2d 32, 1979 Ga. LEXIS 1120 (1979).

If the intent be to take only the legal interest, a slight and trifling excess, due to mistake or inadvertence, will not taint the transaction with usury. Williams v. First Bank & Trust Co., 154 Ga. App. 879, 269 S.E.2d 923, 1980 Ga. App. LEXIS 2428 (1980).

Intent that excess interest be paid. — Transaction is usurious when lender and borrower mutually intend that excess interest be paid. Union Sav. Bank & Trust Co. v. Dottenheim, 107 Ga. 606, 34 S.E. 217, 1899 Ga. LEXIS 113 (1899), overruled in part, Ward v. Hudco Loan Co., 254 Ga. 294, 328 S.E.2d 729, 1985 Ga. LEXIS 688 (1985).

Intent implied when note usurious on note's face. — Intent to charge usurious rates may be implied if all other essential elements are expressed upon the face of the contract. Harrison v. Arrendale, 113 Ga. App. 118, 147 S.E.2d 356, 1966 Ga. App. LEXIS 990 (1966).

When the note calls for usurious interest on the note's face, usurious intent will be implied, although the lender may negate it. Williams v. First Bank & Trust Co., 154 Ga. App. 879, 269 S.E.2d 923, 1980 Ga. App. LEXIS 2428 (1980).

Intent to take unlawful interest demands verdict of usury. — If it appears that the lender intended to take for use of money more than the lawful rate of interest, a verdict of usury is demanded. Simpson v. Charters, 188 Ga. 842, 5 S.E.2d 27, 1939 Ga. LEXIS 635 (1939).

Jury question. — Question of usurious intent and truth of transaction is generally for jury determination, but whe contract is usurious on the contract's face, the intent to violate usury law may be implied. McCrory v. Young, 158 Ga. App. 678, 282 S.E.2d 163, 1981 Ga. App. LEXIS 2368 (1981).

Rebuttal of intent by evidence of honest mistake. — Implication of usurious intent arising from taking or reserving of interest greater than legal rate may be rebutted by evidence that excess was the result of an honest mistake and that usury was not intended. But when evidence is clear, this question can be decided as a matter of law. McCrory v. Young, 158 Ga. App. 678, 282 S.E.2d 163, 1981 Ga. App. LEXIS 2368 (1981).

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Price never considered usury. — One may sell one's credit, one's responsibility, one's goods, or one's lands; and if the person deals fairly, the person may take as large a price for either as the person can get, and there can be no usury in the case. Rushing v. Worsham & Co., 102 Ga. 825, 30 S.E. 541, 1898 Ga. LEXIS 770 (1898).

Cash price and time price. — Seller may make a difference in the seller's cash price and the seller's time price for property. Bowen v. Consolidated Mtg. & Inv. Corp., 115 Ga. App. 874, 156 S.E.2d 168, 1967 Ga. App. LEXIS 1288 (1967).

Higher time price than cash price for property is not a loan; thus, usury laws are inapplicable. Bowen v. Consolidated Mtg. & Inv. Corp., 115 Ga. App. 874, 156 S.E.2d 168, 1967 Ga. App. LEXIS 1288 (1967).

Conditional-sale contract for amount termed time-price is not usurious, even though in a given instance the difference in cash price and term price may exceed eight percent interest. Newkirk v. Universal C.I.T. Credit Corp., 93 Ga. App. 1, 90 S.E.2d 618, 1955 Ga. App. LEXIS 457 (1955).

Property received as interest permissible unless value exceeds lawful rate. — Creditor has right to demand payment of the creditor's debt with legal interest; and if the creditor receives property, the value of which does not exceed the creditor's lawful demand, the creditor has not received any usury, although the creditor may have agreed with the debtor that the property was of greater value than the sum the creditor was lawfully entitled to exact. First Nat'l Bank v. Davis, 135 Ga. 687, 70 S.E. 246, 1911 Ga. LEXIS 50 (1911).

Note permitting acceleration of all liabilities not usurious on the note's face. — Clause in secondary security deed on realty permitting acceleration of all

liabilities does not render note usurious on its face. Goodwin v. Trust Co., 144 Ga. App. 787, 242 S.E.2d 302, 1978 Ga. App. LEXIS 1788 (1978).

Note usurious when acceleration clause allows more than lawful interest. — Promissory note containing acceleration clause permitting collection of more than allowable interest constitutes usurious contract to reserve and take more than lawful interest. Goodwin v. Trust Co., 144 Ga. App. 787, 242 S.E.2d 302, 1978 Ga. App. LEXIS 1788 (1978).

Payment of sum exceeding lawful rate under guise of rent usurious. — When vendee of property is to pay a vendor 10 percent on purchase money until it is settled in full, under name of rent, such contract is usurious on the contract's face. Scofield v. McNaught, 52 Ga. 69, 1874 Ga. LEXIS 240 (1874).

Payment of rents from property exceeding lawful rate, as consideration for loan, constitutes usury. — If money is loaned for purpose of enabling borrower to buy certain shop, upon agreement that for use of money lender shall receive from borrower one half of specified rents from property, which amounts to more than highest legal rate of interest per annum, the transaction will be usurious. Reese v. Bloodworth, 146 Ga. 355, 91 S.E. 120, 1917 Ga. LEXIS 303 (1917).

Paying taxes on bonds, in addition to lawful interest, is usurious. — Stipulation in bonds to pay, in addition to lawful interest, a percentage of federal income taxes that might be imposed upon the bonds is usurious. Newcomb v. Niskey's Lake, Inc., 190 Ga. 565, 10 S.E.2d 51, 1940 Ga. LEXIS 531 (1940).

Commission, in addition to full rate of lawful interest, usurious. — Under former Code 1933, § 57-102 (see now O.C.G.A. § 7-4-1), charge by a lender as a commission of $8,000.00, deducted from a loan of $80,000.00 evidenced by bonds of a borrower, which carrying full rate of lawful interest (eight percent per annum) is usury. Newcomb v. Niskey's Lake, Inc., 190 Ga. 565, 10 S.E.2d 51, 1940 Ga. LEXIS 531 (1940).

Agreement to forbear collection of judgment in consideration of usurious interest unlawful. — If a judgment not tainted with usury is transferred, and the transferee agrees with the defendants to forbear its collection for a term of time, in consideration of usurious interest paid the defendants, such subsequent agreement is usurious. Troutman v. Barnett, 9 Ga. 30, 1850 Ga. LEXIS 104 (1850).

Requirement that borrower keep certain sum on deposit makes loan usurious. — Requirement that borrower shall keep on deposit a certain sum, if made a condition precedent to the loan of money, infects the loan with usury; for reason that the borrower thus pays interest on money which the borrower does not receive or have use of. Bank of Lumpkin v. Farmers State Bank, 161 Ga. 801, 132 S.E. 221, 1926 Ga. LEXIS 336 (1926); Reid v. National Bank, 149 Ga. App. 834, 256 S.E.2d 82, 1979 Ga. App. LEXIS 2047 (1979).

Excess interest may be paid for considerations beyond use of money. — When excess over legal interest is paid for other good and valuable considerations beyond mere use of money, it is not usury. Atlanta Mining & Rolling Mill Co. v. Gwyer, 48 Ga. 9, 1873 Ga. LEXIS 1 (1873); Sledd v. Pilot Life Ins. Co., 52 Ga. App. 326, 183 S.E. 199, 1935 Ga. App. LEXIS 159 (1935); Simpson v. Charters, 188 Ga. 842, 5 S.E.2d 27, 1939 Ga. LEXIS 635 (1939).

Lender's 49 percent economic interest. — In a class action suit seeking to hold a lender liable for payday loans, the trial court did not err in concluding that genuine issues of material fact existed as to whether the lender was the true lender of the loans made after May 14, 2004, because evidence was presented sufficient to create a genuine issue of material fact regarding whether the lender actually received only a 49 percent economic interest for the lender's services and even if the lender did so, whether the lender nevertheless, by contrivance, device, or scheme, attempted to avoid the provisions of O.C.G.A. § 16-17-2(a). Ga. Cash Am. v. Greene, 318 Ga. App. 355, 734 S.E.2d 67, 2012 Ga. App. LEXIS 914 (2012), cert. denied, No. S13C0436, 2013 Ga. LEXIS 165 (Ga. Feb. 18, 2013).

Premium for insurance required as collateral security for loan not charge for

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use of money. Sledd v. Pilot Life Ins. Co., 52 Ga. App. 326, 183 S.E. 199, 1935 Ga. App. LEXIS 159 (1935).

Interest on overdue interest and attorneys' fees lawful. — It is lawful to contract for interest on interest overdue and for payment by debtor of reasonable attorneys' fees on sums, both principal and interest, which have to be collected by suit. Merck v. American Freehold Land Mtg. Co., 79 Ga. 213, 7 S.E. 265, 1887 Ga. LEXIS 206 (1887); Young v. First Nat'l Bank, 22 Ga. App. 58, 95 S.E. 381, 1918 Ga. App. LEXIS 147 (1918).

Inclusion of past due interest in note not usurious. — Contention that, because a sum of past due interest was included in the note, the transaction was thereby tainted with usury, on the theory that the interest cannot be collected on interest, was without merit. Walton v. Johnson, 213 Ga. 108, 97 S.E.2d 310, 1957 Ga. LEXIS 315 (1957).

Interest recoverable on annual interest installments from time interest become due. — Upon contract to pay interest annually, interest may be recovered on annual installments of interest from time interest became due. Calhoun v. Marshall, 61 Ga. 275, 1878 Ga. LEXIS 101 (1878); Ray v. Pease, 97 Ga. 618, 25 S.E. 360, 1895 Ga. LEXIS 538 (1895); Haley v. Covington, 19 Ga. App. 782, 92 S.E. 297, 1917 Ga. App. LEXIS 355 (1917).

Loan not usurious if used to pay usurious loan. — Paying old usurious loan with new, nonusurious loan does not necessarily render new loan usurious. Lott v. Peterson, 23 Ga. App. 458, 98 S.E. 361, 1919 Ga. App. LEXIS 156 (1919).

When lender of money neither charges nor receives more than legal rate of interest, fact that money was, with the lender's knowledge, borrowed for purpose of paying debt infected with usury due by borrower to third person does not make loan usurious. Thompson v. First State Bank, 99 Ga. 651, 26 S.E. 79, 1896 Ga. LEXIS 491 (1896); Carter v. Brooks, 144 Ga. 852, 88 S.E. 209, 1916 Ga. LEXIS 147 (1916).

Facts warranting finding that transaction is merely device to cover agreement to pay usurious interest. — See Kennedy v. Baggarley, 15 Ga. App. 811, 84 S.E. 211, 1914 Ga. App. LEXIS 331 (1914).

Parol Evidence

Introduction to show contract was cover for usury. — Parol evidence may be introduced to show written contract was a cover for usury. McDaniel v. Bank of Bethlehem, 22 Ga. App. 223, 95 S.E. 724, 1918 Ga. App. LEXIS 261 (1918).

Admissible for testing validity of a transaction. — Law abhors usury and will search every fact and circumstance and allow introduction of parol evidence to test the validity of the real transaction of parties. Bailey v. Newberry, 52 Ga. App. 693, 184 S.E. 357, 1935 Ga. App. LEXIS 5 (1935).

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"Usury." — Usury is not the taking of interest from a borrower at an unlawful rate, but rather it is receiving from any source a greater sum for use of money than the lawful interest. 1969 Op. Att'y Gen. No. 69-53.

When interest plus points or loan discount exceed legal limit, loan usurious. — When interest rate charged borrower coupled with points or loan discount collected from seller exceed legal limit, such loan is usurious; the standard charges in a loan transaction are not included in this computation if those charges are expended in a bona fide manner. 1969 Op. Att'y Gen. No. 69-53.

Carrying charges limited to legal rate plus actual expenses. — When no distinction is made between cash price and time price of an article, carrying charges are limited to legal rate of interest, plus any actual expense incurred by vendor incident to the sale, such as fee for recording a security instrument and reasonable protective insurance. 1954-56 Ga. Op. Att'y Gen. 448.

RESEARCH REFERENCES

Am. Jur. 2d.

44B Am. Jur. 2d, Interest and Usury, §§ 1 et seq., 64 et seq.

Am. Jur. Proof of Facts.

Proof of Violation of State Usury Consumer Loan Law, 75 POF3d 103.

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47 C.J.S., Interest and Usury Consumer Credit, §§ 1 et seq., 184, 185.

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Effect on indebtedness originally valid of usurious forbearance, renewal, or extension, 3 A.L.R. 877.

Waiver of usury by renewal or other executory agreement, 13 A.L.R. 1213; 74 A.L.R. 1184.

Provision in statute or ordinance limiting rate of interest per annum as precluding requirement of payment at maximum rate at intervals of less than a year, 29 A.L.R. 1109.

Validity of agreement to pay interest on interest, 37 A.L.R. 325; 76 A.L.R. 1484.

Usury: expenses or charges (including taxes) incident to loan of money, 53 A.L.R. 743; 63 A.L.R. 823; 105 A.L.R. 795; 52 A.L.R.2d 703.

Noncompliance with conditions prescribed by statute as affecting validity of contract, under usury laws, for payment of premium on loan of building and loan association, 74 A.L.R. 973.

Waiver of usury by renewal or other executory agreements, 74 A.L.R. 1184.

Delay in paying over proceeds of loan to borrower as affecting question of usury, 76 A.L.R. 1467.

Right of a purchaser assuming a mortgage debt, with the authorization of the mortgagor, to set up usury in mortgage as a defense or rely upon it as a ground of relief in equity, 82 A.L.R. 1153.

Parol-evidence rule as affecting extrinsic evidence to show or to negative usury, 82 A.L.R. 1199; 104 A.L.R. 1261.

Taking of usury or excessive interest as subject of criminal conspiracy, 89 A.L.R. 830.

Obligations covering deferred payments of purchase money, or extension thereof, as loan or forbearance within usury laws, 91 A.L.R. 1105.

Usury as predicable on agreement by which lender is to receive something other than money for his loan, 95 A.L.R. 1231.

Validity, construction, and effect of express agreement releasing cause of action or defense based on exaction of usury, 99 A.L.R. 600.

Conflict of laws as to usury, 125 A.L.R. 482.

Note or other obligation payable on demand for an amount in excess of amount actually loaned as usurious, 127 A.L.R. 460.

Finance charge in connection with conditional sale contract as usury, 143 A.L.R. 238.

Transaction in form a sale, but accompanied by an agreement or option for repurchase by the vendor or a third person previously interested, as a loan, as regards usury law, 154 A.L.R. 1063.

Computing interest on basis of 360 days in year, 30 days in month, or the like, as usury, 35 A.L.R.2d 842.

Usury: expenses or charges (including taxes) incident to loan of money, 52 A.L.R.2d 703.

Taking or charging interest in advance as usury, 57 A.L.R.2d 630.

Statute denying defense of usury to corporation, 63 A.L.R.2d 924.

Admissibility, in civil case involving usury issue, of evidence of other assertedly usurious transactions, 67 A.L.R.2d 232.

Usury as affected by repayment of, or borrower's option to repay, loan before maturity, 75 A.L.R.2d 1265.

Payments under (ostensibly) independent contract as usury, 81 A.L.R.2d 1280.

Practice of exacting usury as a nuisance or ground for injunction, 83 A.L.R.2d 848.

Usury: liability for the statutory penalty of persons other than the offending lender in a usurious loan transaction, 4 A.L.R.3d 650.

Usury as affected by mistake in amount or calculation of interest or service charges for loan, 11 A.L.R.3d 1498.

Advance in price for credit sale as compared with cash sale as usury, 14 A.L.R.3d 1065.

Provision for interest after maturity at a rate in excess of legal rate as usurious or otherwise illegal, 28 A.L.R.3d 449.

Reformation of usurious contract, 74 A.L.R.3d 1239.

Contingency as to borrower's receipt of money or other property from which loan is to be repaid as rendering loan usurious, 92 A.L.R.3d 623.

Leaving part of loan on deposit with lender as usury, 92 A.L.R.3d 769.

Application of usury laws to transactions characterized as "leases," 94 A.L.R.3d 640.

7-4-2. Legal rate of interest; maximum rate of interest generally; certain items not considered interest.

(a)(1)(A) The legal rate of interest shall be 7 percent per annum simple interest where the rate percent is not established by written contract. Notwithstanding the provisions of other laws to the contrary, except Code Section 7-4-18, the parties may establish by written contract any rate of interest, expressed in simple interest terms as of the date of the evidence of the indebtedness, and charges and any manner of repayment, prepayment, or, subject to the provisions of paragraph (1) of subsection (b) of this Code section, acceleration, where the principal amount involved is more than $3,000.00 but less than $250,000.00 or where the lender or creditor has committed to lend, advance, or forbear with respect to any loan, advance, or forbearance to enforce the collection of more than $3,000.00 but less than $250,000.00.

(B) Where the principal amount is $250,000.00 or more, or the lender or creditor has committed to lend, advance, or forbear with respect to any loan, advance, or forbearance to enforce the collection of $250,000.00 or more, the parties may establish by written contract any rate of interest, expressed in simple interest terms or otherwise, and charges to be paid by the borrower or debtor.

(C) Nothing contained in this subsection shall be construed to prohibit the computation and collection of interest at a variable rate or on a negative amortization basis or on an equity participation basis or on an appreciation basis.

(2) Where the principal amount involved is $3,000.00 or less, such rate shall not exceed 16 percent per annum simple interest on any loan, advance, or forbearance to enforce the collection of any sum of money unless the loan, advance, or forbearance to enforce the collection of any sum of money is made pursuant to another law.

(3) As used in this Code section, the term "interest" means a charge for the use of money computed over the term of the contract at the rate stated in the contract or precomputed at a stated rate on the scheduled principal balance or computed in any other way or any other form. Principal includes such charges to which the parties may

agree under paragraph (1) of this subsection. Amounts paid or contracted to be paid as either an origination fee or discount points, or both, on any loan secured by an interest in real estate shall not be considered interest and shall not be taken into consideration in the calculation of interest and shall not be subject to rebate as provided in paragraph (1) of subsection (b) of this Code section.

(b)(1) Upon acceleration of the maturity of any loan, advance of money, or forbearance to enforce the collection of any sum of money upon which interest has been precomputed, unearned interest shall be rebated to the debtor in such amount as would result in the rate of interest earned being no greater than the rate of interest established by the original contract. In the case of a loan in which the principal and the interest for the entire term of the loan are included in the face amount of the loan and the loan is to be paid back in weekly, monthly, quarterly, semiannual, or yearly installments, with the interest and principal portions of each installment determined under the pro rata method, any such rebate shall be determined on the pro rata method.

(2) Unless stipulated in the contract, there shall be no prepayment penalty.

(c) Nothing contained in this Code section shall be construed to amend or modify the provisions of Chapter 3 of this title, the "Georgia Installment Loan Act," Article 1 of Chapter 1 of Title 10, the "Retail Installment and Home Solicitation Sales Act," Chapter 5 of this title, "The Credit Card and Credit Card Bank Act," Chapter 22 of Title 33, the "Insurance Premium Finance Company Act," Part 5 of Article 3 of Chapter 12 of Title 44, relating to pawnbrokers, and, except as provided in Code Section 7-4-3, Article 2 of Chapter 1 of Title 10, the "Motor Vehicle Sales Finance Act."

(d) Notwithstanding the foregoing, fees and other charges agreed upon by a financial institution and depositor, as defined in Code Section 7-1-4, in a written agreement governing a deposit, share, or other account, including, but not limited to, overdraft and nonsufficient funds, delinquency or default charges, returned payment charges, stop payment charges, or automated teller machine charges, shall not be considered interest.

History.

Laws 1822, Cobb's 1851 Digest, p. 393.; Laws 1845, Cobb's 1851 Digest, p. 393.; Code 1863, § 2022; Code 1868, § 2023; Ga. L. 1873, p. 52, §§ 2-4; Code 1873, § 2050; Ga. L. 1878-79, p. 184, § 3; Code 1882, §§ 2050, 2057a; Civil Code 1895, §§ 2876, 2886; Civil Code 1910, §§ 3426, 3436; Code 1933, § 57-101; Ga. L. 1975, p. 370, § 1; Ga. L. 1979, p. 355, § 1; Ga. L. 1983, p. 1146, § 1; Ga. L. 1984, p. 22, § 7; Ga. L. 1987, p. 268, § 2; Ga. L. 1988, p. 534, § 1; Ga. L. 1997, p. 143, § 7; Ga. L. 2014, p. 213, § 1/HB 824; Ga. L. 2020, p. 156, § 9/SB 462.

Cross references.

Credit Card and Credit Card Bank Act, § 7-5-1 et seq.

Georgia Industrial Loan Act, § 7-3-1 et seq.

Insurance Premium Finance Company Act, § 33-22-1 et seq.

Retail Installment and Home Solicitation Sales Act, § 10-1-1 et seq.

Illegal payday loans, § 16-17-1 et seq.

Editor's notes.

Ga. L. 2014, p. 213, § 3/HB 824, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of February 19, 2014."

Law reviews.

For note discussing the reservation of interest at highest lawful rate as constituting usury, see 1 Ga. L. Rev. No. 2 p. 38 (1927).

For note discussing problems with profits generated by escrow account, and proposing federal legislative reform, see 10 Ga. St. B.J. 618 (1974).

For note discussing whether a holder in due course takes free of claims of violations of the usury laws, see 12 Ga. L. Rev. 814 (1978).

For article surveying 1979 legislative developments in commercial law, see 31 Mercer L. Rev. 13 (1979).

For article on Georgia's usury laws and interest on interest, see 8 Ga. St. U.L. Rev. 291 (1992).

For annual survey on construction law, see 65 Mercer L. Rev. 67 (2013).

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General Consideration

Editor's notes. — Many of the cases cited below were decided under this Code section as it read prior to the 1983 amendment, which extensively rewrote this Code section.

Purpose of section. — Purpose of the statute against usury is, at most, only a check on the conscience of the lender. The necessity to borrow on one hand, and greed on the other, prompted the legislature, no doubt, to fix from time to time a limit on the value of money. This value is merely arbitrary in the legislative mind. Green v. Equitable Mtg. Co., 107 Ga. 536, 33 S.E. 869, 1899 Ga. LEXIS 107 (1899).

State law applied. — In a suit seeking to confirm an arbitration award, a corporation was entitled to an award of interest in accordance with O.C.G.A. § 7-4-2(a)(1)(A) on any unpaid portion of the arbitration award for the period between when the award was made and when the court entered final judgment confirming the award; state law, rather than federal law, applied because the court's jurisdiction was based on diversity. Bryant Motors, Inc. v. Blue Bird Body Co., No. 5:06-CV-353, 2007 U.S. Dist. LEXIS 61700 (M.D. Ga. Aug. 22, 2007).

Comparison with federal rate. — At the relevant times asserted in an adversary proceeding asserted by a Chapter 7 trustee, the legal rate of interest under 28 U.S.C. § 1961 was less than the Georgia legal rate of interest of seven percent. Silliman v. Benson (In re Metro Builders Supply, Inc.), No. 06-66726, No. 06-6497, 2007 Bankr.

LEXIS 3717 (Bankr. N.D. Ga. Oct. 4, 2007).

Rate chargeable when not named in contract. — Former Code 1933, § 57-101 (see now O.C.G.A. § 7-4-102) sets forth interest rate chargeable when none is named in contract. Hopkins v. West Publishing Co., 106 Ga. App. 596, 127 S.E.2d 849, 1962 Ga. App. LEXIS 782 (1962).

Distinction between legal interest and lawful interest. — Generally, the terms legal interest and lawful interest have different meanings. The former means exact rate of interest named in statute, while latter means anything up to maximum rate which law allows. Daniel v. Gibson, 72 Ga. 367, 1884 Ga. LEXIS 269 (1884).

Legal interest rates are prima facie "equitable" and any award deviating from the legal rates must be based on sufficient evidence demonstrating that another rate is appropriate. Atlantic States Constr., Inc. v. Beavers, 169 Ga. App. 584, 314 S.E.2d 245, 1984 Ga. App. LEXIS 1640 (1984).

Promise of liberal interest will not justify more than the legal interest. Weaver v. Chauncey, 43 Ga. 343, 1871 Ga. LEXIS 240 (1871).

Postdefault interest rate higher than predefault interest rate. — In a suit by a lender on a note and guaranties, the note's postdefault interest rate was only three percent higher than the predefault rate of five percent, so the total rate of eight percent per year was well within the legal limit of 60 percent and was permissible under O.C.G.A. §§ 7-4-2(a)(1)(B) and 7-4-18(a). MMA Capital Corp. v. ALR Oglethorpe, LLC, 336 Ga. App. 360, 785 S.E.2d 38, 2016 Ga. App. LEXIS 182 (2016).

These provisions apply to counties, as well as to individuals. A county is bound to pay eight percent interest when that rate is specified in writing, if there is compliance with all other legal requirements. Americus Grocery Co. v. Pitts Banking Co., 169 Ga. 70, 149 S.E. 776, 1929 Ga. LEXIS 283 (1929), overruled, Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475, 1942 Ga. LEXIS 375 (1942).

Section inapplicable to lost wages awards. — Director was properly awarded 12 percent interest on a lost wages award as lost wages were not open accounts under O.C.G.A. § 7-4-2. Gallagher v. McKinnon, 273 Ga. App. 727, 615 S.E.2d 746, 2005 Ga. App. LEXIS 378 (2005), cert. denied, No. S05C1740, 2005 Ga. LEXIS 745 (Ga. Oct. 24, 2005).

Applicability to national banks of state laws regulating interest rate. — See Cooper v. National Bank, 21 Ga. App. 356, 94 S.E. 611 (1917), cert. denied, 246 U.S. 670, 38 S. Ct. 423, 62 L. Ed. 931 (1918), aff'd, 251 U.S. 108, 40 S. Ct. 58, 64 L. Ed. 171 (1919). See also 12 USC §§ 85 and 86, and annotations relating thereto .

Federal savings and loan association subject to usury laws. — Federal savings and loan association doing business in this state is subject to usury laws and in making loans must comply with provisions thereof. However, such association may require borrower to pay necessary initial charges in connection with making of loan. First Fed. Sav. & Loan Ass'n v. Norwood Realty Co., 212 Ga. 524, 93 S.E.2d 763, 1956 Ga. LEXIS 434 (1956).

Construction of Industrial Loan Act (see now Georgian Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) and former Code 1933, § 57-101 (see now O.C.G.A. § 7-4-2) as to pawn-brokers. — See Wall v. Lewis, 192 Ga. 652, 16 S.E.2d 430, 1941 Ga. LEXIS 544 (1941).

Installment Loan Act operates in same manner generally as usury statute. — Industrial Loan Act (see now Georgia Installment Loan Act, O.C.G.A. § 7-3-1 et seq.) operates generally upon entire class of subjects with which it deals, uniformly throughout the state and in the same manner generally as the usury statute. Talley v. Sun Fin. Co., 223 Ga. 419, 156 S.E.2d 55, 1967 Ga. LEXIS 547 (1967).

Acts 1912, p. 144 (see now O.C.G.A. § 7-4-10(a)) was not invalid as special law for which provision had been made by former Civil Code 1910, §§ 3426 and 3436 (see now O.C.G.A. § 7-4-2). South Ga. Mercantile Co. v. Lance, 143 Ga. 530, 85 S.E. 749, 1915 Ga. LEXIS 511 (1915).

Section not repealed by §§ 36-11-3 through 36-11-6. — Former Code 1933, § 23-1605 (see now O.C.G.A. §§ 36-11-3

General Consideration (Cont'd)

through 36-11-6) did not expressly or impliedly repeal former Code 1933, §§ 57-101 and 57-110 (see now O.C.G.A. §§ 7-4-2, 7-4-15), and former Code 1933 § 14-207 (see now O.C.G.A. § 11-3-108). They all were to be considered together, and when so considered, the sections first mentioned contemplate administrative action by county officers in regard to the order in which lawful county orders should be paid. Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475, 1942 Ga. LEXIS 375 (1942).

Floating interest rates under P.L. 93-501. — The 1975 amendments to former Code 1933, § 57-101 (see now O.C.G.A. § 7-4-2) were not intended to supersede floating interest rates permitted by Public Law 93-501. Kennedy v. Brand Banking Co., 245 Ga. 496, 266 S.E.2d 154, 1980 Ga. LEXIS 832 (1980).

Liquidated damages for nonpayment of money cannot exceed lawful interest. — No damages for mere nonpayment of money can ever be so liquidated between parties as to evade provisions of law which fix rate of interest. Clark, Austin & Smith v. Kay, 26 Ga. 403, 1858 Ga. LEXIS 329 (1858).

Lender may recover annual interest payments when due, whether principal is due or not. — Maker of note having expressly contracted to pay interest annually, holder is entitled to recover interest when due, whether principal is due or not. Calhoun v. Marshall, 61 Ga. 275, 1878 Ga. LEXIS 101 (1878); Ray v. Pease, 97 Ga. 618, 25 S.E. 360, 1895 Ga. LEXIS 538 (1895).

Underwriting is not an agreement to loan money. Stewart v. G. L. Miller & Co., 161 Ga. 919, 132 S.E. 535, 1926 Ga. LEXIS 363 (1926).

Liability of guarantors when no rate stated. — When guaranty, entered into by separate instrument, does not contain stipulated interest rate, guarantors are liable only for legal rate of 7 percent annually. FDIC v. Willis, 497 F. Supp. 272, 1980 U.S. Dist. LEXIS 17238 (S.D. Ga. 1980).

Promise to pay 5 percent for attorney fees should suit arise. — Promissory note contained the promise to pay 7 percent interest and 5 percent for attorneys fees, if the note should be collected by suit. The promise to pay the attorneys fees is a part of the principal debt. Baxter v. Bates, 69 Ga. 587, 1882 Ga. LEXIS 268 (1882).

Facts substantially complying with section. — See Tribble v. Anderson, 63 Ga. 31, 1879 Ga. LEXIS 119 (1879); Green v. Equitable Mtg. Co., 107 Ga. 536, 33 S.E. 869, 1899 Ga. LEXIS 107 (1899); Stewart v. Slocumb, 120 Ga. 762, 48 S.E. 311, 1904 Ga. LEXIS 701 (1904).

Objection to statutory rate of interest rather than lower contract rate waived. — Parties waived any objection to the statutory rate of seven percent by failing to object to the rate in the trial court, although the parties' contract provided for a lower rate. Sovereign Healthcare v. Mariner Health Care Mgmt. Co., 329 Ga. App. 782, 766 S.E.2d 172, 2014 Ga. App. LEXIS 782 (2014), cert. denied, No. S15C0566, 2015 Ga. LEXIS 210 (Ga. Mar. 30, 2015).

Class action certification. — In a suit challenging the bank's overdraft fees, the trial court did not abuse the court's discretion in certifying the class because the legality of fees required the examination of a common set of terms in identical form contracts that applied to all members of the putative class as the claims arising from an interpretation of form agreements were classic cases for treatment as a class action. SunTrust Bank v. Bickerstaff, 349 Ga. App. 794, 824 S.E.2d 717, 2019 Ga. App. LEXIS 214 (2019), cert. denied, No. S19C1080, 2019 Ga. LEXIS 862 (Ga. Dec. 23, 2019).

Interest and Other Charges

Method of expressing interest rate. — Requirement that the rate of interest be expressed in simple interest terms does not mandate numerical terminology but the requirement is met by the expression of the method of computation of interest by reference to "prime" or other indices such as "base." 1600 Capital Co. v. Bankers First Fed. Sav. & Loan Ass'n, 187 Ga. App. 504, 370 S.E.2d 668, 1988 Ga. App. LEXIS 739 (1988).

Note must state the rate of interest in simple interest terms. Orix Credit

Alliance, Inc. v. CIT Group/Equipment Fin., Inc., 230 B.R. 213, 1998 Bankr. LEXIS 1803 (Bankr. M.D. Ga. 1998).

Computation of interest on loans for less than or longer than a year. — See Patton v. Bank of La Fayette, 124 Ga. 965, 53 S.E. 664, 1906 Ga. LEXIS 676 (1906), overruled, Sharpe v. DOT, 267 Ga. 267, 476 S.E.2d 722, 1996 Ga. LEXIS 723 (1996).

Former Civil Code 1895, § 2886 (see now O.C.G.A. § 7-4-2) spoke of years and not of months. A legal year is 365 days. Patton v. Bank of La Fayette, 124 Ga. 965, 53 S.E. 664, 1906 Ga. LEXIS 676 (1906), overruled, Sharpe v. DOT, 267 Ga. 267, 476 S.E.2d 722, 1996 Ga. LEXIS 723 (1996).

Lender's charge for service not rendered or to be rendered is interest. — Lender's charge for service which was not in fact rendered or to be rendered the borrower is a charge for use of money advanced and is therefore interest. Williams v. First Bank & Trust Co., 154 Ga. App. 879, 269 S.E.2d 923, 1980 Ga. App. LEXIS 2428 (1980).

Interest on liquidated demand not part of debt. — When purchase price of machinery for necessary improvement of public roads becomes a liquidated demand, as by issuance of county warrant drawn on county treasurer by county commissioners, payable to vendor for purchase price, interest which may thereafter lawfully accrue upon warrant is incidental, and is not to be counted as part of debt for which warrant was issued. Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475, 1942 Ga. LEXIS 375 (1942).

Prepayment penalty clause was permissible under O.C.G.A. § 7-4-21(a)(1) since the clause was in reality a charge and use of the term "interest" in the clause was merely a device for determining the amount of the charge. In re Curtis, 83 B.R. 853, 1988 Bankr. LEXIS 863 (Bankr. S.D. Ga. 1988).

Escrow account charges in a loan for the purchase of real property did not amount to a disguised interest charge since there was a realistic correspondence between the monthly escrow deposit and the annual tax liability and insurance premium covering the property. In re Curtis, 83 B.R. 853, 1988 Bankr. LEXIS 863 (Bankr. S.D. Ga. 1988).

Lender need not pay interest on funds escrowed for a valid business reason. — There is no requirement as a matter of law for the lender to pay the borrower interest on funds escrowed for valid business reasons such as a reserve for replacement of deteriorating equipment. Knight v. First Fed. Sav. & Loan Ass'n, 151 Ga. App. 447, 260 S.E.2d 511, 1979 Ga. App. LEXIS 2569 (1979).

Lease late charge provision. — While a landlord can recover unpaid rent and is also entitled to recover the legal rate of interest on the unpaid rental money, it does not follow that an agreement in a lease providing for a late charge when the rent is not timely paid must comply with O.C.G.A. § 7-4-2. Krupp Realty Co. v. Joel, 168 Ga. App. 480, 309 S.E.2d 641, 1983 Ga. App. LEXIS 2818 (1983).

Prejudgment interest. — Having found there was no jury issue as to whether the buyers owed the earnest money payment plus interest to sellers under the contract, as well as under principles of promissory estoppel, the trial court erred in failing to award such interest for the period money was due until final judgment. Ware v. Renfroe, 231 Ga. App. 529, 499 S.E.2d 907, 1998 Ga. App. LEXIS 493 (1998).

Because the defendant neither filed a compulsory counterclaim nor pled a set-off as an affirmative defense, there was no error in the trial court's failure to provide for a set-off for lease deposits prior to calculating pre-judgment and post-judgment interest. American Med. Transp. Group, Inc. v. Glo-An, Inc., 235 Ga. App. 464, 509 S.E.2d 738, 1998 Ga. App. LEXIS 1543 (1998).

In an action in which the lenders demanded payment of a loan to the debtor before the date of trial, and after a date set by the debtor that the debtor would repay the loan, the lenders were entitled to prejudgment interest up and until the day of trial on the unpaid loan balance at the legal rate of interest. Gray v. King, 270 Ga. App. 855, 608 S.E.2d 320, 2004 Ga. App. LEXIS 1623 (2004).

Interest and Other Charges (Cont'd)

Trial court erred when the court imposed a fixed rate of interest on a judgment obtained by a class of retirees in their action against the Teachers Retirement System of Georgia, arising from their claims that the retirees were not paid the appropriate amounts for their retirement benefits, as there was no pre- or post-judgment interest rate established by the written contract between the parties that governed those payments, such that the statutory rates of seven percent and prime plus three percent should have been applied pursuant to O.C.G.A. §§ 7-4-2(a)(1)(A) and 7-4-12(a); another interest rate that was set by the System in a regulation was not applicable to the instant matter. Teachers Ret. Sys. v. Plymel, 296 Ga. App. 839, 676 S.E.2d 234, 2009 Ga. App. LEXIS 172 (2009).

Unpublished decision: Because the defendant's damages on the defendant's suit on account counterclaim were fixed, certain, and ascertainable making the damages liquidated (plaintiff conceded that the plaintiff received and never paid for $1,017,551 worth of GPS units from the defendant), the district court erred in failing to award the defendant pre-judgment interest at the legal rate established by O.C.G.A. § 7-4-2. Discrete Wireless, Inc. v. Coleman Techs., Inc., 422 Fed. Appx. 777, 2011 U.S. App. LEXIS 7043 (11th Cir. 2011).

In breach-of-contract actions in all cases when an amount ascertained would be the damages at the time of the breach, it may be increased by the addition of legal interest from that time until the recovery. Goody Prods. v. Dev. Auth. of Manchester, 320 Ga. App. 530, 740 S.E.2d 261, 2013 Ga. App. LEXIS 229 (2013).

In a condemnation action, the property owner was properly awarded prejudgment interest on the purchase price on a second parcel because the price was fixed, certain, and ascertainable under the terms of the parties' contract such that the debt owed by the county was liquidated and subject to prejudgment interest under O.C.G.A. § 7-4-15. Gwinnett County v. Old Peachtree Partners, LLC, 329 Ga. App. 540, 764 S.E.2d 193, 2014 Ga. App. LEXIS 688 (2014), cert. denied, No. S15C0517, 2015 Ga. LEXIS 214 (Ga. Mar. 30, 2015).

Prejudgment interest in excess of statutory amount. — When the claim was undisputed, the defendant was entitled to prejudgment interest at the rate of seven percent per annum from the date the debt became due and the trial court's judgment of prejudgment interest of 18% per annum was in excess of the statutorily required amount. Turner Constr. Co. v. Electrical Distribs., Inc., 202 Ga. App. 726, 415 S.E.2d 325, 1992 Ga. App. LEXIS 164 (1992).

Trial court erred in awarding the prevailing party in a contract dispute prejudgment interest at the rate of 12 percent per annum; instead, the legal rate of interest of only seven percent per annum pursuant to O.C.G.A. § 7-4-2(a) was appropriate. Murray v. Barrett, 257 Ga. App. 438, 571 S.E.2d 448, 2002 Ga. App. LEXIS 1185 (2002), cert. denied, No. S03C0157, 2002 Ga. LEXIS 1079 (Ga. Nov. 25, 2002).

Prejudgment interest on damages exceeded recovery amount authorized by evidence. — Pursuant to instructions from the trial court, while the jury was authorized under O.C.G.A. § 13-6-13 to increase the $24,698.39 in breach of contract damages by adding prejudgment legal interest to damages at the rate of seven percent per annum simple interest from the date of the breach, the jury's general verdict on the breach of contract claim in amount of $42,690.05 was in excess of any recovery authorized by the evidence; as a result, the judgment entered on the verdict had to be reversed and the case remanded for new trial. Chacon v. Holcombe, 290 Ga. App. 767, 660 S.E.2d 851, 2008 Ga. App. LEXIS 408 (2008).

Deposits in court not subject to prejudgment and postjudgment interest. — In a contract action, a party was not entitled to prejudgment and postjudgment interest when deposits were made pursuant to the requirements of O.C.G.A. § 9-11-67. Sacha v. Coffee Butler Serv., Inc., 215 Ga. App. 280, 450 S.E.2d

704, 1994 Ga. App. LEXIS 1221 (1994), cert. denied, No. S95C0456, 1995 Ga. LEXIS 464 (Ga. Feb. 23, 1995).

No writing necessary for interest when admission by debtor. — Trial court did not err in awarding a creditor a money judgment, plus interest, because the interest owed was established by the debtor's own admission on the stand; in a case when the interest owed is established by a party's own admission on the stand, no writing is necessary. Allen v. Santana, 303 Ga. App. 844, 695 S.E.2d 314, 2010 Ga. App. LEXIS 422 (2010).

Interest rate not in excess of maximum. — Trial court did not err by rejecting a debtor's argument that a lender's temporary acceptance of lowered payments without waiving full payment transformed the loan into a usurious transaction because the interest rate of the loan was not in excess of the maximum applicable legal rate of 5 percent per month under O.C.G.A. § 7-4-18(a). Latimore v. Vatacs Group, Inc., 317 Ga. App. 98, 729 S.E.2d 525, 2012 Ga. App. LEXIS 567 (2012).

Compounding interest. — In this breach of contract action, it was error to compound the interest because the parties' agreement stated that late amounts under the contract would "be subject to interest at the lesser of 1.5% per month or the maximum allowed by applicable law." Caradigm USA LLC v. PruittHealth, Inc., 964 F.3d 1259, 2020 U.S. App. LEXIS 21368 (11th Cir. 2020).

Usury

1. In General

Usury defined. — Usury is excess over legal interest charged by lender for use of the lender's money. Sledd v. Pilot Life Ins. Co., 52 Ga. App. 326, 183 S.E. 199, 1935 Ga. App. LEXIS 159 (1935).

Effect of criminal usury. — Loan violative of the criminal usury statute is illegal with the result that the lender forfeits the interest but may collect the principal. Norris v. Sigler Daisy Corp., 260 Ga. 271, 392 S.E.2d 242, 1990 Ga. LEXIS 223 (1990).

Intent required. — Under law of Georgia, intent to circumvent usury laws is prerequisite to existence of usury. Camilla Cotton Oil Co. v. Spencer Kellogg & Sons, 257 F.2d 162, 1958 U.S. App. LEXIS 4460 (5th Cir. 1958).

Four elements of usurious transaction. — There are four elements of a usurious transaction under Georgia law: (1) loan or forbearance of money, either express or implied; (2) upon understanding that principal shall or may be returned; and that (3) for such loan or forbearance a greater profit than is authorized by law shall be paid; and (4) that contract was made with intent to violate the law. Element of intent may be implied if all other elements are expressed upon face of contract. Bank of Lumpkin v. Farmers State Bank, 161 Ga. 801, 132 S.E. 221, 1926 Ga. LEXIS 336 (1926); Duderwicz v. Sweetwater Sav. Ass'n, 595 F.2d 1008, 1979 U.S. App. LEXIS 14500 (5th Cir. 1979); Hershiser v. Yorkshire Condominium Ass'n, 201 Ga. App. 185, 410 S.E.2d 455, 1991 Ga. App. LEXIS 1292 (1991).

Substance of transaction examined in determining whether usurious. — In determining whether contract is usurious, substance of transaction will be critically inspected and analyzed; for name by which transaction is denominated is altogether immaterial if it appears that a loan of money was the basis of agreement which is under consideration. Bank of Lumpkin v. Farmers State Bank, 161 Ga. 801, 132 S.E. 221, 1926 Ga. LEXIS 336 (1926).

Court must look not at form and words, but at substance of transaction; and as, on the one hand, it should not pay attention to words of transaction, or manner in which the transaction was negotiated, if substance of it went to defeat the statute against usury, so, on the other hand, it ought not to rely upon words or form of transaction, if in substance such transaction was legal. Murdock Acceptance Corp. v. Wagnon, 587 F.2d 764, 1979 U.S. App. LEXIS 17643 (5th Cir. 1979).

Usurious interest violates section. — Usury being an excess of legal interest, it was a violation of former Code 1933, § 57-101 to reserve and take usury or to contract to reserve and take usury. Newcomb v. Niskey's Lake, Inc., 190 Ga.

Usury (Cont'd)
1. In General (Cont'd)

565, 10 S.E.2d 51, 1940 Ga. LEXIS 531 (1940).

It was a violation to reserve and take usurious interest, or to contract to reserve and take usurious interest. Duderwicz v. Sweetwater Sav. Ass'n, 595 F.2d 1008, 1979 U.S. App. LEXIS 14500 (5th Cir. 1979).

Effect of repealing usury limit. — In the absence of a savings clause, repeal of a usury limit operates retroactively to lift the penalty for usury. Doyle v. Southern Guar. Corp., 795 F.2d 907, 1986 U.S. App. LEXIS 27236 (11th Cir. 1986).

When defense of usury was not raised until after the 1983 amendment of O.C.G.A. § 7-4-2 became effective, the interest rates at issue are legal so long as those rates conform to the limits contained in § 7-4-2(a)(1). Ward v. Hudco Loan Co., 254 Ga. 294, 328 S.E.2d 729, 1985 Ga. LEXIS 688 (1985).

Lender's 49 percent economic interest. — In a class action suit seeking to hold a lender liable for payday loans, the trial court did not err in concluding that genuine issues of material fact existed as to whether the lender was the true lender of the loans made after May 14, 2004, because evidence was presented sufficient to create a genuine issue of material fact regarding whether the lender actually received only a 49 percent economic interest for the lender's services and even if the lender did so, whether the lender nevertheless, by contrivance, device, or scheme, attempted to avoid the provisions of O.C.G.A. § 16-17-2(a). Ga. Cash Am. v. Greene, 318 Ga. App. 355, 734 S.E.2d 67, 2012 Ga. App. LEXIS 914 (2012), cert. denied, No. S13C0436, 2013 Ga. LEXIS 165 (Ga. Feb. 18, 2013).

Amortization of initial charges. — Initial charges in the form of discount points and other interest charges during the first month of the loan should be amortized over the life of the loan to calculate what interest rate was charged "per month." Johnson v. Fleet Fin., Inc., 785 F. Supp. 1003, 1992 U.S. Dist. LEXIS 2586 (S.D. Ga. 1992).

Actual declining principal balance method should be used in determining whether irregularly amortized loan is usurious because usury on a particular loan can only be determined by proper reference to the actual outstanding principal balance on that loan. Southern Fed. Sav. & Loan Ass'n v. Lyle, 249 Ga. 284, 290 S.E.2d 455, 1982 Ga. LEXIS 805 (1982).

Actual performance of usurious agreement not required. — Taint of usury results not from payment of usurious interest, but from agreement to do so, whether performed or unperformed. Duderwicz v. Sweetwater Sav. Ass'n, 595 F.2d 1008, 1979 U.S. App. LEXIS 14500 (5th Cir. 1979).

Terms of contract rather than actual turn of events are to be used in computing usury. Knight v. First Fed. Sav. & Loan Ass'n, 151 Ga. App. 447, 260 S.E.2d 511, 1979 Ga. App. LEXIS 2569 (1979).

Usurious contracts unlawful only as to usurious interest. — Contracts to pay usury are unlawful, but only as to the usurious interest; but mere illegality in consideration is not sufficient to defeat rights of an innocent holder. Weed v. Gainesville, Jefferson & S.R.R., 119 Ga. 576, 46 S.E. 885, 1904 Ga. LEXIS 292 (1904).

Substance of transaction controls. — Law recognizes a seller's right to make a difference in the seller's cash price and the seller's time price for the seller's property; and, though in a given instance this difference may exceed the maximum allowable rate, usury laws are not applicable. If, however, property is sold at a cash price, and time is given by vendor to purchaser upon a portion of the purchase money, and a greater rate of interest than that allowed by law is charged on such deferred payments, the contract is usurious. Murdock Acceptance Corp. v. Wagnon, 587 F.2d 764, 1979 U.S. App. LEXIS 17643 (5th Cir. 1979).

While it is lawful and not usurious to charge one price for property sold for cash and a higher price for same property if sold on credit, if contract is that property be sold at cash valuation, and that certain payments are to be deferred in consideration of a greater rate of interest than that allowed by law, such contract is usurious. Irvin v. Mathews, 75 Ga. 739, 1885 Ga. LEXIS 219 (1885); Rushing v. Worsham &

Co., 102 Ga. 825, 30 S.E. 541, 1898 Ga. LEXIS 770 (1898); Ozmore v. Coram, 133 Ga. 250, 65 S.E. 448, 1909 Ga. LEXIS 201 (1909); Plastics Dev. Corp. v. Flexible Prods. Co., 112 Ga. App. 460, 145 S.E.2d 655, 1965 Ga. App. LEXIS 741 (1965).

Section inapplicable to note outside provisions. — Defendant did not prevail on defendant's claim of usury because the amount of the note, $2.3 million, is outside the provisions of Georgia's usury statute. Barton v. Marubeni Am. Corp., 204 Ga. App. 346, 419 S.E.2d 342, 1992 Ga. App. LEXIS 817 (1992).

Parol evidence rule inapplicable to usurious contracts. — While it is well established that parol evidence cannot be used to add to or change terms of valid written contract, the rule does not apply to contract which is usurious and, therefore, invalid. Pickens Inv. Co. v. Jones, 82 Ga. App. 850, 62 S.E.2d 753, 1950 Ga. App. LEXIS 1223 (1950).

Parol promise found valid. — When a promissory note on the note's face bore interest at 6 percent, and, after the note fell due and was unpaid, the makers in consideration of the holders delaying to enforce collection agreed in parol to pay 8 percent interest thereon and for two years interest was paid at this rate, such payments were valid, and interest in excess of 6 percent could neither be recovered, nor thereafter applied as a credit on the principal of the note. Strickland v. Bank of Cartersville, 141 Ga. 565, 81 S.E. 886, 1914 Ga. LEXIS 57 (1914).

Showing required when loan made at less than maximum rate. — When loan had been made at less than maximum rate of interest, the debtor must prove that escrow arrangement was a device to exact interest in excess of the lawful rate, and the debtor must show the exact amount of claimed excess and how the excess was computed. Knight v. First Fed. Sav. & Loan Ass'n, 151 Ga. App. 447, 260 S.E.2d 511, 1979 Ga. App. LEXIS 2569 (1979).

To purge contract of usury it must be wholly abandoned or cancelled, and a new obligation undertaken containing no part of the usury. Duderwicz v. Sweetwater Sav. Ass'n, 595 F.2d 1008, 1979 U.S. App. LEXIS 14500 (5th Cir. 1979).

Lender cannot unilaterally purge transaction of taint. — Allegedly usurious loan transaction cannot be purged of usurious taint through unilateral action of lender. Duderwicz v. Sweetwater Sav. Ass'n, 595 F.2d 1008, 1979 U.S. App. LEXIS 14500 (5th Cir. 1979).

Under the look-through rule, a hypothetical coercive claim was the basis for federal jurisdiction over the petitioner bank's Federal Arbitration Act petition, but petitioner payday loan companies' arbitration petition was precluded by a related underlying state court judgment holding the companies in contempt and, striking the companies' arbitration defenses under O.C.G.A. § 9-11-37(b)(2) to respondent borrower's suit alleging violations of Georgia's usury statute, O.C.G.A. § 7-4-1 et seq., Georgia's Industrial Loan Act, O.C.G.A. § 7-3-1 et seq.; and Georgia's Racketeer Influenced and Corrupt Organizations statute, O.C.G.A. § 16-14-1 et seq. Cmty. State Bank v. Strong, 651 F.3d 1241, 2011 U.S. App. LEXIS 17767 (11th Cir. 2011), cert. denied, 568 U.S. 813, 133 S. Ct. 101, 184 L. Ed. 2d 22, 2012 U.S. LEXIS 7369 (2012).

2. Transactions Held Usurious

Only when prepaid sums and stipulated interest together exceed lawful interest is a transaction usurious. Scheil v. Georgia Fed. Sav. & Loan Ass'n, 154 Ga. App. 714, 269 S.E.2d 881, 1980 Ga. App. LEXIS 2353 (1980).

Taking or reserving of maximum interest in advance is usurious. — Taking or reserving in advance of interest at highest legal rate, whether in short or long term loan, is usurious. Haley v. Covington, 19 Ga. App. 782, 92 S.E. 297, 1917 Ga. App. LEXIS 355 (1917); Kent v. Hibernia Sav., Bldg. & Loan Ass'n, 190 Ga. 764, 10 S.E.2d 759, 1940 Ga. LEXIS 567 (1940).

Deed to secure usurious loan is void. — Reserving of interest in advance at highest legal rate on a loan, whether it be a short or long-term loan, is usurious; and deed to land given to secure

Usury (Cont'd)
2. Transactions Held Usurious (Cont'd)

promissory note for such a loan is void on account of usury. Loganville Banking Co. v. Forrester, 143 Ga. 302, 84 S.E. 961, 1915 Ga. LEXIS 408 (1915); Reese v. Bloodworth, 146 Ga. 355, 91 S.E. 120, 1917 Ga. LEXIS 303 (1917).

Commission deducted from loan is usurious. — Charge by lender as a commission, deducted from a loan evidenced by bonds of the borrower, which carry full rate of lawful interest was usury. Newcomb v. Niskey's Lake, Inc., 190 Ga. 565, 10 S.E.2d 51, 1940 Ga. LEXIS 531 (1940).

Combining loans to reach usury limit prohibited. — Former § 7-4-7, which removed the former nine percent rate ceiling on loans exceeding $100,000 in certain situations, was not applicable when there were eleven separate loans and notes, none of which amounted to $100,000, although the total principal balance was over $100,000, and although the borrower paid the interest on all eleven notes with one check. Henson v. Columbus Bank & Trust Co., 770 F.2d 1566, 1985 U.S. App. LEXIS 23187 (11th Cir. 1985) (decided under former § 7-4-7).

Escrow fund used as device to extract excess interest is usurious. — Escrow fund is usurious only when the lender's requirement that the borrower maintain such a deposit is in fact merely a scheme or device by which the intent to extract excess interest is concealed. Knight v. First Fed. Sav. & Loan Ass'n, 151 Ga. App. 447, 260 S.E.2d 511, 1979 Ga. App. LEXIS 2569 (1979).

Stipulation to pay taxes on bonds is usurious. — Stipulation in bonds to pay, in addition to lawful interest, a percentage of federal income taxes that might be imposed upon the bonds is usurious. Newcomb v. Niskey's Lake, Inc., 190 Ga. 565, 10 S.E.2d 51, 1940 Ga. LEXIS 531 (1940).

Petition sufficiently pleading usury. — Petition alleging: (1) sum upon which paid; (2) time when contract was made; (3) when payable; and (4) amount of usury agreed upon, sufficiently pleads usury. Pickens Inv. Co. v. Jones, 82 Ga. App. 850, 62 S.E.2d 753, 1950 Ga. App. LEXIS 1223 (1950).

Condition precedent to loan charging maximum rate that borrower pay another's debt. — When lender requires, as condition precedent to making loan upon which full legal rate of interest is expressly charged, that the borrower shall assume and pay off a promissory note held by the lender against one who is known by the lender to be insolvent, and whose debt the borrower is under no obligation to pay, the transaction is usurious. Bishop v. Exchange Bank, 114 Ga. 962, 41 S.E. 43, 1902 Ga. LEXIS 848 (1902).

Indefinite amount. — Portion of the judgment awarding interest at a rate greater than the seven percent was vacated and the case was remanded to the trial court for recalculation of the interest at the correct rate because with an indefinite rate expressed in the subdivision declaration, the seven percent per year rate mandated by O.C.G.A. § 7-4-2(a)(1)(A) governed the rate of interest allowed by the declaration. Lend A Hand Charity, Inc. v. Ford Plantation Club, Inc., 338 Ga. App. 594, 791 S.E.2d 180, 2016 Ga. App. LEXIS 504 (2016).

3. Transactions Held Not Usurious

Excess over legal rate paid for other considerations not usurious. — When excess over legal interest is paid for other good and valuable considerations beyond mere use of money, it is not usury. Sledd v. Pilot Life Ins. Co., 52 Ga. App. 326, 183 S.E. 199, 1935 Ga. App. LEXIS 159 (1935).

Minor mistake held not usury. — Contract not usurious when by mistake a few cents more than legal rate is charged. Rushing v. Willingham, 105 Ga. 166, 31 S.E. 154, 1898 Ga. LEXIS 471 (1898); Loganville Banking Co. v. Forrester, 143 Ga. 302, 84 S.E. 961, 1915 Ga. LEXIS 408 (1915).

Interest charged on interest due is not usurious. — Contract to pay maximum rate of interest per annum semi-annually, with interest on semi-annual payments of interest after due, did not constitute usury. Pendergrass

v. New York Life Ins. Co., 163 Ga. 671, 137 S.E. 36, 1927 Ga. LEXIS 45 (1927).

Interest not usurious based on principal. — When the principal amount of the homeowners' mortgage was $61,850 with accrued interest at the rate of 13 percent per year, this interest was not in violation of O.C.G.A. § 7-4-2. English v. Liberty Mtg. Corp., 205 Ga. App. 141, 421 S.E.2d 286, 1992 Ga. App. LEXIS 1078 (1992).

Interest rate based upon a daily charge. — Interest rate based upon a daily charge equal to the annual rate divided by 360 is not usurious per se. Mom Corp. v. Chattahoochee Bank, 203 Ga. App. 847, 418 S.E.2d 74, 1992 Ga. App. LEXIS 564 (1992).

Interest from maturity upon principal and lawful interest not usurious. — It is lawful to include in a promissory note amount of interest at legal rate, which will be due at its maturity, and to provide that sum represented by principal and such interest shall bear interest at maximum rate per annum from maturity. McCrary v. Woodard, 122 Ga. 793, 50 S.E. 941, 1905 Ga. LEXIS 328 (1905).

Note covering loan, lawful interest, and antecedent debt not usurious. — When debtor who has been adjudicated bankrupt, but who has not obtained a discharge, arranges with one of the debtor's creditors for a loan of money on condition that the debtor will execute a note to cover the loan, with lawful interest and also amount of the debtor's previous indebtedness to creditor, such transaction is a valid and enforceable renewal of an antecedent debt, and a note is not usurious because the note contains a promise to pay the antecedent debt. Cameron v. Meador-Pasley Co., 39 Ga. App. 712, 148 S.E. 309, 1929 Ga. App. LEXIS 534 (1929).

Compensation for professional services by lender not usurious. — If sum was paid bona fide by way of compensation for professional services rendered by a lender, and did not enter into consideration moving lender to make loan, the transaction was not usurious. Sanders v. Nicolson, 101 Ga. 739, 28 S.E. 976, 1897 Ga. LEXIS 312 (1897).

Charge for insurance on security for debt not usurious. — When property is conveyed to secure a debt, a stipulation that the borrower shall, in addition to legal interest, pay insurance premiums thereon is not usurious. New England Mtg. Sec. Co. v. Gay, 33 F. 636, 1888 U.S. App. LEXIS 2031 (C.C.D. Ga. 1888), cert. dismissed, 145 U.S. 123, 12 S. Ct. 815, 36 L. Ed. 646, 1892 U.S. LEXIS 2125 (1892).

Premium for insurance required on collateral security for loan not counted as part of interest. Sledd v. Pilot Life Ins. Co., 52 Ga. App. 326, 183 S.E. 199, 1935 Ga. App. LEXIS 159 (1935).

Forfeiture of Interest

Usury works forfeiture of all interest under the law. Newcomb v. Niskey's Lake, Inc., 190 Ga. 565, 10 S.E.2d 51, 1940 Ga. LEXIS 531 (1940).

Effect of device by which lender exacts usurious interest. — If agreement is a mere device or subterfuge by which one party was permitted to charge a higher than lawful rate of interest for a loan of money, the agreement would be usurious, and the lender can collect no interest at all. Stewart v. G. L. Miller & Co., 161 Ga. 919, 132 S.E. 535, 1926 Ga. LEXIS 363 (1926).

Interest not forfeited when claim amended to legal rate. — Plaintiff did not forfeit any right to interest on an open account for seeking a higher interest rate than that allowed by law since, before trial, the plaintiff amended the plaintiff's pleadings to seek the statutorily permitted rate of interest on commercial accounts. Belvin v. Houston Fertilizer & Grain Co., 169 Ga. App. 100, 311 S.E.2d 526, 1983 Ga. App. LEXIS 2993 (1983).

Written Contract

Absent specification in writing, interest exceeding seven percent per annum may not be collected. Cosby v. A.M. Smyre Mfg. Co., 158 Ga. App. 587, 281 S.E.2d 332, 1981 Ga. App. LEXIS 2324 (1981).

Portion awarding interest in a foreclosure judgment was vacated and the case remanded for recalculation of the interest rate pursuant to O.C.G.A. § 7-4-2 because § 7-4-2 governed the rate of interest in contracts when the interest rate was not

Written Contract (Cont'd)

specified and since the maximum legal rate specified in the declaration was not definite and ascertainable, the trial court erred in awarding 18 percent interest rather than the seven percent provided for by § 7-4-2. Northside Bank v. Mountainbrook of Bartow County Homeowners Ass'n, 338 Ga. App. 126, 789 S.E.2d 378, 2016 Ga. App. LEXIS 449 (2016).

Writing requirement applies only to executory promises. — Former Civil Code 1910, § 3426, which provided that a contract to pay interest in excess of seven percent must be in writing, applied only to a contract containing an executory promise to pay such excess interest, and did not apply to a contract when such excess interest had been actually paid and accepted in consideration of a promise to extend time of payment of the principal sum. Lewis v. Citizens' & S. Bank, 31 Ga. App. 597, 121 S.E. 524, 1924 Ga. App. LEXIS 83 (1924), aff'd, Citizens' & Southern Bank v. Lewis, 159 Ga. 551, 126 S.E. 392, 1925 Ga. LEXIS 17 (1925).

Designation of interest rate in terms of "prime" was "in writing" and thereby complied with laws of usury. Stewart v. National Bank, 174 Ga. App. 892, 332 S.E.2d 19, 1985 Ga. App. LEXIS 1990 (1985).

Specification of interest in handwriting of debtor, signed by creditor, is sufficient. Wofford v. Wyly, 72 Ga. 863, 1884 Ga. LEXIS 334 (1884).

One seeking eight percent interest on alleged note must sue upon written instrument providing therefor. Ramsey v. Langley, 86 Ga. App. 544, 71 S.E.2d 863, 1952 Ga. App. LEXIS 1003 (1952).

Acceleration

By accelerating payment on notes payable on or before maturity, maker avoids paying unearned interest. Garner v. Sisson Properties, Inc., 198 Ga. 203, 31 S.E.2d 400, 1944 Ga. LEXIS 381 (1944).

Interest on accelerated balance limited to seven percent absent authorization. — In suit to recover balance on promissory note, award of interest on accelerated balance was limited to seven percent per annum, rather than nine percent which was sought, since there was no language in the note authorizing the collection of a higher rate upon declaration of default. Atlantic Bank & Trust Co. v. Fox, 157 Ga. App. 673, 278 S.E.2d 474, 1981 Ga. App. LEXIS 1961 (1981).

Interest after Maturity

Rate of interest specified in contract runs after maturity as well as before. Silvey v. McCool, 86 Ga. 1, 12 S.E. 175, 1890 Ga. LEXIS 166 (1890); Neal v. Brockhan, 87 Ga. 130, 13 S.E. 283, 1891 Ga. LEXIS 109 (1891).

Post-maturity interest rate not penalty when same as loan interest rate. — Post-maturity interest rate on outstanding balance does not constitute penalty or compensation for delay when rate is the same as interest rate of loan itself. Whitfield v. Termplan, Inc., 651 F.2d 383, 1981 U.S. App. LEXIS 11143 (5th Cir. 1981).

Interest called for will extend only if contracted for. — When promissory note contained a promise to pay principal, with interest from date at eight percent, in the absence of agreement, such rate will not extend beyond maturity of note, unless terms of the note itself expressly so provide. Sherwood v. Moore, 35 F. 109, 1888 U.S. App. LEXIS 2422 (C.C.D. Ga. 1888).

Attorney Fees

Reasonable fee to lender's attorney for title examination was not considered commission for negotiation of loan. McCall v. Herring, 118 Ga. 522, 45 S.E. 442 (1903).

Jury/Court Determinations

Unless apparent on face of contract, question of usury is for jury. — Question of whether one intends to exact usury by a contrivance or device or whether the alleged charge is bona fide for actual services is for the determination of the jury. Bank of Lumpkin v. Farmers State Bank, 161 Ga. 801, 132 S.E. 221, 1926 Ga. LEXIS 336 (1926).

If it is apparent on the face of the contract, the court may declare it to be usurious, but if doubtful question must be resolved by the jury. Pickens Inv. Co. v. Jones, 82 Ga. App. 850, 62 S.E.2d 753, 1950 Ga. App. LEXIS 1223 (1950).

It is incumbent upon one attacking loan to show jury that it is in fact usurious; intent of lender to charge and collect more than legal rate of interest in violation of law is a question for the jury. Knight v. First Fed. Sav. & Loan Ass'n, 151 Ga. App. 447, 260 S.E.2d 511, 1979 Ga. App. LEXIS 2569 (1979).

Claim that transaction is a device to cover up usury raises jury issue. — When a transaction is not per se usurious, if it is claimed to be a device to cover up a charge of usury, a question of fact as well as a question of law is raised and the question should be submitted to the jury. Knight v. First Fed. Sav. & Loan Ass'n, 151 Ga. App. 447, 260 S.E.2d 511, 1979 Ga. App. LEXIS 2569 (1979).

Section 7-4-12 inapplicable to awards of special master preceding judgment. — Twelve percent rate of O.C.G.A. § 7-4-12 applies only to judgments; any interest accruing under O.C.G.A. § 22-2-113 for that period of time following an award of the special master until the jury verdict and entry of final judgment is to be at legal interest rate established by § 7-4-2. City of Atlanta v. Wright, 159 Ga. App. 809, 285 S.E.2d 250, 1981 Ga. App. LEXIS 2824 (1981).

Court orders to pay money bear interest at seven percent. — Orders absolute given by inferior courts of this state for payment of money to other persons in liquidation of debts due by those courts draw interest just as other liquidated demands do, that is, those when sum is fixed, ascertained, and agreed to be paid bear interest at the rate of seven percent per annum. State ex rel. Greer v. Speer, 33 Ga. 93 (1864).

Award of prejudgment interest in federal court. — Admiralty courts have discretion in awarding prejudgment interest so federal rather than state law controls, and there is no abuse of discretion in a federal court's award of ten percent prejudgment interest. The fact that the suit was brought under the court's diversity jurisdiction does not affect this conclusion. Kilpatrick Marine Piling v. Fireman's Fund Ins. Co., 795 F.2d 940, 1986 U.S. App. LEXIS 27750 (11th Cir. 1986).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — Many of the opinions cited below were rendered under this Code section as it read prior to the 1983 amendment, which extensively rewrote this Code section.

Usury defined. — Usury is not the taking of interest from the borrower at an unlawful rate, but rather it is receiving from any source a greater sum for use of money than the lawful interest. 1969 Op. Att'y Gen. No. 69-53.

Carrying charges are limited to legal rate plus actual expenses incurred. — When no distinction is made between cash price and time price of an article, carrying charges are limited to legal rate of interest, plus any actual expense incurred by vendor incident to sale, such as fee for recording security instrument and reasonable protective insurance. 1954-56 Ga. Op. Att'y Gen. 448.

Service charge probably usurious. — If monthly service charge plan does not come within any specific exception set out by state law, then charge of one to one and a half percent per month of unpaid balance would probably be usurious. 1969 Op. Att'y Gen. No. 69-45.

Construction with Industrial Loan Act. — Merchant who makes cash advances of $3,000.00 or less is subject to the provisions of the Georgia Industrial Loan Act, O.C.G.A. § 7-3-1 et seq., rather than O.C.G.A. § 7-4-2(a)(2), unless the merchant charges eight percent simple interest per annum or less. 1984 Op. Att'y Gen. No. 84-79.

Loan or origination fee. — If a loan or origination fee charged in connection with a non-real estate loan under $3,000 is not adduced based on the time value of money, if its use merely increases the lender's expectation of collecting in full

the principal amount of the loan plus interest or if the fee is attributable to a service or benefit other than the extension of credit, and if the fee's factual justification is clearly documented in sufficient detail, such a fee should not be considered prepaid interest. 2003 Op. Att'y Gen. No. 2003-8.

Overdraft fees. — Overdraft fee will not be considered interest when the transaction is readily characterized as a checking account transaction, lacking the legal and economic reality of a loan or extension of credit, and when the fee is not determined based on the amount and time value of overdraft amounts. 2003 Op. Att'y Gen. No. 2003-9.

RESEARCH REFERENCES

Am. Jur. 2d.

44B Am. Jur. 2d, Interest and Usury, §§ 1, 3.

C.J.S.

47 C.J.S., Interest and Usury Consumer Credit, §§ 1 et seq., 84, 85.

ALR.

Provision in statute or ordinance limiting rate of interest per annum as precluding requirement of payment at maximum rate at intervals of less than a year, 29 A.L.R. 1109.

Validity of agreement to pay interest on interest, 37 A.L.R. 325; 76 A.L.R. 1484.

Construction of contractual provisions as to interest as regards time from which interest is to be computed, 69 A.L.R. 958.

Delay in paying over proceeds of loan to borrower as affecting question of usury, 76 A.L.R. 1467.

Obligations covering deferred payments of purchase money, or extension thereof, as loan or forbearance within usury laws, 91 A.L.R. 1105.

Validity, construction, and effect of express agreement releasing cause of action or defense based on exaction of usury, 99 A.L.R. 600.

Termination of interest, or reduction of interest rate, on deposit of public funds, 107 A.L.R. 1210.

Rate of interest chargeable against guardians, executors or administrators, and trustees, 112 A.L.R. 333.

Note or other obligation payable on demand for an amount in excess of amount actually loaned as usurious, 127 A.L.R. 460.

Finance charge in connection with conditional sale contract as usury, 143 A.L.R. 238.

Usury as affecting conditional sale contract, 152 A.L.R. 598.

Usury as predictable upon transaction in form a sale or exchange of commercial paper or other choses in action, 165 A.L.R. 626.

Retrospective application and effect of statutory provision for interest or changed rate of interest, 4 A.L.R.2d 932; 40 A.L.R.4th 147; 41 A.L.R.4th 694.

Computing interest on basis of 360 days in year, 30 days in month, or the like, as usury, 35 A.L.R.2d 842.

Taking or charging interest in advance as usury, 57 A.L.R.2d 630.

Interest upon arrearages or unpaid accumulations of annuities, 66 A.L.R.2d 857.

Usury as affected by repayment of, or borrower's option to repay, loan before maturity, 75 A.L.R.2d 1265.

What is "compound interest" within meaning of statutes prohibiting the charging of such interest, 10 A.L.R.3d 421.

Advance in price for credit sale as compared with cash sale as usury, 14 A.L.R.3d 1065.

Usury: effect of borrower's agreement to pay, guarantee, or secure some other debt owed to or by lender, 31 A.L.R.3d 763.

Validity and construction of provision (escalator clause) in land contract or mortgage that rate of interest payable shall increase if legal rate is raised, 60 A.L.R.3d 473.

Reformation of usurious contract, 74 A.L.R.3d 1239.

Validity under usury laws of provision calling for repayment of principal which exceeds sum loaned by amount reflecting any decline in purchasing power of dollar, 90 A.L.R.3d 763.

Contingency as to borrower's receipt of money or other property from which loan is to be repaid as rendering loan usurious, 92 A.L.R.3d 623.

Leaving part of loan on deposit with lender as usury, 92 A.L.R.3d 769.

Application of usury laws to transactions characterized as "leases," 94 A.L.R.3d 640.

Validity and construction of state statute or rule allowing or changing rate of prejudgment interest in tort actions, 40 A.L.R.4th 147.

Retrospective application and effect of state statute or rule allowing interest or changing rate of interest on judgments or verdicts, 41 A.L.R.4th 694.

Propriety of Landlord's Imposition of Fee for Late Payment of Rent, 49 A.L.R.7th Art. 2.

Intentional or Negligent Infliction of Emotional Distress in Aviation Cases Involving Crashes, Hard Landings, or In-Flight Injuries, 49 A.L.R.7th Art. 9.

7-4-3. Finance charges on certain retail installment contracts; contract provisions related to manufactured homes; violations.

(a) Notwithstanding the provisions of subsections (a) through (c) of Code Section 10-1-33, any retail installment contract pertaining to:

(1) Any manufactured home with a cash sale price of more than $3,000.00; or

(2) Any motor vehicle where the amount financed is $5,000.00 or more

may provide for such finance charge as the parties may agree in writing.

(b)(1) Any retail installment contract pertaining to a manufactured home or any consumer loan secured by such a home shall contain the contract provisions required by subsection (c) of Section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221 (12 U.S.C. Section 1735f-7, notes).

(2) Any person violating this subsection shall be subject to the liability specified in Code Section 7-4-5; provided, however, that the contract or loan shall still be entitled to the benefits of the other provisions of Code Section 7-4-2.

(c) As used in this Code section, the term:

(1) "Finance charge" means the amount agreed upon between the buyer and the seller to be added to the cash sale price and, if a separate charge is made therefor, the amount, if any, included for insurance and other benefits and official fees, in determining the time sale price.

(2) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and

includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of Housing and Urban Development and complies with the standards established under The National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

(3) "Retail installment contract" or "contract" means an instrument or instruments creating a purchase money security interest or any instrument evidencing an obligation secured by a purchase money security interest.

History.

Code 1981, § 7-4-3, enacted by Ga. L. 1983, p. 1146, § 2; Ga. L. 1985, p. 698, § 4; Ga. L. 2004, p. 631, § 7; Ga. L. 2024, p. 1052, § 1(a)(35)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "provided, however, that" for "but" in paragraph (b)(2).

Editor's notes.

Ga. L. 1983, p. 1146, § 2 repealed the former Code Section 7-4-3, relating to flexible maximum interest rates on real estate loans, and enacted the present Code Section 7-4-3, which became effective March 31, 1983.

JUDICIAL DECISIONS

Controlling nature of section as to mobile homes. — Since the General Assembly, beginning in 1983, has distinguished between mobile home loans and motor vehicle loans, and since O.C.G.A. § 7-4-3(a)(1) and (b)(1), as amended in 1983, deal specifically with mobile home installment sales contracts, whereas O.C.G.A. § 10-1-33(d), as amended in 1985, does not, paragraphs (a)(1) and (b)(1) express the controlling legislation and legislative intent on mobile home installment sales contracts in excess of $3,000. Southern Guar. Corp. v. Doyle, 256 Ga. 790, 353 S.E.2d 510, 1987 Ga. LEXIS 657 (1987).

Retroactivity. — The 1983 enactment of O.C.G.A. § 7-4-3(a), which provides that O.C.G.A. § 10-1-33 shall not apply to retail installment contracts pertaining to any manufactured home with a cash sales price of more than $3,000.00, does not operate retroactively so as to eliminate any cause of action a manufactured home purchaser may have acquired under O.C.G.A. § 10-1-38 by a transaction prior to the 1983 act's effective date. Southern Guar. Corp. v. Doyle, 256 Ga. 790, 353 S.E.2d 510, 1987 Ga. LEXIS 657 (1987).

7-4-4. Advertisement of rates of interest or finance charge.

(a) No person shall advertise in or through any newspaper, radio, television, letter, circular, billhead, or in any way or through any medium any rate of interest or finance charge pertaining to any consumer credit transactions other than a rate stated in simple interest terms or a rate stated in terms which would comply with the federal

Truth in Lending Simplification and Reform Act, Public Law 96-221 (15 U.S.C. Sections 57a and 1602, et seq.).

(b) There is no liability under this Code section on the part of any owner or personnel of any medium in which an advertisement appears or through which it is disseminated when the publisher, owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement, did not prepare the advertisement, or did not have a direct financial interest in the sale or distribution of the advertised product or service.

(c) Nothing contained in this Code section shall be construed to amend, modify, or repeal any of the provisions of Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975."

History.
Code 1981, § 7-4-4, enacted by Ga. L. 1983, p. 1146, § 3; Ga. L. 1984, p. 22, § 7; Ga. L. 2024, p. 1052, § 1(a)(36)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "U.S.C. Sections 57a" for "U.S.C. 57(a)" in subsection (a) and deleted "known as" following "Title 10," in subsection (c).

Editor's notes.
Ga. L. 1983, p. 1146, § 3 repealed former Code Section 7-4-4, relating to maximum interest rates on installment loans and giving security for principal and interest, and enacted present Code Section 7-4-4, which became effective March 31, 1983.

RESEARCH REFERENCES

ALR.
What constitutes "finance charge" under § 106(a) of the Truth in Lending Act (15 USCA § 1605(a)) or applicable regulations, 154 A.L.R. Fed. 431.

Validity, construction, and application of Truth in Lending Act (TILA) and regulations promulgated thereunder — United States Supreme Court cases, 67 A.L.R. Fed. 2d 567.

7-4-5. Failure to include required contract provisions for manufactured homes; violation of advertising restrictions.

(a) Any person who fails to comply with subsection (b) of Code Section 7-4-3 or Code Section 7-4-4 with respect to any person is liable to such person in an amount equal to the sum of:

(1) Any actual damage sustained by such person as a result of the failure; and

(2) Twice the amount of any interest or finance charge contracted for in connection with the transaction, except that the liability under this paragraph shall not be less than $100.00 nor greater than $1,000.00.

(b) Such liability may be asserted in an individual action only and may not be the subject of a class action; provided, however, that this

provision shall not apply to any class action pending prior to March 31, 1983.

History.
Code 1981, § 7-4-5, enacted by Ga. L. 1983, p. 1146, § 4; Ga. L. 2020, p. 493, § 7/SB 429.
Editor's notes.
Ga. L. 1983, p. 1146, § 4 repealed former Code Section 7-4-5, relating to maximum interest on loans secured by deposits or savings account, and enacted present Code Section 7-4-5, which became effective March 31, 1983.

7-4-6. [Reserved] No limit on interest rate payable by profit corporations or persons on nonconsumer loans in excess of $3,000.00.

History.
Code 1933, § 57-118, enacted by Ga. L. 1961, p. 300, §§ 1, 2; Ga. L. 1979, p. 355, § 2; repealed by Ga. L. 1983, p. 1146, § 8, effective March 31, 1983.
Editor's notes.
Ga. L. 1983, p. 1146, § 8 repealed and reserved this Code section, effective March 31, 1983.

7-4-7. [Reserved] No limit on interest rate on loans of $100,000.00 or more.

History.
Code 1933, § 57-119, enacted by Ga. L. 1969, p. 80, §§ 1, 2, 5; repealed by Ga. L. 1983, p. 1146, § 8, effective March 31, 1983.
Editor's notes.
Ga. L. 1983, p. 1146, § 8 repealed and reserved this Code section, effective March 31, 1983.

7-4-8. Commission to third person does not make lawful interest usurious.

Except as the application of this Code section is modified by Code Section 7-3-5, where the lender neither takes nor contracts to take more than lawful interest, the loan is not rendered usurious by money paid or agreed to be paid others by the borrower in order to obtain the loan.

History.
Civil Code 1895, § 2887; Civil Code 1910, § 3437; Code 1933, § 57-104; Ga. L. 1957, p. 331, § 3.
History of Code section.
This Code section is derived from the decisions in Merck v. American Freehold Land Mfg. Co., 79 Ga. 213, 7 S.E. 265 (1887), and Hughes v. Griswold, 82 Ga. 299, 9 S.E. 1092 (1889).
Editor's notes.
Code Section 7-3-5, referred to in this Code section, was repealed by Ga. L. 2020, p. 156, § 2/SB462, effective June 30, 2020.
Law reviews.
For note discussing the applicability of the usury laws to legitimate brokers' commissions, see 12 Ga. L. Rev. 814 (1978).
For article discussing methods of computation of finance charges in Georgia consumer credit contracts, see 30 Mercer L. Rev. 281 (1978).

JUDICIAL DECISIONS

Commission to surety is not usurious. — Premium or commission paid by principal maker of promissory note to endorser or surety to protect latter in risk assumed and to compensate the endorser for the endorser's services in procuring loan for which note is given, in which premium or commission lender has no interest, is in no sense usury. Jones v. Norton, 9 Ga. App. 333, 71 S.E. 687, 1911 Ga. App. LEXIS 540 (1911); Morgan v. Shepherd, 171 Ga. 33, 154 S.E. 780, 1930 Ga. LEXIS 277 (1930).

Whether one is agent of borrower or of lender is question for jury. — Question whether agent was agent of borrower or of lender is question of fact which should be decided by jury. Williams v. Forman, 18 Ga. App. 242, 89 S.E. 459, 1916 Ga. App. LEXIS 258 (1916).

RESEARCH REFERENCES

Am. Jur. 2d.

45 Am. Jur. 2d, Interest and Usury, § 153 et seq.

C.J.S.

47 C.J.S., Interest and Usury Consumer Credit, § 243.

ALR.

Usury: expenses or charges (including taxes) incident to loan of money, 53 A.L.R. 743; 63 A.L.R. 823; 105 A.L.R. 795.

Usury: expenses or charges in form of commissions to agents, brokers, or like intermediaries incident to loan of money, 52 A.L.R.2d 703.

Payments under (ostensibly) independent contract as usury, 81 A.L.R.2d 1280.

Usury: charging borrower for or with expense or trouble of procuring money loaned, 91 A.L.R.2d 1389.

7-4-9. Back interest may be stipulated in contract and recovered.

Interest from date, if the debt is not punctually paid at maturity, may be recovered when so stipulated in the contract, provided that interest has not already been included in the principal amount.

History.

Orig. Code 1863, § 2025; Code 1868, § 2026; Code 1873, § 2052; Code 1882, § 2052; Civil Code 1895, § 2879; Civil Code 1910, § 3429; Code 1933, § 57-105; Ga. L. 2024, p. 1052, § 1(a)(37)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "provided that interest" for "provided interest" in this Code section.

Law reviews.

For article on Georgia's usury laws and interest on interest, see 8 Ga. St. U.L. Rev. 291 (1992).

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Interest on past due interest. — There is no inhibition against charging interest on interest which is past due. Hardy v. G.A.C. Fin. Corp., 131 Ga. App. 282, 205 S.E.2d 526, 1974 Ga. App. LEXIS 1403, aff'd, 232 Ga. 632, 208 S.E.2d 453, 1974 Ga. LEXIS 1036 (1974).

Interest obligation note is liquidated demand bearing interest upon maturity. — When obligation to

pay interest is put in form of an interest note, that note becomes a liquidated demand; and when it is not paid at maturity it bears interest as such, certainly if parties have contracted that it should. Hardy v. G.A.C. Fin. Corp., 131 Ga. App. 282, 205 S.E.2d 526, 1974 Ga. App. LEXIS 1403, aff'd, 232 Ga. 632, 208 S.E.2d 453, 1974 Ga. LEXIS 1036 (1974).

RESEARCH REFERENCES

Am. Jur. 2d.

44B Am. Jur. 2d, Interest and Usury, § 262.

C.J.S.

47 C.J.S., Interest and Usury Consumer Credit, § 134 et seq.

ALR.

Rate of interest after maturity on contracts fixing rate "until payment", 6 A.L.R. 1196.

Right to have usurious payments made on previous obligation applied as payment of principal on renewal, 13 A.L.R. 1244.

Interest on certificate of deposit after maturity, 15 A.L.R. 650.

Right to interest on overdue instalments of interest, in absence of provision therefor, 27 A.L.R. 81.

Right of partners inter se in respect of interest, 66 A.L.R. 3.

Construction of contractual provisions as to interest as regards time from which interest is to be computed, 69 A.L.R. 958.

Payment of or offer to pay principal and legal interest as condition of relief in equity against usurious contract, 70 A.L.R. 693; 135 A.L.R. 808; 166 A.L.R. 458.

Who other than borrower may avail himself to latter's right to recover back usurious payments or penalties therefor, 82 A.L.R. 1008; 134 A.L.R. 1335.

Income tax in respect of amount collected on a debt which had been deducted as a bad debt in the return for a previous year, 143 A.L.R. 338.

Right of holder of commercial paper to interest or finance charges applicable to period after acceleration of maturity of obligation because of debtor's default, 63 A.L.R.3d 10.

Contingency as to borrower's receipt of money or other property from which loan is to be repaid as rendering loan usurious, 92 A.L.R.3d 623.

7-4-10. Usury forfeits entire interest; right of setoff; how forfeiture discharged; when time bars action or defense.

(a) Any person, company, or corporation violating the provisions of Code Section 7-4-2 shall forfeit the entire interest so charged or taken or contracted to be reserved, charged, or taken. No further penalty or forfeiture shall be occasioned, suffered, or allowed.

(b) The amount forfeited as provided in subsection (a) of this Code section may be pleaded as a setoff in any action for the recovery of the principal sum loaned or advanced by the defendant in said action.

(c) No contrivance or arrangement between the parties to any such unlawful transaction or their privies, except an actual and full payment of the amount forfeited as provided in subsection (a) of this Code section, shall have the effect of discharging such forfeiture.

(d) No plea or action for the recovery of such forfeiture shall be barred by lapse of time shorter than one year.

History.

Ga. L. 1875, p. 105, §§ 3, 4; Code 1882, §§ 2057b, 2057c, 2057d, 2057e; Civil Code 1895, §§ 2888, 2889, 2890, 2891; Civil Code 1910, §§ 3438, 3439, 3440, 3441; Ga. L. 1916, p. 48, §§ 1, 2; Code 1933, §§ 57-112, 57-113, 57-114, 57-115.

Law reviews.

For note discussing problems with profits generated by escrow account, and proposing federal legislative reform, see 10 Ga. St. B.J. 618 (1974).

For note discussing penalties for violations of the usury statutes, and procedures for invoking the usury defense, see 12 Ga. L. Rev. 814 (1978).

For article discussing methods of computation of finance charges in Georgia consumer credit contracts, see 30 Mercer L. Rev. 281 (1978).

JUDICIAL DECISIONS

Analysis

General Consideration
Forfeiture
Setoff
Statute of Limitations

General Consideration

Actual performance of usurious agreement not required. — Taint of usury does not result from payment of usurious interest, but from agreement to do so, whether performed or unperformed. Duderwicz v. Sweetwater Sav. Ass'n, 595 F.2d 1008, 1979 U.S. App. LEXIS 14500 (5th Cir. 1979).

Once there is usury, the usury infects any renewal note for the same debt or any part thereof unless the usury is purged. A determination as to the application of former O.C.G.A. § 7-4-7, which provided for no limit of interest rate on loans of $100,000.00 or more, cannot be decided without a complete accounting to purge all usurious interest (to be applied to principal, if paid) and then a determination made as to whether or not the principal of the original note was for $100,000 or more, which would insulate it against the defense of usury. McNair v. Gold Kist, Inc., 166 Ga. App. 782, 305 S.E.2d 478, 1983 Ga. App. LEXIS 2330 (1983).

Unilateral action cannot purge usurious taint. — Allegedly usurious loan transaction cannot be purged of usurious taint through unilateral action of the lender. Duderwicz v. Sweetwater Sav. Ass'n, 595 F.2d 1008, 1979 U.S. App. LEXIS 14500 (5th Cir. 1979).

To purge contract of usury, the contract must be wholly abandoned or cancelled, and a new obligation undertaken containing no part of the usury. Duderwicz v. Sweetwater Sav. Ass'n, 595 F.2d 1008, 1979 U.S. App. LEXIS 14500 (5th Cir. 1979).

Tender of principal required prior to intervention to prevent foreclosure. — Before a borrower who has executed a deed infected with usury can have affirmative equitable relief, such as injunction to prevent exercise of power of sale by grantee in such security deed, the borrower must pay or tender to the grantee the principal sum due. McGraw v. Planters' Bank, 178 Ga. 580, 173 S.E. 643, 1934 Ga. LEXIS 104 (1934).

Since interest only is subject to forfeiture, principal amount of indebtedness must be tendered before equity will intervene to prevent foreclosure sale. Citizens & S.S. DeKalb Bank v. Watkins, 236 Ga. 759, 225 S.E.2d 266, 1976 Ga. LEXIS 1017 (1976).

No forfeiture when claim amended to legal rate. — Plaintiff did not forfeit any right to interest on an open account for seeking a higher interest rate than that allowed by law when, before trial, the plaintiff amended the plaintiff's pleadings to seek the statutorily permitted rate of interest on commercial accounts. Belvin v.

General Consideration (Cont'd)

Houston Fertilizer & Grain Co., 169 Ga. App. 100, 311 S.E.2d 526, 1983 Ga. App. LEXIS 2993 (1983).

Judgment for principal and attorney's fees does not bear interest. — When note is tainted with usury and judgment is obtained for amount advanced and for attorney's fees, as provided for in note, the judgment obtained does not bear interest. Taylor v. Merchants Mut. Credit Corp., 100 Ga. App. 634, 112 S.E.2d 188, 1959 Ga. App. LEXIS 682 (1959).

Waiver of homestead in usurious contract is void. — Nothing in former Code 1882, § 2057 militated against the view that waiver of right of homestead and exemption, made as part of usurious contract, was void. Cleghorn v. Greeson, 77 Ga. 343, 1886 Ga. LEXIS 331 (1886).

Federal savings and loan associations subject to usury laws. — Federal savings and loan association doing business in this state is subject to operation of usury laws and in making loans must comply with provisions thereof. However, such association may require borrower to pay necessary initial charges in connection with making of loan. First Fed. Sav. & Loan Ass'n v. Norwood Realty Co., 212 Ga. 524, 93 S.E.2d 763, 1956 Ga. LEXIS 434 (1956).

Forfeiture

Operation of subsections (a) and (d) of this section. — Under former Code 1933, § 57-112, all interest on a usurious loan was forfeited and payments thereon go in reduction of principal, and any payments made after principal was paid off can be recovered, if paid within 12 months next before filing suit therefor. Hartsfield Co. v. Watkins, 67 Ga. App. 411, 20 S.E.2d 440, 1942 Ga. App. LEXIS 431 (1942); Duderwicz v. Sweetwater Sav. Ass'n, 595 F.2d 1008, 1979 U.S. App. LEXIS 14500 (5th Cir. 1979).

Under former Code 1933, § 57-112, one who lends at usurious rate forfeits interest and other charges for making the loan. Childs v. Liberty Loan Corp., 144 Ga. App. 715, 242 S.E.2d 354, 1978 Ga. App. LEXIS 1762 (1978).

Forfeiture extends to interest and charges not to principal. — One who lends at a usurious rate forfeits only interest and other charges for making loan — not principal. Service Loan & Fin. Corp. v. McDaniel, 115 Ga. App. 548, 154 S.E.2d 823, 1967 Ga. App. LEXIS 1167 (1967).

Usurious interest rate charged in a note did not void the entire transaction; thus, the interest, but not the principal was forfeited. Aikens v. Wagner, 231 Ga. App. 178, 498 S.E.2d 766.

Entire interest forfeited. — Any person charging more than maximum rate of interest forfeits entire interest. Murdock Acceptance Corp. v. Wagnon, 587 F.2d 764, 1979 U.S. App. LEXIS 17643 (5th Cir. 1979).

Unpaid interest forfeited. — Interest contracted for but not yet paid is subject to forfeiture. Duderwicz v. Sweetwater Sav. Ass'n, 595 F.2d 1008, 1979 U.S. App. LEXIS 14500 (5th Cir. 1979).

Payments exceeding principal, not barred by statute of limitations. — Under former Code 1933, § 57-112 all money shown to have been paid in excess of principal amount of loan and not barred by statute of limitations was recoverable. Family Home Servs., Inc. v. Taylor, 142 Ga. App. 386, 236 S.E.2d 28, 1977 Ga. App. LEXIS 1626 (1977).

All interest forfeited when payments are applied to principal. — All interest is forfeited when loan is usurious and payments on such loan are applied to principal amount of debt. Hartsfield Co. v. Watkins, 67 Ga. App. 411, 20 S.E.2d 440, 1942 Ga. App. LEXIS 431 (1942).

Prepaid finance charge is subject to forfeiture if loan is usurious. — Prepaid finance charge for making a loan which is not paid to a separate legal entity but to a lender in the lender's own right is subject to the forfeiture provision of former Code 1933, § 57-112 when the loan is usurious. Childs v. Liberty Loan Corp.,

144 Ga. App. 715, 242 S.E.2d 354, 1978 Ga. App. LEXIS 1762 (1978).

Forfeiture of interest is only penalty when deed secures usurious debt. — Deed executed by a borrower purporting to convey title to the lender to secure a debt infected with usury was not void because so infected with usury. The only penalty to be incurred, under Acts 1916, p. 48, was to forfeit entire interest charged or taken, or contracted to be reserved, charged, or taken. McGraw v. Planters' Bank, 178 Ga. 580, 173 S.E. 643, 1934 Ga. LEXIS 104 (1934).

Setoff

Usurious interest paid may not be setoff against independent claims or recovered per se after lapse of one year after its payment. Feeney Hay Co. v. Suggs, 60 Ga. App. 42, 2 S.E.2d 806, 1939 Ga. App. LEXIS 496 (1939).

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Suit to recover forfeiture must be brought within one year from payment. Baker v. Moultrie Banking Co., 53 Ga. App. 107, 184 S.E. 894, 1936 Ga. App. LEXIS 17 (1936).

Suits for recovery of forfeiture must be brought within 12 months from payment. Hartsfield Co. v. Watkins, 67 Ga. App. 411, 20 S.E.2d 440, 1942 Ga. App. LEXIS 431 (1942).

Forfeiture referred to in former Code 1933, § 57-115 (see now O.C.G.A. § 7-4-10(d)) was that provided for in former Code 1933, § 57-112 (see now O.C.G.A. § 7-4-10(a)). Duderwicz v. Sweetwater Sav. Ass'n, 595 F.2d 1008, 1979 U.S. App. LEXIS 14500 (5th Cir. 1979).

Subsection (d) not complete bar. — Rather than concluding that O.C.G.A. § 7-4-10(d) acts as a complete bar to actions filed more than a year after contract formation, the courts interpreting that section have held that the statute bars only actions to affirmatively recover interest paid more than a year before the action was instituted. Doyle v. Southern Guar. Corp., 795 F.2d 907, 1986 U.S. App. LEXIS 27236 (11th Cir. 1986).

Subsection (d) does not prevent plea claiming credit towards principal. — When a lender charges for use of money a greater rate of interest than is permitted by law, the whole charge for interest is forfeited, and all payments made by debtor may be claimed by the debtor as credits upon the principal sum loaned; to such claim, no matter when payments were made, statutory bar of one year is not applicable; and this is true even though the debtor may have given express direction that payments be applied to interest. Reconstruction Fin. Corp. v. Puckett, 181 Ga. 288, 181 S.E. 861, 1935 Ga. LEXIS 72 (1935).

Limitation inapplicable to defensive pleading alleging payment of usurious debt. — Plea alleging payment of debt infected with usury may be properly filed to an action on debt, notwithstanding more than 12 months have elapsed after payment before plea is filed. Haskins v. Bank of State, 100 Ga. 216, 27 S.E. 985, 1897 Ga. LEXIS 27 (1897), overruled, Montgomery v. Reynolds, 124 Ga. 1053, 53 S.E. 512, 1906 Ga. LEXIS 694 (1906), overruled in part, Broadway Nat'l Bank v. Kendrick, 124 Ga. 1053, 53 S.E. 576, 1906 Ga. LEXIS 695 (1906); Atlanta Sav. Bank v. Spencer, 107 Ga. 629, 33 S.E. 878, 1899 Ga. LEXIS 114 (1899); Lankford v. Peterson, 21 Ga. App. 1, 93 S.E. 499, 1917 Ga. App. LEXIS 392 (1917).

Timely petition cannot be amended to recover usury barred by limitation. — Petition to recover usury cannot be amended by adding a count which seeks to recover for other usury paid on a date more than one year before tendering of amendment. Baker v. Moultrie Banking Co., 53 Ga. App. 107, 184 S.E. 894, 1936 Ga. App. LEXIS 17 (1936).

Statute of limitations in National Banking Act inapplicable to usury defense. — Statutory limitation of two years in National Banking Act of June 3, 1864, c. 106, 13 Stat. 99, applies only to suit to recover penalty of double interest

Statute of Limitations (Cont'd)

received or paid, and not to defense of usury to defeat recovery of interest, and begins to run from time of payment of usurious interest. Young v. First Nat'l Bank, 22 Ga. App. 58, 95 S.E. 381, 1918 Ga. App. LEXIS 147 (1918).

RESEARCH REFERENCES

Am. Jur. 2d.

44B Am. Jur. 2d, Interest and Usury, §§ 172 et seq., 196, 286 et seq.

C.J.S.

47 C.J.S., Interest and Usury Consumer Credit, §§ 286 et seq., 325, 400, 401.

ALR.

Right to have usurious payments made on previous obligation applied as payment of principal on renewal, 13 A.L.R. 1244.

Affirmative liability for usurious penalty or excess interest paid under usurious contract in event of assignment or transfer, 78 A.L.R. 408.

Right to have usurious payments of interest applied as credit on principal as affected by statute of limitations, 101 A.L.R. 741.

Validity or voluntary conveyance consideration for which was tainted by usury, 102 A.L.R. 483.

When does limitation commence to run against action, defense, or counterclaim based on usury, 108 A.L.R. 622.

Right of junior mortgagee to attack senior mortgage for usury, 121 A.L.R. 879.

Usury as affecting conditional sale contract, 152 A.L.R. 598.

Payment or offer to pay principal and interest as condition of relief in equity against usurious contract, 166 A.L.R. 458.

Availability of setoff, counterclaim, or the like to recover either penalty for usury in, or usurious interest paid on, separate transaction or instrument, 54 A.L.R.2d 1344.

Right, in absence of statute expressly so providing, to recover back usurious payments, 59 A.L.R.2d 522.

Validity, and applicability to causes of action not already barred, of a statute enlarging limitation period, 79 A.L.R.2d 1080.

Statute of limitations: effect of delay in appointing administrator or other representative on cause of action accruing at or after death of person in whose favor it would have accrued, 28 A.L.R.3d 1141.

Validity under usury laws of provision calling for repayment of principal which exceeds sum loaned by amount reflecting any decline in purchasing power of dollar, 90 A.L.R.3d 763.

7-4-11. Usury is personal defense; no collection from insolvent to prejudice of others.

Usury is a personal defense; provided, however, that a creditor may not collect usurious interest from an insolvent debtor to the prejudice of other creditors.

History.

Civil Code 1895, § 2878; Civil Code 1910, § 3428; Code 1933, § 57-103; Ga. L. 2024, p. 1052, § 1(a)(38)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "provided, however, that" for "but" in this Code section.

History of Code section.

This Code section is derived from the decision in Burgwyn Bros., Tobacco Co. v. Bentley & Co., 90 Ga. 508, 16 S.E. 216 (1892).

Law reviews.

For note discussing whether a holder in due course takes free of claims of violations of the usury laws, see 12 Ga. L. Rev. 814 (1978).

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Defense of usury is personal to debtor, and may not be urged save by borrower or borrower's privies. Clark v. Kaiser Agric. Chems., 156 Ga. App. 251, 274 S.E.2d 648, 1980 Ga. App. LEXIS 3019 (1980); Plowden v. Peoples Fin. Corp. (In re Pair), 14 B.R. 732, 1981 Bankr. LEXIS 2779 (Bankr. N.D. Ga. 1981).

Plea of usury is personal and because the usury laws protect the debtor, not the debt, the parties' various rights concerning the debt belongs to them only so long as they remain within a lender-borrower relationship. Lindenberg v. First Fed. Sav. & Loan Ass'n, 528 F. Supp. 440, 1981 U.S. Dist. LEXIS 16202 (N.D. Ga. 1981), aff'd, 691 F.2d 974, 1982 U.S. App. LEXIS 24143 (11th Cir. 1982).

Counterclaim or separate suit unnecessary. — Usury is a defense and need not be asserted as a counterclaim or in separate suit. Williams v. First Bank & Trust Co., 154 Ga. App. 879, 269 S.E.2d 923, 1980 Ga. App. LEXIS 2428 (1980).

Before defense raised, obligation to pay indebtedness prima facie valid. — Defense of usury is a matter personal to the debtor and, before the debtor has made such defense, the debtor's obligation to pay the indebtedness infected with usury is prima facie valid. Napier v. Jordan, 52 Ga. App. 585, 183 S.E. 854, 1936 Ga. App. LEXIS 189 (1936).

Borrower cannot use usury statute to take advantage of own wrong. Eiberger v. West, 247 Ga. 767, 281 S.E.2d 148, 1981 Ga. LEXIS 880 (1981).

Estoppel can lie to bar defense of usury. Eiberger v. West, 247 Ga. 767, 281 S.E.2d 148, 1981 Ga. LEXIS 880 (1981).

Failure to plead usury results in an estoppel to rely upon it as a defense. Clark v. Kaiser Agric. Chems., 156 Ga. App. 251, 274 S.E.2d 648, 1980 Ga. App. LEXIS 3019 (1980).

One failing to set up defense of usury is concluded by judgment. Clark v. Kaiser Agric. Chems., 156 Ga. App. 251, 274 S.E.2d 648, 1980 Ga. App. LEXIS 3019 (1980).

Failure to raise defense of usury precludes attack levy of execution. — Debtor who has had the debtor's day in court will not be heard to attack levy of execution on ground that the debt was infected with usury. Wilkinson v. Holton, 119 Ga. 557, 46 S.E. 620, 1904 Ga. LEXIS 275 (1904); Clark v. Kaiser Agric. Chems., 156 Ga. App. 251, 274 S.E.2d 648, 1980 Ga. App. LEXIS 3019 (1980).

Advertisement of collateral not tortious when defense not raised. — Fact that after creditor has advertised property for sale for payment of a usurious debt, the debtor, in a bill in equity to enjoin sale, sets up usury and shows that the debtor has paid all that the debtor was legally liable for, and obtains a judgment against the creditor for an amount which debtor overpaid, does not so relate as to give any tortious character to the creditor's original act in advertising property for sale. Napier v. Jordan, 52 Ga. App. 585, 183 S.E. 854, 1936 Ga. App. LEXIS 189 (1936).

Creditor of insolvent may attack claim of another creditor as usurious. — While plea of usury is a personal one which can be set up by a debtor only, when the debtor is insolvent and there is a fund in court to be distributed, equity will allow one creditor to suggest usury as to claim of another, and compel usurious creditor to write off usury and receive only principal and legal interest. Stone v. Georgia Loan & Trust Co., 107 Ga. 524, 33 S.E. 861, 1899 Ga. LEXIS 105 (1899).

Under former Civil Code 1895, § 2878 petitioning creditors in bankruptcy may attack validity of deed by which alleged bankrupt has conveyed to another creditor a valuable part of the bankrupt's estate on the ground that it was usurious, and the court of bankruptcy has power to enjoin the sale of property by the grantee pending adjudication of the question. In re Miller, 118 F. 360, 1901 U.S. Dist. LEXIS 8 (D. Ga. 1901).

Assignee of bond for title can attack conveyance to usurer. — Assignee of bond for title can attack in equity a conveyance to one who had advanced money to complete purchase for usury. First Nat'l Bank v. Rambo, 143 Ga. 665, 85 S.E. 840, 1915 Ga. LEXIS 571 (1915).

Creditor of a party who makes a conveyance tainted with usury is a

privy. Stone v. Georgia Loan & Trust Co., 107 Ga. 524, 33 S.E. 861, 1899 Ga. LEXIS 105 (1899).

RESEARCH REFERENCES

Am. Jur. 2d.
44B Am. Jur. 2d, Interest and Usury, § 183.
C.J.S.
47 C.J.S., Interest and Usury Consumer Credit, § 351.
ALR.
Right of junior mortgagee to attack senior mortgage for usury, 59 A.L.R. 342; 121 A.L.R. 879.
Right of surety or guarantor to avail himself of defense of usury, 70 A.L.R. 359.
Survival of claim for usury against estate of usurer, 78 A.L.R. 451.
Who other than borrower may avail himself to latter's right to recover back usurious payments or penalties therefor, 82 A.L.R. 1008; 134 A.L.R. 1335.
Validity, construction, and effect of express agreement releasing cause of action or defense based on exaction of usury, 99 A.L.R. 600.
Estoppel to assert usury against innocent purchaser of usurious instrument, 110 A.L.R. 451.
Statute denying defense of usury to corporation, 63 A.L.R.2d 924.
Right of attachment or judgment creditor, or officer standing in his shoes, to attack older lien or security interest for usury, 70 A.L.R.2d 1409.

7-4-12. Interest on judgments.

(a) All judgments in this state shall bear annual interest upon the principal amount recovered at a rate equal to the prime rate as published by the Board of Governors of the Federal Reserve System, as published in statistical release H. 15 or any publication that may supersede it, on the day the judgment is entered plus 3 percent.

(b) If the judgment is rendered on a written contract or obligation providing for interest at a specified rate, the judgment shall bear interest at the rate specified in the contract or obligation.

(c) The postjudgment interest provided for in this Code section shall apply automatically to all judgments in this state and the interest shall be collectable as a part of each judgment whether or not the judgment specifically reflects the entitlement to postjudgment interest.

(d) This Code section shall apply to all civil actions filed on or after July 1, 2003.

History.
Laws 1845, Cobb's 1851 Digest, p. 394.; Code 1863, § 2027; Code 1868, § 2028; Code 1873, § 2054; Code 1882, § 2054; Civil Code 1895, § 2882; Civil Code 1910, § 3432; Code 1933, § 57-108; Ga. L. 1980, p. 1118, § 1; Ga. L. 1986, p. 195, § 1; Ga. L. 1987, p. 352, § 1; Ga. L. 1989, p. 14, § 7; Ga. L. 2003, p. 820, § 1.

Cross references.
Amount of judgment upon which interest may be charged, § 9-12-10.
Pre-judgment interest in highway condemnation proceedings, § 32-3-19.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1988, the hyphen was deleted in the word "postjudgment" in subsection (c).

Pursuant to Code Section 28-9-5, in 2003, "July 1, 2003" was substituted for "the effective date of this Code section" in subsection (d).

Editor's notes.

Ga. L. 2003, p. 820, § 9, not codified by the General Assembly, provides that this Act "shall apply to all civil actions filed on or after July 1, 2003."

Law reviews.

For article discussing methods of computation of finance charges in Georgia consumer credit contracts, see 30 Mercer L. Rev. 281 (1978).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 28 (2003).

For annual survey of trial practice and procedure, see 56 Mercer L. Rev. 433 (2004).

JUDICIAL DECISIONS

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General Consideration

Construction with O.C.G.A. § 51-12-14. — Trial court did not err in adding interest to the award before considering whether the judgment was greater than the demand for purposes of O.C.G.A. § 51-12-14, as § 51-12-14 had to be construed in pari materia with O.C.G.A. § 7-4-12; post-judgment interest continued to accrue under § 7-4-12 until the set-off became effective under O.C.G.A. § 9-13-75. Sec. Life Ins. Co. v. St. Paul Marine & Fire Ins. Co., 263 Ga. App. 525, 588 S.E.2d 319, 2003 Ga. App. LEXIS 1255 (2003), rev'd, No. S04G0322, 2004 Ga. LEXIS 1038 (Ga. Nov. 22, 2004), aff'd in part and rev'd in part, 278 Ga. 800, 606 S.E.2d 855, 2004 Ga. LEXIS 1078 (2004), vacated in part, 273 Ga. App. 91, 614 S.E.2d 477, 2005 Ga. App. LEXIS 417 (2005).

Interest on judgments mandatory. — See Gunnin v. Parker, 198 Ga. App. 864, 403 S.E.2d 822, 1991 Ga. App. LEXIS 318 (1991), cert. denied, No. S91C0897, 1991 Ga. LEXIS 739 (Ga. May 22, 1991), cert. denied, No. S91C0849, 1991 Ga. LEXIS 741 (Ga. May 22, 1991).

In a condemnation action, the trial court's ordering that post-judgment interest was to cease after the filing of the notice of appeal was in error as post-judgment interest was not abated by an appeal of a judgment and was due until the date the judgment was paid in full under O.C.G.A. § 9-11-67. Joe & James Props. v. City of Atlanta, 368 Ga. App. 302, 890 S.E.2d 21, 2023 Ga. App. LEXIS 301 (2023).

Judgment is a liquidated demand of highest dignity upon which creditor is entitled to interest. Executrix of Houston v. Mossman, 1 Ga. Rpt. Ann. (T.U.P.C. 138) 50 (1807).

Judgment for sum certain required. — Mandate of O.C.G.A. § 7-4-12 that judgments bear interest "upon the principal amount recovered..." presupposes the rendition of a judgment of a sum certain; thus, in an action seeking declaration of the value of a homeplace equity that was not established at the time of a divorce judgment, the former wife was entitled to interest from the date of the declaratory judgment, not from the date of entry of the divorce judgment. Brown v. Brown, 265 Ga. 725, 462 S.E.2d 609, 1995 Ga. LEXIS 860 (1995).

Trial court did not err in denying a request for post-judgment interest since no judgment for a sum certain was entered. McClure v. Raper, 277 Ga. 642, 594 S.E.2d 330, 2004 Ga. LEXIS 196 (2004).

Retroactivity of increase. — The 1980 amendment, which raised the interest on judgments from 7 percent to 12 percent, applied, as of July 1, 1980 (the

General Consideration (Cont'd)

effective date of the amendment), to judgments rendered before the effective date of the amendment but not satisfied by then. Shook & Fletcher Insulation Co. v. Central Rigging & Contracting Corp., 684 F.2d 1383, 1982 U.S. App. LEXIS 25880 (11th Cir. 1982). But see DOT v. Delta Mach. Prods. Co., 162 Ga. App. 252, 291 S.E.2d 104, 1982 Ga. App. LEXIS 2130 (1982); Camellia Corp. v. Cornell, 162 Ga. App. 362, 291 S.E.2d 556, 1982 Ga. App. LEXIS 2169 (1982).

Application by federal court. — Federal district court used an interest rate of 12% based on O.C.G.A. § 7-4-12, in computing the total amount of damages in an action for retirement benefits under the federal Employee Retirement Income Security Act, 29 U.S.C. § 1051 et seq. Williams v. Wright, 783 F. Supp. 1392, 1992 U.S. Dist. LEXIS 1756 (S.D. Ga. 1992).

If forfeiture provision of § 7-4-10(a) applicable, judgment bears no interest. — If usurious interest was reserved for a loan of money, and in suit by lender against the debtor, the judgment was rendered for the principal amount only, interest being forfeited by virtue of Acts 1916, p. 48 (see now O.C.G.A. § 7-4-10(a)), such judgment bears no interest as that Act prohibited recovery of any interest if usury was charged. Tennille Banking Co. v. Quinn, 156 Ga. 159, 118 S.E. 644, 1923 Ga. LEXIS 218 (1923).

Commercial accounts. — Commercial account is not, by virtue of O.C.G.A. § 7-4-16, regarding when interest runs on commercial accounts, transformed into such an "obligation" as would come within the exception to the standard post-judgment interest rate of 12 percent per year that is established by O.C.G.A. § 7-4-12. ADC Constr. Co. v. Hall, 202 Ga. App. 119, 413 S.E.2d 522, 1991 Ga. App. LEXIS 1718 (1991).

Section applicable in action upon revolving account. — Although general usury statutes are inapplicable to revolving accounts, those statutes do apply to interest rates chargeable on judgments for actions on such accounts. Farmers Mut. Exch. of Wrens, Inc. v. Rabun, 145 Ga. App. 798, 245 S.E.2d 52, 1978 Ga. App. LEXIS 2138 (1978).

In proceeding to hold party in contempt for failure to make alimony and child-support payments under a divorce decree, the contempt judgment bears interest of 12 percent from the date of the judgment's entry. The court is vested with discretion in determining whether any interest is payable on the child-support arrearages prior to entry of the contempt judgment, which interest should be made part of the contempt judgment itself. Turner v. Turner, 251 Ga. 435, 306 S.E.2d 650, 1983 Ga. LEXIS 842 (1983); Leroux v. Avera, 192 Ga. App. 210, 384 S.E.2d 274, 1989 Ga. App. LEXIS 983 (1989).

Judgment against surety on supersedeas bond bears interest. — Judgment in alimony suit against surety upon supersedeas bond given by the defendant for eventual condemnation money may, when remittitur from appellate court is received, affirming judgment, be rendered for full amount of all accrued unpaid installments due at time of entering of judgment, which necessarily represents eventual condemnation money. Such a judgment bears interest under former Civil Code 1910, § 3432 (see now O.C.G.A. § 7-4-12). Luke v. Luke, 32 Ga. App. 738, 124 S.E. 556, 1924 Ga. App. LEXIS 618 (1924).

Judgment providing for interest on interest is erroneous. State Hwy. Dep't v. Godfrey, 118 Ga. App. 560, 164 S.E.2d 340, 1968 Ga. App. LEXIS 1458 (1968).

Rates

Legal interest rates are prima-facie "equitable" and any award deviating from the legal rates must be based upon sufficient evidence demonstrating that another rate is appropriate. Atlantic States Constr., Inc. v. Beavers, 169 Ga. App. 584, 314 S.E.2d 245, 1984 Ga. App. LEXIS 1640 (1984).

Rate of interest. — Generally interest on a judgment is to be calculated at seven percent (now 12 percent) per annum from date of judgment until payment, but when contract or note upon which action is based specifies a different rate, or when interest is prescribed by statute, the

judgment thereon bears interest from the date of judgment at contract rate or at statutory rate. Chilivis v. Rogers Oil Co., 135 Ga. App. 176, 217 S.E.2d 179, 1975 Ga. App. LEXIS 2361 (1975).

District court did not abuse the court's discretion in looking to the state statutory interest rate for guidance in determining the appropriate pre-judgment interest rate. Smith v. American Int'l Life Assurance Co., 50 F.3d 956, 1995 U.S. App. LEXIS 9443 (11th Cir. 1995).

Director was properly awarded 12 percent interest on a lost wages award as lost wages were not open accounts under O.C.G.A. § 7-4-2. Gallagher v. McKinnon, 273 Ga. App. 727, 615 S.E.2d 746, 2005 Ga. App. LEXIS 378 (2005), cert. denied, No. S05C1740, 2005 Ga. LEXIS 745 (Ga. Oct. 24, 2005).

Trial court properly ordered that a judgment in favor of the plaintiffs in a personal injury action would bear post-judgment interest at a rate of 12 percent because the version of O.C.G.A. § 7-4-12 which was in effect at the time of the filing of the action allowed that rate of interest. Ford Motor Co. v. Sasser, 274 Ga. App. 459, 618 S.E.2d 47, 2005 Ga. App. LEXIS 694 (2005), cert. denied, No. S05C2083, 2005 Ga. LEXIS 874 (Ga. Nov. 18, 2005).

Shareholder's award of lost wages was not an open account; 12 percent interest was properly added to the award under O.C.G.A. § 7-4-12 as it existed at the time of the judgment. Gallagher v. McKinnon, 273 Ga. App. 727, 615 S.E.2d 746, 2005 Ga. App. LEXIS 378 (2005), cert. denied, No. S05C1740, 2005 Ga. LEXIS 745 (Ga. Oct. 24, 2005).

In a suit in which an insured contended that an insurer acted with negligence or in bad faith in failing to honor an accident victim's time-sensitive demand for settlement in the amount of the policy limits, the insured was not precluded from seeking post-judgment interest, at a rate of 12% per annum, under O.C.G.A. § 7-4-12 upon a judgment that was rendered in 2004 in favor of the victim and against the insured simply because the insurer later tendered the policy limits. Hulsey v. Travelers Indem. Co. of Am., 460 F. Supp. 2d 1332, 2006 U.S. Dist. LEXIS 80549 (N.D. Ga. 2006).

Trial court erred when the court imposed a fixed rate of interest on a judgment obtained by a class of retirees in their action against the Teachers Retirement System of Georgia, arising from their claims that they were not paid the appropriate amounts for their retirement benefits, as there was no pre- or post-judgment interest rate established by the written contract between the parties that governed those payments, such that the statutory rates of seven percent and prime plus three percent should have been applied pursuant to O.C.G.A. §§ 7-4-2(a)(1)(A) and 7-4-12(a); another interest rate that was set by the System in a regulation was not applicable to the instant matter. Teachers Ret. Sys. v. Plymel, 296 Ga. App. 839, 676 S.E.2d 234, 2009 Ga. App. LEXIS 172 (2009).

Husband's concern about the interest rate of 11.25 percent imposed on an award of attorneys fees was justified under circumstances in which the husband asserted that the date of the judgment was October 1, 2007, and the applicable prime rate was seven and three quarters percent, while the wife argued that the applicable prime rate was eight and one quarter percent, the rate on July 20, 2007, the day the trial court orally pronounced the court's judgment; however, an oral pronouncement was not a judgment. It had to have been reduced to writing and entered as a judgment to have been effective. Mongerson v. Mongerson, 285 Ga. 554, 678 S.E.2d 891, 2009 Ga. LEXIS 314 (2009), overruled in part, Simmons v. Simmons, 288 Ga. 670, 706 S.E.2d 456, 2011 Ga. LEXIS 153 (2011).

Judgment exempted from statutory rate. — Although the record contained no written contract between the parties, when the plaintiff's complaint alleged that the defendants contracted, in addition to paying for the plaintiff's services, to pay the plaintiff 1.5 percent per month interest, this contractual provision constituted an obligation under O.C.G.A. § 7-4-12, which exempted the judgment from the post-judgment rate of 12 percent. Sellers v. Nodvin, 207 Ga. App. 742, 429 S.E.2d 138, 1993 Ga. App. LEXIS 335 (1993).

Timing

Money judgments bear interest from their dates of entry both at law and in equity. Guernsey v. Phinizy, 113 Ga. 898, 39 S.E. 402, 1901 Ga. LEXIS 411 (1901).

Interest accrues until paid. — Under O.C.G.A. § 7-4-12, interest on a judgment continues to accrue at the rate of 12 percent per annum until paid; such post-judgment interest is a damage that the plaintiffs recover against the defendants, and is included in calculating the recovery against it for purposes of O.C.G.A. § 51-12-14, because post-judgment interest at 12 percent is intended to deter post-judgment delay, motions, and appeals and to bring finality to judgments or the defendant pays the price of protracted post-judgment litigation. Sec. Life Ins. Co. v. St. Paul Marine & Fire Ins. Co., 263 Ga. App. 525, 588 S.E.2d 319, 2003 Ga. App. LEXIS 1255 (2003), rev'd, No. S04G0322, 2004 Ga. LEXIS 1038 (Ga. Nov. 22, 2004), aff'd in part and rev'd in part, 278 Ga. 800, 606 S.E.2d 855, 2004 Ga. LEXIS 1078 (2004), vacated in part, 273 Ga. App. 91, 614 S.E.2d 477, 2005 Ga. App. LEXIS 417 (2005).

Deposits in court not subject to prejudgment and postjudgment interest. — In a contract action, a party was not entitled to prejudgment and postjudgment interest when deposits were made pursuant to the requirements of O.C.G.A. § 9-11-67. Sacha v. Coffee Butler Serv., Inc., 215 Ga. App. 280, 450 S.E.2d 704, 1994 Ga. App. LEXIS 1221 (1994), cert. denied, No. S95C0456, 1995 Ga. LEXIS 464 (Ga. Feb. 23, 1995).

Judgment in action of trover bears interest from time of entry. — Judgment in action of trover for gross amount made up of value of mules and their hire bears interest from time of entry. O'Neill Mfg. Co. v. Woodley, 118 Ga. 114, 44 S.E. 980, 1903 Ga. LEXIS 468 (1903).

Postjudgment interest ran from date of original judgment entered on the jury's verdict, not from the date on which the judgment of the appellate court reversing the grant of the motion for JNOV was made the judgment of trial court. Wilensky v. Blalock, 205 Ga. App. 845, 424 S.E.2d 26, 1992 Ga. App. LEXIS 1537 (1992), cert. denied, No. S93C0231, 1993 Ga. LEXIS 5 (Ga. Jan. 7, 1993).

When two appeals were taken from an original judgment on a note, and the trial court's judgment in favor of the creditor as to liability on the note was affirmed in both appeals, postjudgment interest ran, not from the date the trial court adopted the appellate judgment, but from the date the original judgment was entered in the trial court. Groover v. Commercial Bancorp, 220 Ga. App. 13, 467 S.E.2d 355.

Application

Interest on confirmed arbitration award. — Trial court properly awarded postjudgment interest after the court confirmed an arbitration award; once confirmed, the arbitration was treated like all other judgments, and under O.C.G.A. § 7-4-12(a), all judgments bore annual interest on the principal amount recovered. Airtab, Inc. v. Limbach Co., LLC, 295 Ga. App. 720, 673 S.E.2d 69, 2009 Ga. App. LEXIS 93 (2009).

Accrual of interest when more than one judgment entered. — When a first judgment lacks an evidentiary or legal basis, postjudgment interest accrues from the date of the second judgment; when the original judgment was basically sound but was modified on remand, postjudgment interest accrues from the date of the first judgment. CRS Sirrine, Inc. v. Dravo Corp., 219 Ga. App. 301, 464 S.E.2d 897, 1995 Ga. App. LEXIS 1020 (1995), cert. denied, No. S96C0561, 1996 Ga. LEXIS 412 (Ga. Mar. 8, 1996).

After the trial court's finding of liability was confirmed on appeal and the case was simply remanded for clarification of the damage award, and when the second judgment awarded exactly the same amount of damages, postjudgment interest would run from the date of the original judgment. CRS Sirrine, Inc. v. Dravo Corp., 219 Ga. App. 301, 464 S.E.2d 897, 1995 Ga. App. LEXIS 1020 (1995), cert. denied, No. S96C0561, 1996 Ga. LEXIS 412 (Ga. Mar. 8, 1996).

Deposit into registry of court for less than amount of entire judgment. — Defendant city's deposit into the registry of the court did not constitute a

valid tender of the entire judgment in a condemnation action, notwithstanding that the deposit was in an amount greater than the judgment rendered for the plaintiff, since the deposit was for the payment of judgments rendered to two plaintiffs and was in an amount less than their combined judgments and, therefore, the plaintiff was entitled to postjudgment interest. Chouinard v. City of East Point, 248 Ga. App. 768, 546 S.E.2d 827, 2001 Ga. App. LEXIS 278 (2001), cert. denied, No. S01C0992, 2001 Ga. LEXIS 739 (Ga. Sept. 17, 2001).

Post-judgment interest under O.C.G.A. § 13-6-11. — Trial court properly excluded an award of pre-judgment interest in calculating the amount of post-judgment interest and properly applied post-judgment interest to the award of attorney fees under O.C.G.A. § 13-6-11. Davis v. Whitford Props., 282 Ga. App. 143, 637 S.E.2d 849, 2006 Ga. App. LEXIS 1341 (2006), cert. denied, No. S07C0408, 2007 Ga. LEXIS 151 (Ga. Feb. 5, 2007).

As to postjudgment interest in condemnation cases, O.C.G.A. § 7-4-12 supersedes O.C.G.A. § 32-3-19 as § 7-4-12 is the more recent of the two. DOT v. Vest, 160 Ga. App. 368, 287 S.E.2d 85, 1981 Ga. App. LEXIS 3074 (1981).

Section does not apply to awards of special masters. — O.C.G.A. § 7-4-12 applies only to judgments; any interest accruing under O.C.G.A. § 22-2-113 for that period of time following an award of the special master until the jury verdict and entry of final judgment is to be at the legal interest rate established by O.C.G.A. § 7-4-2, such rate being seven percent per annum. City of Atlanta v. Wright, 159 Ga. App. 809, 285 S.E.2d 250, 1981 Ga. App. LEXIS 2824 (1981).

Favorable judgment appellant entitled to interest during pendency of appeal. — One obtaining money judgment in lower court, who unsuccessfully appeals one's favorable judgment, is entitled to interest on one's judgment during the pendency of the appeal. Henley v. Mabry, 125 Ga. App. 293, 187 S.E.2d 309, 1972 Ga. App. LEXIS 1302 (1972).

Interest on a favorable judgment is not abated by appealing that judgment. Heath v. L.E. Schwartz & Sons, 203 Ga. App. 91, 416 S.E.2d 113, 1992 Ga. App. LEXIS 376 (1992).

Filing of garnishment proceedings by the judgment creditor during the pendency of an appeal by the debtor did not toll the accrual of post-judgment interest, even if the garnishee paid the funds into the court. Great S. Midway v. Hughes, 223 Ga. App. 643, 478 S.E.2d 400, 1996 Ga. App. LEXIS 1205 (1996).

When a claim for principal judgment debt interest arises in a later-filed garnishment action, it is more akin to a request for prejudgment interest because the judgment creditor seeks to recover interest running from before the trial court enters judgment in the garnishment action and, in fact, from before the garnishment action was even commenced. St. Paul Reinsurance Co. v. Ross, 276 Ga. App. 135, 622 S.E.2d 374, 2005 Ga. App. LEXIS 1062 (2005), cert. denied, No. S06C0504, 2006 Ga. LEXIS 227 (Ga. Mar. 27, 2006).

Administrator acting as mere stakeholder is not liable for interest on judgment rendered against the administrator when the administrator did not make an appeal and was at all times ready to make payment. Truett v. Williams, 101 Ga. 311, 28 S.E. 851, 1897 Ga. LEXIS 223 (1897).

Operation of section in condemnation proceedings under "three assessor" law contained in Title 22. — When, in condemnation proceeding under the "three assessor" law as contained in Title 22, the amount of the final judgment is less than the award made by the assessors, condemnee is not liable for a refund of interest on the difference in the amount of the award and judgment except from the date of judgment. City of Atlanta v. Lunsford, 105 Ga. App. 247, 124 S.E.2d 493, 1962 Ga. App. LEXIS 902 (1962).

Verdict need not provide for future interest. — As all judgments bear interest from the date of rendition under former Civil Code, § 3432 (see now O.C.G.A. § 7-4-12), it is immaterial that the verdict does not provide for future interest and judgment, insofar as the verdict provides for future interest, is

Application (Cont'd)

lawful, and is not invalid upon ground that the judgment does not follow the verdict. Lang v. South Ga. Inv. Co., 38 Ga. App. 430, 144 S.E. 149, 1928 Ga. App. LEXIS 269 (1928).

Judgment for principal and interest due bears interest only upon principal. — Judgment may be legally entered for principal sum and interest due on claim sued on to the date of judgment. However, such judgment only bears interest from its date on principal sum. The interest found to be due at date of judgment does not bear interest. Southern Loan Co. v. McDaniel, 50 Ga. App. 285, 177 S.E. 834, 1934 Ga. App. LEXIS 741 (1934); West v. Jamison, 182 Ga. App. 565, 356 S.E.2d 659, 1987 Ga. App. LEXIS 1753 (1987).

Objection to judgment bearing interest on principal and interest well taken. — Objection that when verdict included both principal and interest in one gross sum, and that unless corrected the judgment entered thereon would bear interest against the defendant upon both principal and interest of the balance of the original debt, was well taken under former Code 1882, § 2054. Hubbard v. McRae, 95 Ga. 705, 22 S.E. 714, 1895 Ga. LEXIS 251 (1895); Linder v. Renfroe, 1 Ga. App. 58, 57 S.E. 975, 1907 Ga. App. LEXIS 148 (1907).

When verdict does not separate principal and interest, new trial granted. — When verdict in favor of the plaintiff manifestly includes both principal and interest, and does not specifically separate the amount of each, a new trial will be granted. Bentley v. Phillips, 171 Ga. 866, 156 S.E. 898, 1930 Ga. LEXIS 531 (1930).

Interest on vacated partial summary judgment not awardable. — Although a partial summary judgment is a judgment for purposes of O.C.G.A. § 7-4-12, when the court vacated such a judgment, no post-judgment interest could be awarded on that judgment. Crolley v. Haygood Contracting, Inc., 207 Ga. App. 434, 429 S.E.2d 93, 1993 Ga. App. LEXIS 214 (1993).

Bankruptcy "cramdown" provisions. — Motor vehicle finance company was entitled to receive interest from bankruptcy debtor under the Chapter 13 cramdown provisions at the state legal rate of 12%, and not at the installment contract rate of 14%, since there was no evidence other than the contract of a prevailing rate other than 12%, and since there was no evidence that the debtors acted in bad faith in proposing the Chapter 13 plan. In re Mitchell, 191 B.R. 957, 1995 Bankr. LEXIS 1983 (Bankr. M.D. Ga. 1995).

Effect of party's dilatory practices. — Plaintiff, a long-term disability benefits claimant, sought pre-judgment interest under O.C.G.A. § 7-4-12 on a benefits award against the defendant plan administrator; however, denial of interest was not an abuse of discretion since the amount of interest sought was greater than the claimant's award of benefits and claimant bore some fault for the extended period of time required to litigate the case due to the claimant's several amended complaints, requests to extend discovery times and other deadlines, and motion to disqualify the judge. Byars v. Coca-Cola Co., 517 F.3d 1256, 2008 U.S. App. LEXIS 3750 (11th Cir. 2008).

Interest award reversed. — Award of interest for a client against an attorney from the date that the client satisfied an underlying judgment against the client, the client's son, and the attorney had no legal basis and was reversed; it had been established that the client, the client's son, and the attorney were joint tortfeasors and while O.C.G.A. § 10-7-51 authorized the award of interest running from the date of a co-surety's payment of a joint obligation, it applied to contribution actions arising from joint instruments executed by the sureties, not to joint tortfeasors. The issue was not controlled by O.C.G.A. § 9-13-78 as the statute provided a method of enforcing contribution from a joint defendant and it did not purport to control an award of interest; O.C.G.A. § 7-4-12 provided that all money judgments bore post-judgment interest from the date of entry. Gerschick v. Pounds, 281 Ga. App. 531, 636 S.E.2d 663, 2006 Ga. App. LEXIS 940 (2006), cert. denied, No. S07C0191, 2007 Ga. LEXIS 95 (Ga. Jan. 8, 2007).

OPINIONS OF THE ATTORNEY GENERAL

Distinction between condemnation cases based on date filed. — Condemnation cases filed before July 1, 1980, bear interest at seven percent on amount recovered from date of taking. Cases filed on and after July 1, 1980, bear interest at seven percent from date of taking to date of final judgment and at 12 percent from date of final judgment. 1980 Op. Att'y Gen. No. 80-100.

RESEARCH REFERENCES

Am. Jur. 2d.

44B Am. Jur. 2d, Interest and Usury, § 38.

C.J.S.

47 C.J.S., Interest and Usury Consumer Credit, § 60 et seq.

ALR.

Statute of limitation applicable to interest on judgment, 120 A.L.R. 719.

Time when interest ceases to run upon obligation secured by lien transferred to proceeds of sale of the property free from liens in receivership, bankruptcy, or other proceedings, 134 A.L.R. 846.

Date of verdict or date of entry of judgment thereon as beginning of interest period on judgment, 1 A.L.R.2d 479.

Recovery of interest on claim against a governmental unit in absence of provision in contract or express statutory provision, 24 A.L.R.2d 928.

Right to interest on unpaid alimony, 33 A.L.R.2d 1455.

Interest on decree or judgment of Probate Court allowing a claim against estate or making an allowance for services, 54 A.L.R.2d 814.

Interest upon arrearages or unpaid accumulations of annuities, 66 A.L.R.2d 857.

Date from which interest on judgment starts running, as affected by modification of amount of judgment on appeal, 4 A.L.R.3d 1221.

Right to interest, pending appeal, of judgment creditor appealing unsuccessfully on ground of inadequacy, 15 A.L.R.3d 411; 11 A.L.R.4th 1099.

Running of interest on judgment where both parties appeal, 11 A.L.R.4th 1099.

Retrospective application and effect of state statute or rule allowing interest or changing rate of interest on judgments or verdicts, 41 A.L.R.4th 694.

Divorce and separation: award of interest on deferred installment payments of marital asset distribution, 10 A.L.R.5th 191.

Date on which postjudgment interest, under 28 USCS sec. 1961 (a), begins to accrue on federal court's award of attorneys' fees, 111 A.L.R. Fed. 615.

Determination of appropriate Chapter 11 "cramdown" rate of interest, 17 A.L.R. Fed. 3d 8.

7-4-12.1. Interest on child support and domestic relations orders; settlement of unreimbursed public assistance.

(a) All awards, court orders, decrees, or judgments rendered pursuant to Title 19 expressed in monetary amounts shall accrue interest at the rate of 7 percent per annum commencing 30 days from the date such award, court order, decree, or judgment is entered or an installment payment is due, as applicable. The court may modify the date on which interest shall begin to accrue. It shall not be necessary for the party to whom the child support is due to reduce any such award to judgment in order to recover such interest. The court shall have discretion in applying or waiving past due interest. In determining whether to apply,

waive, or reduce the amount of interest owed, the court shall consider whether:

(1) Good cause existed for the nonpayment of the child support;

(2) Payment of the interest would result in substantial and unreasonable hardship for the parent owing the interest;

(3) Applying, waiving, or reducing the interest would enhance or detract from the parent's current ability to pay child support, including the consideration of the regularity of payments made for current child support of those dependents for whom support is owed; and

(4) The waiver or reduction of interest would result in substantial and unreasonable hardship to the parent to whom interest is owed.

(b) Subsection (a) of this Code section shall not be construed to abrogate the authority of the Department of Human Services to waive, reduce, or negotiate a settlement of unreimbursed public assistance in accordance with subsection (b) of Code Section 19-11-5.

(c) Notwithstanding Code Section 7-4-12, 7-4-15, 9-12-10, or 13-6-13, when an award, court order, decree, or judgment for alimony or equitable division of assets and liabilities is payable in installments, interest on such award, court order, decree, or judgment shall not begin to accrue until an installment is 30 days past due unless otherwise ordered by the court.

History.

Code 1981, § 7-4-12.1, enacted by Ga. L. 1996, p. 649, § 1; Ga. L. 2005, p. 224, § 3/HB 221; Ga. L. 2006, p. 583, § 2/SB 382; Ga. L. 2010, p. 878, § 7/HB 1387; Ga. L. 2015, p. 34, § 1/HB 347; Ga. L. 2017, p. 646, § 2-1/SB 137.

Editor's notes.

Ga. L. 2005, p. 224, § 1/HB 221, not codified by the General Assembly, provides that: "The General Assembly finds and declares that it is important to assess periodically child support guidelines and determine whether existing guidelines continue to be viable and effective or whether they have failed or ceased to accomplish their original policy objectives. The General Assembly further finds that supporting Georgia's children is vitally important to the citizens of Georgia. Therefore, the General Assembly has determined that it is in the best interests of the state and its citizenry to undertake an evaluation of the child support guidelines on a continuing basis. The General Assembly declares that it is important that all of Georgia's children are provided with adequate financial support whether the children's parents are living together or not living together. The General Assembly finds that both parents have a continuing obligation with respect to providing financial and emotional stability for their child or children. It is the hope of the members of the General Assembly that all parents work together to advance the best interest of their children."

Ga. L. 2006, p. 583, § 10(b)/SB 382, not codified by the General Assembly, provides: "Sections 1 through 7 of this Act shall become effective on January 1, 2007, and shall apply to all pending civil actions on or after January 1, 2007."

Ga. L. 2015, p. 34, § 2/HB 347, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to all civil actions pending on or after such effective date." This Act became effective April 2, 2015.

Law reviews.

For annual survey of domestic relations law, see 56 Mercer L. Rev. 221 (2004).

For article on 2005 amendment of this Code section, see 22 Ga. St. U.L. Rev. 73 (2005).

For article on 2006 amendment of this Code section, see 23 Ga. St. U.L. Rev. 103 (2006).

JUDICIAL DECISIONS

Lack of findings. — Trial court erred by awarding interest on the judgment for the ex-wife's unpaid child support because, although the trial court did not err in granting interest without a specific request for that relief, the trial court's order made no mention of the four specific factors used in determining whether and how to apply interest, and it contained no findings regarding those factors. Claybrooks v. Claybrooks, 364 Ga. App. 157, 874 S.E.2d 190, 2022 Ga. App. LEXIS 279 (2022).

Res judicata. — Because the issue of interest on past due child support was not put in issue and decided in a prior contempt proceeding related to a father's failure to pay child support, res judicata did not bar a subsequent judgment for interest on the past due child support amounts; it is undisputed that O.C.G.A. § 7-4-12.1 applies retroactively. Dial v. Adkins, 265 Ga. App. 650, 595 S.E.2d 332, 2004 Ga. App. LEXIS 212 (2004).

No enforceable contract to collect post-judgment interest on unpaid child support. — Trial court's grant of summary judgment in favor of the Georgia Department of Human Resources, Office of Child Support enforcement, was upheld on appeal in a class action suit brought by a recipient challenging the department's failure to collect post-judgment interest on unpaid child support since a statement of understanding, though stating it was a contract, afforded complete discretion to the department in rendering services and used the vague term appropriate services, which rendered the purported agreement too vague and uncertain to be enforced as a contract. Kennedy v. Ga. Dep't of Human Res. Child Support Enforcement, 286 Ga. App. 222, 648 S.E.2d 727, 2007 Ga. App. LEXIS 732 (2007).

Direction to waive or reduce interest owed. — Court recognized that, under Georgia law, the court had discretion in determining whether to apply, waive, or reduce the amount of interest owed, but the court declined to exercise the court's discretion to waive or reduce the amount of interest owed because the criteria set out in O.C.G.A. § 7-4-12.1 had not been met. Debtor had not provided any explanation for the nonpayment of child support, other than stating that the debtor could not afford to pay the child support, which was not what the statute contemplated. In re Moore-Mckinney, 603 B.R. 855, 2019 Bankr. LEXIS 1474 (Bankr. N.D. Ga. 2019).

Retroactive application. — Legislative intent of adopting O.C.G.A. § 7-4-12.1 was to have it apply to all child support arrearages, regardless of whether arrearages accrued prior to July 1, 1996. Reid v. Reid, 232 Ga. App. 304, 502 S.E.2d 269.

Amended version of O.C.G.A. § 7-4-12.1 applies to all civil actions that were filed when the former version of the statute was effective but were still pending on or after January 1, 2007; the amended version of § 7-4-12.1 makes changes related to interest on child support arrearage that are remedial rather than substantive, and therefore retroactive application does not impair vested substantive rights. Gowins v. Gary, 284 Ga. App. 370, 643 S.E.2d 836, 2007 Ga. App. LEXIS 317 (2007), rev'd, 283 Ga. 433, 658 S.E.2d 575, 2008 Ga. LEXIS 243 (2008).

Amended version of statute applied to revived judgment. — In a former wife's suit seeking unpaid child support pursuant to a judgment that had become dormant, the entire child support award could not be revived under O.C.G.A. § 9-12-61; because each payment was treated as a new judgment, only

installments that became due within the ten years preceding the filing of the renewal petition were revived. Additionally, the trial court erred in applying the former version of O.C.G.A. § 7-4-12.1 and awarding 12 percent interest; only 7 percent was available. Johnson v. Collins, 354 Ga. App. 589, 841 S.E.2d 189, 2020 Ga. App. LEXIS 204 (2020).

No abuse of discretion in applying interest to child support arrearage. — Trial court did not abuse the court's discretion in applying interest to the ex-husband's arrearage of child support or attorney fees in the court's order granting the ex-wife's contempt motion as the trial court made findings regarding the financial circumstances of both parties and declined to waive the past due interest, deciding instead to defer some of the ex-husband's interest payments until after the youngest minor child aged out of support; thus, prolonging the repayment of interest. McCarthy v. Ashment, 353 Ga. App. 270, 835 S.E.2d 745, 2019 Ga. App. LEXIS 643 (2019), cert. denied, No. S20C0707, 2020 Ga. LEXIS 628 (Ga. Aug. 10, 2020).

7-4-13. Law of place of contract governs interest unless otherwise provided.

Every contract shall bear interest according to the law of the place of the contract at the time of the contract, unless upon its face it shall be apparent that the intention of the parties was to adopt the law of another forum; in this case the law of that forum shall govern.

History.

Orig. Code 1863, § 2026; Code 1868, § 2027; Code 1873, § 2053; Code 1882, § 2053; Civil Code 1895, § 2880; Civil Code 1910, § 3430; Code 1933, § 57-106.

Law reviews.

For article on choice-of-law of contracts in Georgia, see 21 Mercer L. Rev. 389 (1970).

JUDICIAL DECISIONS

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General Consideration

O.C.G.A. § 7-4-13 has been interpreted as a choice of law provision which determines which state's usury laws are controlling. FDIC v. Lattimore Land Corp., 656 F.2d 139, 1981 U.S. App. LEXIS 17762 (5th Cir. 1981).

Determination of place of contract. — See Folsom v. Continental Adjustment Corp., 48 Ga. App. 435, 172 S.E. 833, 1934 Ga. App. LEXIS 96 (1934).

Law of place of performance governs interest. — On contracts made in one state to be performed in another, if the contracts bear interest, the law of the state where the contracts are to be performed governs the rate of interest to be paid. Vinson v. Platt & McKenzie, 21 Ga. 135, 1857 Ga. LEXIS 18 (1857).

General rule that interest which contract shall bear is to be governed by law of place where it is to be performed applies to contracts legal where made. Martin v. Johnson, 84 Ga. 481, 10 S.E. 1092, 1889 Ga. LEXIS 357 (1889).

Choice of law provisions cannot create exemption from state investigation. — Parties to a private contract who admittedly made loans to Georgia residents could not, by virtue of a choice of law provision, exempt themselves from investigation for potential violations of Georgia's usury

laws. BankWest, Inc. v. Oxendine, 266 Ga. App. 771, 598 S.E.2d 343, 2004 Ga. App. LEXIS 397 (2004), cert. denied, No. S04C1408, 2004 Ga. LEXIS 731 (Ga. Sept. 7, 2004).

Dealings with foreign corporation governed by laws of its domicile. — Dealings in Indiana with corporation chartered by that state are governed by its laws, and when attacked here for usury, provisions of such laws applicable to the transaction must be made to appear. Flournoy & Epping v. First Nat'l Bank, 79 Ga. 810, 2 S.E. 547, 1887 Ga. LEXIS 305 (1887).

Place of preliminary negotiations does not determine place of contract. — Since land was located in Georgia and all papers executed therein, mere fact that negotiations preliminary to execution of papers took place in Florida does not alter fact that this is a Georgia contract. First Nat'l Bank v. Rambo, 143 Ga. 665, 85 S.E. 840, 1915 Ga. LEXIS 571 (1915).

Federal law was intended to preempt conflicting state law in the area of due-on-sale home loan assumption practices of federal savings and loan associations, and federal law permits the escalation of interest rates upon the assumption of a residential purchase loan when there is an appropriate provision in the contract. Lindenberg v. First Fed. Sav. & Loan, 691 F.2d 974, 1982 U.S. App. LEXIS 24143 (11th Cir. 1982).

Section applicable when note executed in another state. — When note is executed and made payable in another state, even though secured by a deed to land in this state, the rate of interest on the note is governed by usury laws of the sister state. Jones v. Lawman, 56 Ga. App. 764, 194 S.E. 416, 1937 Ga. App. LEXIS 229 (1937); Clark v. Transouth Fin. Corp., 142 Ga. App. 389, 236 S.E.2d 135, 1977 Ga. App. LEXIS 1628 (1977).

Georgia law applies when contract executed and payable in Georgia. — Choice of law rule holds that when: (1) land held by security deed is in Georgia; (2) contract was executed in Georgia; and (3) contract was made payable in Georgia, law of usury applies as Georgia is place of performance of contract. FDIC v. Lattimore Land Corp., 656 F.2d 139, 1981 U.S. App. LEXIS 17762 (5th Cir. 1981).

Applicability of common law of Georgia. — When a promissory note is both executed and to be performed in another state, in an attack by the maker upon a note for usury, in an action brought in this state against the maker by the holder, when laws of the foreign states regulating interest charges and usury do not appear, the common law will be presumed to be there in force, and the right to collect interest in such suit, unless contrary to public policy or specific statutes of this state, will be governed by common law as it has been construed and applied in this state. Folsom v. Continental Adjustment Corp., 48 Ga. App. 435, 172 S.E. 833, 1934 Ga. App. LEXIS 96 (1934).

When evidence is silent as to legal interest in another state, common law is presumed to govern, and a contract for reasonable interest is allowed. Thomas v. Clarkson, 125 Ga. 72, 54 S.E. 77, 1906 Ga. LEXIS 48 (1906); Ellington v. Harris, 127 Ga. 85, 56 S.E. 134, 1906 Ga. LEXIS 742 (1906).

Subsequent agreements governed by laws as of date made. — Parties are free to bargain away their rights, and once the borrower is released from liability, whether by novation, a loan modification, or any other means, subsequent agreements for repayments of the debt are governed by the laws as of the date they are made, and not the date of the creation of the debt. Lindenberg v. First Fed. Sav. & Loan Ass'n, 528 F. Supp. 440, 1981 U.S. Dist. LEXIS 16202 (N.D. Ga. 1981), aff'd, 691 F.2d 974, 1982 U.S. App. LEXIS 24143 (11th Cir. 1982).

Transactions involving the assumption of home loan obligations, the release of borrowers, and the substitution of new parties at escalated interest rates resulted in new contracts, notwithstanding that the loan modification agreements were not intended to be novations; so the date of the loan assumptions, rather than the original date of the notes, controlled the applicable usury rates. Lindenberg v. First Fed. Sav. & Loan, 691 F.2d 974, 1982 U.S. App. LEXIS 24143 (11th Cir. 1982).

Facts resulting in finding of Georgia contract. — See Taylor v. American Freehold Land-Mortgage Co.,

General Consideration (Cont'd)

106 Ga. 238, 32 S.E. 153, 1898 Ga. LEXIS 69 (1898).

Facts resulting in finding of out-of-state contract. — See Goodrich v. Williams, 50 Ga. 425, 1873 Ga. LEXIS 282 (1873).

Party must plead and prove interest or usury laws of other state. — When another state's law applies, provision of law applicable must be made to appear. Since courts of this state will not take cognizance of interest or usury laws of another state it is essential that the defendant, if the defendant wishes to avail oneself of defense of usury, plead and prove laws of other state in this respect, and that such laws were in force at time of execution of note. Jones v. Lawman, 56 Ga. App. 764, 194 S.E. 416, 1937 Ga. App. LEXIS 229 (1937).

Intent of Parties

Georgia law governs when contract so stipulates. — When note, executed in this state, is made payable in the State of New York, and is secured by a mortgage which stipulates contract and note shall in all respects be construed according to the laws of Georgia, and the note on the note's face bears interest at the rate of 8 percent per annum, which is legal in Georgia, the entire amount of such interest is collectible in this state, notwithstanding that the maximum legal rate of interest in the State of New York may be less than 8 percent. New England Mtg. Sec. Co. v. McLaughlin, 87 Ga. 1, 13 S.E. 81, 1891 Ga. LEXIS 80 (1891).

Security deeds are relevant in indicating situs contemplated in fixing rate of interest on note. Clark v. Transouth Fin. Corp., 142 Ga. App. 389, 236 S.E.2d 135, 1977 Ga. App. LEXIS 1628 (1977).

Facts evidencing intent of parties that Georgia law apply. — See Underwood v. American Mtg. Co., 97 Ga. 238, 24 S.E. 847, 1895 Ga. LEXIS 345 (1895).

Evidence

No presumption of usury absent proof of other state's usury law. — When there is no proof as to statute of usury of another state, there will be no presumption that the contract is usurious. Rooney v. Southern Bldg. & Loan Ass'n, 119 Ga. 941, 47 S.E. 345, 1904 Ga. LEXIS 414 (1904).

In ascertaining another state's usury laws, courts are confined to evidence introduced. — It is not permissible for courts of this state to avail themselves of any means of ascertaining what are laws of another state on subject of usury, other than by evidence introduced. Champion v. Wilson & Co., 64 Ga. 184, 1879 Ga. LEXIS 30 (1879); Craven v. Bates, Kingsbery & Co., 96 Ga. 78, 23 S.E. 202, 1895 Ga. LEXIS 11 (1895).

One pleading another state's statute must show that the statute was in force at the contract's execution. Thomas v. Clarkson, 125 Ga. 72, 54 S.E. 77, 1906 Ga. LEXIS 48 (1906).

Evidence necessary for finding that foreign contract is usurious. — For jury to find that the contract made and to be performed in another state was void for usury, evidence must show that the rate of interest agreed to be taken was in excess of the rate allowed by the law of such state. Mayor of Griffin v. Inman, Swann & Co., 57 Ga. 370, 1876 Ga. LEXIS 125 (1876).

Insufficient showing as to other state's usury laws. — See Craven v. Bates, Kingsbery & Co., 96 Ga. 78, 23 S.E. 202, 1895 Ga. LEXIS 11 (1895).

RESEARCH REFERENCES

Am. Jur. 2d.

44B Am. Jur. 2d, Interest and Usury, §§ 11, 14, 15.

C.J.S.

47 C.J.S., Interest and Usury Consumer Credit, § 79 et seq.

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Time at which interest is payable under will or contract providing for payment of interest, 10 A.L.R. 997.

Validity of agreement to pay interest on interest, 37 A.L.R. 325; 76 A.L.R. 1484.

Right of holder of preferred claim to interest after appointment of receiver or declared bankruptcy or insolvency, where assets are insufficient to pay principal of all claims, 69 A.L.R. 1210.

Law of the forum as governing the right to and rate of interest as damages for delay in payment of money or discharge of other obligations, 78 A.L.R. 1047.

Who other than borrower may avail himself to latter's right to recover back usurious payments or penalties therefor, 82 A.L.R. 1008; 134 A.L.R. 1335.

7-4-14. Interest runs from default unless otherwise agreed; when demand necessary.

In the absence of an agreement to the contrary, interest shall not run until default; hence, where money can be recovered because of mistake or other like reasons, no interest shall run until after demand and refusal to refund.

History.

Civil Code 1895, § 2881; Civil Code 1910, § 3431; Code 1933, § 57-107.

History of Code section.

This Code section is derived from the decision in Georgia R.R. & Banking Co. v. Smith, 83 Ga. 626, 10 S.E. 235 (1889).

Law reviews.

For survey article on trial practice and procedure, see 60 Mercer L. Rev. 397 (2008).

JUDICIAL DECISIONS

Analysis

General Consideration
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Obligations Payable On Demand

General Consideration

Interest accrues after default on interest-free contract. — Stipulation in contract for sale of goods, to be delivered within a reasonable time in the future and to be paid for on delivery, to effect that obligation of purchaser is to bear no interest, does not mean that the purchaser would not be required to pay interest in case of and after the purchaser's default, but was merely a provision against payment of interest prior to maturity of purchase-money. Morgan v. J.B. Colt Co., 34 Ga. App. 630, 130 S.E. 600, 1925 Ga. App. LEXIS 453 (1925).

Interest note is liquidated demand which bears interest at maturity. — When obligation to pay interest is put in form of interest note, that note becomes a liquidated demand; and when the note is not paid at maturity the note bears interest as such, certainly if parties have contracted that it should. Walton v. Johnson, 213 Ga. 108, 97 S.E.2d 310, 1957 Ga. LEXIS 315 (1957).

Good faith diversion of funds insufficient to bring case within section. — That diversion of funds was

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made in good faith and with honest intentions is not sufficient to bring a case within former Civil Code 1895, § 2881. Davidson v. Story, 106 Ga. 799, 32 S.E. 867, 1899 Ga. LEXIS 756 (1899).

Trustee is chargeable with legal rate of interest from date of breach of trust. Allen v. Allen, 198 Ga. 269, 31 S.E.2d 483, 1944 Ga. LEXIS 394 (1944).

Interest charged from time of appropriation for improper retention of fees. — When executor improperly retained attorney's fees for services rendered by the executor it is proper to charge the executor with interest from time such fees were appropriated. Davidson v. Story, 106 Ga. 799, 32 S.E. 867, 1899 Ga. LEXIS 756 (1899).

Interest recoverable from time of discharge upon payment of spouse's debt. — When wife did not demand repayment of money with which she discharged her husband's debt until sometime subsequent to its payment, she could recover interest thereon from the time of its payment. Bank of Waynesboro v. Walters, 135 Ga. 643, 70 S.E. 244, 1911 Ga. LEXIS 30 (1911).

Interest recoverable from date of contract made by incompetent party. — When one not having capacity to contract is induced by undue influence to pay over money under contract, interest may be recovered from date of the contract if recovery allowed at all. Newman v. Thompson, 134 Ga. 137, 67 S.E. 662, 1910 Ga. LEXIS 137 (1910).

Mistake

When payment is by mistake, interest does not run until after demand. — When money is paid by mistake, and there is no fraud or misconduct by the party receiving the money, interest does not run until after demand, since prior to demand, by suit or otherwise, the receiver is in no default. Trustees of Jesse Parker Williams Hosp. v. Nisbet, 191 Ga. 821, 14 S.E.2d 64, 1941 Ga. LEXIS 379 (1941).

General rule is that on money paid by mistake, when there is no fraud or misconduct by the party receiving the money, interest does not run until after demand. Dell v. Kugel, 99 Ga. App. 551, 109 S.E.2d 532, 1959 Ga. App. LEXIS 903 (1959).

In an action for money had and received brought to recover money paid and received by reason of mutual mistake of law, interest accrues not from the time the money is received, but from date on which demand for the money's return is made. Dell v. Kugel, 99 Ga. App. 551, 109 S.E.2d 532, 1959 Ga. App. LEXIS 903 (1959).

Former Code 1933, § 57-107 is not limited to a mistake of fact; there can be a mistake as to the law in good faith. Keen v. Lewis, 215 Ga. 166, 109 S.E.2d 764, 1959 Ga. LEXIS 423 (1959).

Section applicable only when money recoverable. — Former Code 1933, § 57-107 applicable only when money, paid by mistake or other like reason, can be recovered, and has no reference to situations when a trustee has converted property of another to the trustee's own use. Allen v. Allen, 198 Ga. 269, 31 S.E.2d 483, 1944 Ga. LEXIS 394 (1944).

Obligations Payable On Demand

When salary is demanded and refused, judgment may bear interest. — There is a definite contractual relation between every employee and employer, whether the employee is a public officer or not, which entitles the employee to payment of the employee's salary, and when a demand is made therefor and refused, the court may award interest on the salary. Undercofler v. Scott, 220 Ga. 406, 139 S.E.2d 299, 1964 Ga. LEXIS 570 (1964).

Interest on claim due on notice and demand runs from demand. — When claim is due only on notice and demand upon donee, interest on such claim runs only from demand. Trustees of Jesse Parker Williams Hosp. v. Nisbet, 191 Ga. 821, 14 S.E.2d 64, 1941 Ga. LEXIS 379 (1941).

Legacy payable at discretion does not bear interest until after demand. — When legacy is placed in the hands of a person with discretion as to payment, it does not bear interest until after the date of demand for payment. Harrison v.

Watkins, 127 Ga. 314, 56 S.E. 437, 1907 Ga. LEXIS 246 (1907).

Deposit for certiorari does not bear interest until after demand. — When it is necessary for allowance of certiorari that the deposit of fine and costs for violation of a city ordinance be made, deposit does not bear interest until after the demand. Mayor of Savannah v. Kassell, 115 Ga. 310, 41 S.E. 572, 1902 Ga. LEXIS 395 (1902).

When guarantor agreed to pay certain sum, interest does not run until demand has been made upon the guarantor. Manry v. Waxelbaum Co., 108 Ga. 14, 33 S.E. 701, 1899 Ga. LEXIS 176 (1899).

No prejudgment interest absent demand for return of purchase money. — In determining that a tax sale was void, the superior court properly held that a buyer of real property was entitled to a refund of the purchase price the buyer paid for the property, but the buyer could not recover prejudgment interest, as the buyer failed to make an unequivocal demand for the return of the buyer's purchase money. Harpagon Co. v. Freeman, 281 Ga. 531, 640 S.E.2d 268, 2007 Ga. LEXIS 45 (2007).

Prejudgment interest claim not valid. — Trial court properly concluded that the plaintiff did not have a valid claim for prejudgment interest under O.C.G.A. § 7-4-15 because the plaintiff's claims were not liquidated as, if successful at trial, the plaintiff stood to receive either a specific verdict amount or nothing at all because there were different potential sales involved. Miller v. Lynch, 351 Ga. App. 361, 830 S.E.2d 749, 2019 Ga. App. LEXIS 362 (2019), cert. denied, No. S19C1614, 2020 Ga. LEXIS 152 (Ga. Feb. 28, 2020), cert. denied, No. S19C1615, 2020 Ga. LEXIS 148 (Ga. Feb. 28, 2020).

RESEARCH REFERENCES

Am. Jur. 2d.

44B Am. Jur. 2d, Interest and Usury, §§ 48, 49.

C.J.S.

47 C.J.S., Interest and Usury Consumer Credit, § 103.

ALR.

Time at which interest is payable under will or contract providing for payment of interest, 10 A.L.R. 997.

When contract construed to require interest to be paid in advance, 39 A.L.R. 951.

Who other than borrower may avail himself to latter's right to recover back usurious payments or penalties therefor, 82 A.L.R. 1008; 134 A.L.R. 1335.

Liability of Federal Deposit Insurance Corporation for interest in respect of insured deposit, 153 A.L.R. 532.

7-4-15. When interest runs on liquidated demands; promissory notes payable on demand.

All liquidated demands, where by agreement or otherwise the sum to be paid is fixed or certain, bear interest from the time the party shall become liable and bound to pay them; if payable on demand, they shall bear interest from the time of the demand. In case of promissory notes payable on demand, the law presumes a demand instantly and gives interest from date.

History.

Laws 1799, Cobb's 1851 Digest, p. 405.; Ga. L. 1858, p. 90, § 1; Code 1863, § 2029; Code 1868, § 2030; Code 1873, § 2056; Code 1882, § 2056; Civil Code 1895, § 2884; Civil Code 1910, § 3434; Code 1933, § 57-110.

Law reviews.

For note discussing usury law application to interest charged on liquidated demands and promissory notes payable on demand, see 12 Ga. L. Rev. 814 (1978).

For article, "2015 Georgia Corporation

and Business Organization Case Law Developments," see 21 Ga. St. Bar. J. 30 (Apr. 2016).

JUDICIAL DECISIONS

Analysis

General Consideration
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General Consideration

Prejudgment interest. Prejudgment interest is required when damages are liquidated. United States ex rel. Delta Metals, Inc. v. R.M. Wells Co., 497 F. Supp. 541, 1980 U.S. Dist. LEXIS 9377 (S.D. Ga. 1980).

Award of prejudgment interest is made by the judge as a matter of law under O.C.G.A. § 7-4-15. American Family Life Assurance Co. v. United States Fire Co., 885 F.2d 826, 1989 U.S. App. LEXIS 15341 (11th Cir. 1989).

Award of interest under O.C.G.A. § 7-4-15 is not premised on bad faith but on the principle that when a debt is owed and the demands for funds is made, interest accrues from the time entitlement attaches. Rivergate Corp. v. Atlanta Indoor Adv. Concepts, Inc., 210 Ga. App. 501, 436 S.E.2d 697, 1993 Ga. App. LEXIS 1232 (1993), cert. denied, No. S94C0163, 1994 Ga. LEXIS 149 (Ga. Jan. 21, 1994); United States ex rel. Ga. Elec. Supply Co. v. United States Fid. & Guar. Co., 656 F.2d 993, 1981 U.S. App. LEXIS 17556 (5th Cir. 1981).

Because the trial court in an action involving a tax lien encumbrance erred in calculating pre-judgment interest pursuant to O.C.G.A. § 7-4-16, which applies to commercial accounts, remand for re-calculation based on O.C.G.A. § 7-4-15 was required. Homeland Communities, Inc. v. Rahall & Fryer, P.C., 235 Ga. App. 440, 509 S.E.2d 714, 1998 Ga. App. LEXIS 1530 (1998).

Jury's award of prejudgment interest in the amount of $36,143 on a principal balance of $134,335 on a credit account for the sale of cattle feed products was proper and was affirmed. Dixon Dairy Farms, Inc. v. Purina Mills, Inc., 267 Ga. App. 738, 601 S.E.2d 152, 2004 Ga. App. LEXIS 768 (2004).

In determining the prejudgment interest to be added to a testamentary gift, the operative statute in a probate case is the more specific statute, O.C.G.A. § 53-4-61, rather than the more general one, O.C.G.A. § 7-4-15. In re Estate of Barr, 278 Ga. App. 837, 630 S.E.2d 135, 2006 Ga. App. LEXIS 413 (2006), cert. denied, No. S06C1485, 2006 Ga. LEXIS 521 (Ga. July 14, 2006).

Because a stockholder failed to comply with O.C.G.A. § 51-12-14, and prejudgment interest was not authorized by O.C.G.A. § 7-4-15, these awards entered in favor of the stockholder were reversed. Monterrey Mexican Rest. of Wise, Inc. v. Leon, 282 Ga. App. 439, 638 S.E.2d 879, 2006 Ga. App. LEXIS 1427 (2006), overruled in part, Temple v. Hillegass, 344 Ga. App. 454, 810 S.E.2d 625, 2018 Ga. App. LEXIS 49 (2018).

Unpublished decision: Since a former employee was entitled to liquidated damages pursuant to the terms of an employment contract due to the employee's former employer's reduction of the employee's base salary, the employee was also entitled to prejudgment interest on the liquidated damages. McBride v. Mkt. St. Mortg., 381 Fed. Appx. 758, 2010 U.S. App. LEXIS 11191 (10th Cir. 2010).

Unpublished decision: Because the defendant's damages on the defendant's suit on account counterclaim were fixed, cer-

tain, and ascertainable making the damages liquidated (the plaintiff conceded that the plaintiff received and never paid for $1,017,551 worth of GPS units from the defendant), the district court erred in failing to award the defendant pre-judgment interest at the legal rate established by O.C.G.A. § 7-4-2. Discrete Wireless, Inc. v. Coleman Techs., Inc., 422 Fed. Appx. 777, 2011 U.S. App. LEXIS 7043 (11th Cir. 2011).

Trial court erred in denying a widow's motion for summary judgment on the widow's claim for prejudgment interest because the widow was entitled to collect credit life insurance proceeds since an insurer was precluded from denying or rescinding insurance coverage; the only issue contested by the insurer was the existence of coverage, not the amount of the widow's claim and, thus, the widow's claim to the insurance proceeds was liquidated. Flynt v. Life of the South Ins. Co., 312 Ga. App. 430, 718 S.E.2d 343, 2011 Ga. App. LEXIS 973 (2011), cert. denied, No. S12C0461, 2012 Ga. LEXIS 305 (Ga. Mar. 19, 2012).

Trial court properly awarded a creditor prejudgment interest under O.C.G.A. § 7-4-15 after the creditor, having been awarded partial summary judgment on the creditor's claim for money had and received, amended the creditor's complaint to seek prejudgment interest. The debtors were given an opportunity to contest the award of interest. Crisler v. Haugabook, 290 Ga. 863, 725 S.E.2d 318, 2012 Ga. LEXIS 347 (2012).

In a condemnation action, the property owner was properly awarded prejudgment interest on the purchase price on a second parcel because the price was fixed, certain, and ascertainable under the terms of the parties' contract such that the debt owed by the county was liquidated and subject to prejudgment interest under O.C.G.A. § 7-4-15. Gwinnett County v. Old Peachtree Partners, LLC, 329 Ga. App. 540, 764 S.E.2d 193, 2014 Ga. App. LEXIS 688 (2014), cert. denied, No. S15C0517, 2015 Ga. LEXIS 214 (Ga. Mar. 30, 2015).

Trial court did not err by awarding the lottery player prejudgment interest because the player's demand for interest was sufficient to be considered a demand for prejudgment interest under O.C.G.A. § 7-4-15. In the player's complaint the player demanded interest on the amount of the single cash payment that was due and owing, in the amended complaint the player demanded interest on the single cash payment, and in the statement of material undisputed facts and supporting theories that the player filed with the motion for summary judgment the player stated that the player was entitled to judgment in the player's favor for the lump sum payment plus interest and costs. Ga. Lottery Corp. v. Vasaya, 353 Ga. App. 52, 836 S.E.2d 107, 2019 Ga. App. LEXIS 655 (2019).

FDIC's demand was for $10 million, the limit under the insurance policy and the amount the insurer ultimately paid, and the only thing left to dispute was whether the insurer's policy covered the wrongful renovations done by the bank at all, but a dispute as to liability did not make a claim unliquidated, and given that the insurer paid the money, it could assert that the claim was unliquidated; declaratory judgments were not coercive, and the entire lawsuit had been dedicated to extensively litigating prejudgment interest, which clearly sufficed under Georgia law. FDIC v. Certain Underwriters at Lloyd's of London, 45 F.4th 1301, 2022 U.S. App. LEXIS 23203 (11th Cir. 2022).

Attorney fees and expenses. — Award of attorney fees and litigation expenses is not liquidated until reduced to judgment and cannot support an award of prejudgment interest under O.C.G.A. § 7-4-15. Harkleroad v. Stringer, 231 Ga. App. 464, 499 S.E.2d 379, 1998 Ga. App. LEXIS 455 (1998).

Interest is allowed on liquidated accounts, and should be payable from due date. Walter E. Heller & Co. v. Aetna Bus. Credit, Inc., 158 Ga. App. 249, 280 S.E.2d 144, 1981 Ga. App. LEXIS 2151 (1981).

Recovery when amount fixed and certain. — When the amount at issue is fixed and certain, the recovery of prejudgment interest is appropriate. Buchanan v. Bowman, 820 F.2d 359, 1987 U.S. App. LEXIS 7920 (11th Cir. 1987).

Prejudgment interest is allowed when the amount in question is liqui-

General Consideration (Cont'd)

dated, or is certain and fixed. Erickson's Inc. v. Travelers Indem. Co., 330 F. Supp. 380, 1971 U.S. Dist. LEXIS 13462 (S.D. Ga. 1971), aff'd, 454 F.2d 884, 1972 U.S. App. LEXIS 11647 (5th Cir. 1972).

Amount certain cannot be rendered uncertain by means of unsuccessful, invalid, or lack of defense. Bassett Furn. Indus. v. NVF Co., 576 F.2d 1084, 1978 U.S. App. LEXIS 10031 (5th Cir.), amended, 583 F.2d 778, 1978 U.S. App. LEXIS 8217 (5th Cir. 1978).

Total amount due and owing is ascertained when bill is tendered, and a defendant owes interest thereon, subject to reduction if the defendant can establish that retention of part of the amount after the due date is justifiable. Bassett Furn. Indus. v. NVF Co., 576 F.2d 1084, 1978 U.S. App. LEXIS 10031 (5th Cir.), amended, 583 F.2d 778, 1978 U.S. App. LEXIS 8217 (5th Cir. 1978).

Entitlement to legal rate from maturity absent contract provision for interest. — Even though there may have been no liability for interest under express provisions of the contract, the plaintiff is nevertheless entitled to interest at the legal rate on any matured portion of indebtedness from date the indebtedness matured. Considine Co. v. Turner Communications Corp., 155 Ga. App. 911, 273 S.E.2d 652, 1980 Ga. App. LEXIS 2834 (1980).

Wrongfully collected taxes. — Taxpayer is allowed to recover prejudgment interest in an action for a refund of wrongfully collected taxes. Eastern Air Lines v. Fulton County, 183 Ga. App. 891, 360 S.E.2d 425, 1987 Ga. App. LEXIS 2115 (1987), superseded by statute as stated in Ga. Dep't of Corr. v. Couch, 295 Ga. 469, 759 S.E.2d 804, 2014 Ga. LEXIS 489 (2014), cert. denied, 183 Ga. App. 905.

Payment date based on nonoccurring contingency due within reasonable time. — When existence of debt is conditional on happening of some event, payment cannot be enforced until that event happens; but when payment of existing liability is postponed until happening of event which does not happen, payment must be made within a reasonable time. B.G. Sanders & Assocs. v. Castellow, 154 Ga. App. 433, 268 S.E.2d 695, 1980 Ga. App. LEXIS 2212 (1980).

Jury rendering verdict for liquidated demand should give interest thereon. Earnest v. Nappier, 19 Ga. 537, 1856 Ga. LEXIS 215 (1856); Felker v. Johnson, 53 Ga. App. 390, 186 S.E. 144, 1936 Ga. App. LEXIS 132 (1936).

Jury must determine interest due from time liability arose. — When the jury found that the plaintiff was entitled to recover, it was also required to find amount of interest due from the time the defendant became liable. Brandt v. Eckman, 79 Ga. App. 47, 52 S.E.2d 665, 1949 Ga. App. LEXIS 585 (1949).

Payment of county orders. — Former Code 1933, §§ 23-1604 — 23-1608 (see now O.C.G.A. §§ 36-11-3 through 36-11-6) did not expressly or impliedly repeal former Code 1933, §§ 57-101, 57-110 and § 14-207 (see now O.C.G.A. §§ 7-4-2, 7-4-15 and 11-3-108, respectively). They all are to be considered together, and when so considered, the sections first mentioned contemplate administrative action by county officers in regard to an order in which lawful county orders shall be paid. Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475, 1942 Ga. LEXIS 375 (1942).

Section 36-11-5 does not mean interest is disallowed when sufficient funds are available. — Provision in former Code 1933, § 23-1608 (see now O.C.G.A. § 36-11-5) that county orders when legally issued and duly presented but not paid for want of funds, shall bear interest if endorsed by the treasurer as set forth, does not mean that interest allowed generally on liquidated demands under former Code 1933, §§ 57-101 and 57-110 (see now O.C.G.A §§ 7-4-2 and 7-4-15) will be disallowed if sufficient available funds are in hand to pay warrant. Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475, 1942 Ga. LEXIS 375 (1942).

Section inapplicable in suits based on quantum meruit. — When the plaintiff seeks recovery on quantum

meruit basis and not for a liquidated demand, former Code 1933, § 57-110 (see now O.C.G.A. § 7-4-15 and former Code 1933, § 57-111 (see now O.C.G.A. § 7-4-16) were not applicable. Noble v. Hunt, 95 Ga. App. 804, 99 S.E.2d 345, 1957 Ga. App. LEXIS 924 (1957).

Liquidated Demands

Definition of liquidated debt. — Liquidation is an amount certain and fixed, either by act and agreement of parties, or by operation of law; a sum which cannot be changed by proof; it is so much or nothing; and the term does not necessarily refer to a writing. Nisbet v. Lawson, 1 Ga. 275, 1846 Ga. LEXIS 72 (1846); Council v. Hixon, 11 Ga. App. 818, 76 S.E. 603, 1912 Ga. App. LEXIS 207 (1912).

A liquidated demand is an amount certain and fixed . . . a sum which cannot be changed by proof. GECC v. Strickle Properties, 861 F.2d 1532, 1988 U.S. App. LEXIS 17389 (11th Cir. 1988).

A liquidated sum is an amount certain and fixed, either by the act and agreement of the parties or by operation of law; a sum which cannot be changed by the proof; it is so much or nothing. Great Am. Ins. Co. v. International Ins. Co., 753 F. Supp. 357, 1990 U.S. Dist. LEXIS 16948 (M.D. Ga. 1990).

Liquidated claim is for an amount certain and fixed. International Indem. Co. v. Terrell, 178 Ga. App. 570, 344 S.E.2d 239, 1986 Ga. App. LEXIS 2550 (1986); American Family Life Assurance Co. v. United States Fire Co., 885 F.2d 826, 1989 U.S. App. LEXIS 15341 (11th Cir. 1989); Tower Fin. Servs., Inc. v. Smith, 204 Ga. App. 910, 423 S.E.2d 257, 1992 Ga. App. LEXIS 1276 (1992), cert. denied, No. S92C1381, 1992 Ga. LEXIS 821 (Ga. Oct. 2, 1992).

Liquidated damages were damages that were in an amount that were certain and fixed, and since the trial court did not have before the court such evidence, the court erred in determining that the damages in the contract between the services provider and the corporation were liquidated, and entering a corresponding judgment. Mitchell v. Gilwil Group, Inc., 261 Ga. App. 882, 583 S.E.2d 911, 2003 Ga. App. LEXIS 799 (2003).

Debt is liquidated when it is certain how much is due and when it is due. Roberts v. Prior, 20 Ga. 561, 1856 Ga. LEXIS 98 (1856); Lincoln Lumber Co. v. Keeter, 167 Ga. 231, 145 S.E. 68, 1928 Ga. LEXIS 130 (1928); Continental Carriers, Inc. v. Seaboard Coast Line R.R., 129 Ga. App. 889, 201 S.E.2d 826, 1973 Ga. App. LEXIS 1184 (1973); B.G. Sanders & Assocs. v. Castellow, 154 Ga. App. 433, 268 S.E.2d 695, 1980 Ga. App. LEXIS 2212 (1980).

When certainty must occur. — Certainty as to amount due and when it is due need not be contemporaneous with agreement out of which it results. Bartee v. Andrews, 18 Ga. 407, 1855 Ga. LEXIS 215 (1855); Council v. Hixon, 11 Ga. App. 818, 76 S.E. 603, 1912 Ga. App. LEXIS 207 (1912).

Demand for "$30,500.00 approx" did not demand liquidated damages in a fixed or certain amount. Rice v. State Farm Fire & Cas. Co., 208 Ga. App. 166, 430 S.E.2d 75, 1993 Ga. App. LEXIS 476 (1993), cert. denied, No. S93C1054, 1993 Ga. LEXIS 758 (Ga. July 1, 1993).

Liquidation of claim may be achieved by agreement of parties among other methods. Lumbermens Mut. Ins. Co. v. Cantex Mfg. Co., 262 F.2d 63, 1958 U.S. App. LEXIS 3402 (5th Cir. 1958).

Trial court properly found that the liquidated damages provision of a contract was enforceable since the plaintiff 's damages would be difficult to assess with accuracy, the parties' intent was to provide for damages rather than a penalty, and the amount specified was a reasonable pre-estimation of the plaintiff 's probable loss. Maz Medics, Inc. v. Satellite Adv. Sys., 194 Ga. App. 583, 391 S.E.2d 446, 1990 Ga. App. LEXIS 276 (1990).

Service provider was entitled to recover prejudgment interest on the liquidated damages amounts under O.C.G.A. § 7-4-15 because the liquidated damages were "fixed and certain" "by agreement" as provided in the statute. Sovereign Healthcare v. Mariner Health Care Mgmt. Co., 329 Ga. App. 782, 766 S.E.2d 172, 2014 Ga. App. LEXIS 782 (2014), cert. denied, No. S15C0566, 2015 Ga. LEXIS 210 (Ga. Mar. 30, 2015).

Liquidated Demands (Cont'd)

Claim which one party to transaction cannot alone render certain is unliquidated. Roberts v. Prior, 20 Ga. 561, 1856 Ga. LEXIS 98 (1856); Council v. Hixon, 11 Ga. App. 818, 76 S.E. 603, 1912 Ga. App. LEXIS 207 (1912); Lincoln Lumber Co. v. Keeter, 167 Ga. 231, 145 S.E. 68, 1928 Ga. LEXIS 130 (1928); Buck Creek Indus., Inc. v. Crutchfield & Co., 133 Ga. App. 80, 210 S.E.2d 32, 1974 Ga. App. LEXIS 975 (1974).

Claim unliquidated when there is a bona fide contention as to amount owing. Ryan v. Progressive Retailer Publishing Co., 16 Ga. App. 83, 84 S.E. 834, 1915 Ga. App. LEXIS 503 (1915); International Indem. Co. v. Terrell, 178 Ga. App. 570, 344 S.E.2d 239, 1986 Ga. App. LEXIS 2550 (1986).

When there remains question of fact as to amount of money defendant owes the plaintiff, the damages are no longer liquidated, and an award of prejudgment interest would not be authorized. Spears v. Allied Eng'g Assocs., 186 Ga. App. 878, 368 S.E.2d 818, 1988 Ga. App. LEXIS 475 (1988).

Claim unliquidated when entire amount in dispute. — In a suit to collect an alleged contractual indebtedness arising from the dissolution of a partnership agreement, under which each partner would receive that partner's share of the assets of the partnership, including accounts receivable to the extent that "charges made exceeded collections credited to such charges during the 180-day period immediately preceding the date of dissolution," since the entire principal amount of the indebtedness was in dispute, it necessarily followed that no portion of the claim was liquidated and that the plaintiff was not entitled to pre-judgment interest. Arora v. Thakrar, 187 Ga. App. 170, 369 S.E.2d 524, 1988 Ga. App. LEXIS 547 (1988).

Dispute as to amount of surplus from real estate foreclosure sale. — When the amount of the surplus (if any) from a foreclosure sale on real estate was in dispute throughout the course of litigation (that is, it was the subject of conflicting testimony, which might be resolved only by a final court decision), this surplus figure clearly did not fall within the concept of "liquidation" under Georgia law. Walton Motor Sales, Inc. v. Ross, 736 F.2d 1449, 1984 U.S. App. LEXIS 20368 (11th Cir. 1984).

Demand unliquidated when amount established by jury. — Award of prejudgment interest was error when demand for damages was not liquidated because its amount could only be established by submission to a jury. Marathon Oil Co. v. Hollis, 167 Ga. App. 48, 305 S.E.2d 864, 1983 Ga. App. LEXIS 2388 (1983); Malta Constr. Co. v. Henningson, Durham & Richardson, Inc., 716 F. Supp. 1466, 1989 U.S. Dist. LEXIS 8449 (N.D. Ga. 1989), aff'd, 927 F.2d 614, 1991 U.S. App. LEXIS 2157 (11th Cir. 1991); Jennings Enters., Inc. v. Carte, 224 Ga. App. 538, 481 S.E.2d 541.

When the defendant is indebted to the plaintiff for a definite sum, interest is properly allowed thereon. Thompson v. Ocmulgee Bldg. & Loan Ass'n, 56 Ga. 350, 1876 Ga. LEXIS 287 (1876).

Claim resting entirely in parol may be a liquidated demand. Nisbet v. Lawson, 1 Ga. 275, 1846 Ga. LEXIS 72 (1846); Anderson v. State, 2 Ga. 370, 1847 Ga. LEXIS 56 (1847); Council v. Hixon, 11 Ga. App. 818, 76 S.E. 603, 1912 Ga. App. LEXIS 207 (1912).

Unliquidated demands arising ex delicto do not bear interest as a matter of law. Western & A.R.R. v. Brown, 102 Ga. 13, 29 S.E. 130, 1897 Ga. LEXIS 438 (1897).

Interest. — If interest is allowed, it is really not interest but damages and the verdict should not express damages in an aggregate sum. Georgia R.R. & Banking Co. v. Crawley, 87 Ga. 191, 13 S.E. 508, 1891 Ga. LEXIS 123 (1891).

In actions ex delicto, the jury may allow interest as part of damages. If interest is allowed it is not recoverable eo nomine and the verdict should express damages in the aggregate sum. Mayor of Milledgeville v. Stembridge, 139 Ga. 692, 78 S.E. 35, 1913 Ga. LEXIS 570 (1913).

Purchase price is liquidated demand bearing interest after delivery. — Claim for purchase price, when contract of sale has been fixed at

definite sum, is a liquidated demand; and, in absence of proof of either contract or custom concerning payment, such purchase price is due when material is delivered and amount bears interest at legal rate from date of delivery. McCarthy v. Nixon Grocery Co., 126 Ga. 762, 56 S.E. 72, 1906 Ga. LEXIS 536 (1906); Howard Supply Co. v. Bunn, 127 Ga. 663, 56 S.E. 757, 1907 Ga. LEXIS 451 (1907); Curtis v. College Park Lumber Co., 145 Ga. 601, 89 S.E. 680, 1916 Ga. LEXIS 414 (1916); Rice-Stix Dry Goods Co. v. Friedlander Bros., 30 Ga. App. 312, 117 S.E. 762, 1923 Ga. App. LEXIS 425 (1923), aff'd, 158 Ga. 303, 122 S.E. 890, 1924 Ga. LEXIS 137 (1924); Horkan v. Great Am. Indem. Co., 211 Ga. 690, 88 S.E.2d 13, 1955 Ga. LEXIS 429 (1955); National Recording Corp. v. W.R. Grace & Co., 112 Ga. App. 310, 145 S.E.2d 382, 1965 Ga. App. LEXIS 684 (1965).

When purchaser breached contract by failure to pay purchase-money on delivery of goods, the seller was entitled to recover agreed purchase-price as liquidated damages, with interest thereon from the time the purchaser was liable and bound to pay. Morgan v. J.B. Colt Co., 34 Ga. App. 630, 130 S.E. 600, 1925 Ga. App. LEXIS 453 (1925).

Interest, due and payable, is a liquidated demand. — When interest was due and payable on installments of certain paving assessments, such accrued and matured interest was a liquidated demand, and itself bore interest from its maturity at legal rate. Steele v. City of Waycross, 187 Ga. 382, 200 S.E. 704, 1938 Ga. LEXIS 798 (1938).

Past due interest a liquidated demand. — Stipulation in note that interest shall be paid annually renders past due interest a liquidated demand which itself bears interest. Butler v. First Nat'l Bank, 13 Ga. App. 35, 78 S.E. 772, 1913 Ga. App. LEXIS 22 (1913).

Interest note is liquidated demand, which bears interest from maturity. — When obligation to pay interest is put in form of interest note, that note becomes a liquidated demand; and when the note is not paid at maturity the note bears interest as such, certainly if parties have contracted that the note should. Byrd v. Equitable Life Assurance Soc'y, 185 Ga. 628, 196 S.E. 63, 1938 Ga. LEXIS 817 (1938).

Noninterest bearing installment note liquidated debt. — Note for sum payable in 18 monthly installments, but bearing no interest, is liquidated debt. Recordex Corp. v. Southeastern Metal Prods., Inc., 147 Ga. App. 79, 248 S.E.2d 159, 1978 Ga. App. LEXIS 2781 (1978).

Liquidated insurance claims are subject to prejudgment interest. — See Florida Int'l Indem. Co. v. Osgood, 233 Ga. App. 111, 503 S.E.2d 371.

Contract stipulation for attorney's fees was liquidated demand. — When note stipulates for attorney's fees in case of collection by suit, it is part of principal debt and bears interest. Baxter v. Bates, 69 Ga. 587, 1882 Ga. LEXIS 268 (1882).

Attorney's fees. — Trial court's grant of a default judgment to the appellee on the issue of the appellant's liability on a promissory note was upheld but the trial court's award of damages, interest, and attorney fees to the appellee was vacated because material conflicts in the pleadings existed that had to be resolved before the trial court could calculate the value of the stock on the day the appellee submitted the June Conversion Notice and could award that amount as damages. Pure Hospitality Solutions, Inc. v. Canouse, 347 Ga. App. 592, 820 S.E.2d 434, 2018 Ga. App. LEXIS 571 (2018).

County warrant is a liquidated demand. — County warrant, which is a liquidated demand even though it does not express any date for payment, is as matter of law payable on demand, made five days after date on which it is issued, and will ordinarily bear interest from and after demand so made. Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475, 1942 Ga. LEXIS 375 (1942).

Debt based on published tariffs is liquidated and bears interest from the time the party becomes liable. National Carloading Corp. v. Security Van Lines, 164 Ga. App. 850, 297 S.E.2d 740, 1982 Ga. App. LEXIS 3350 (1982).

Fraudulently acquired loan. — Action in fraud to recover a fixed amount of money lost in a fraudulently acquired loan is a liquidated demand eligible for

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prejudgment interest. Gorlin v. Halpern, 184 Ga. App. 10, 360 S.E.2d 729, 1987 Ga. App. LEXIS 2128 (1987), rev'd, 258 Ga. 127, 365 S.E.2d 405, 1988 Ga. LEXIS 141 (1988), vacated, 187 Ga. App. 413, 371 S.E.2d 179, 1988 Ga. App. LEXIS 706 (1988).

Insured's demand for payment of attorney's fees did not become liquidated until judgment because the amount of attorney's fees was not fixed and certain until that time. American Family Life Assurance Co. v. United States Fire Co., 885 F.2d 826, 1989 U.S. App. LEXIS 15341 (11th Cir. 1989).

Attorney's fees fixed upon foreclosure of property securing debt. — When a promissory note secured by a deed to secure debt provided for payment in a principal amount, together with interest at the rate of nine percent per annum from date until paid in full, together with all costs of collection including 15 percent as attorney's fees if collected by law or through an attorney at law, at the time of the sale of the property at a foreclosure sale after notice, the obligation to pay attorney's fees to the plaintiff had become fixed and certain, and from that time forward interest on such sum began to run. Bulman v. First Nat'l Bank, 165 Ga. App. 843, 303 S.E.2d 29, 1983 Ga. App. LEXIS 2039 (1983).

Award of prejudgment interest in stock purchase agreement. — In a case arising out of breach of a stock purchase agreement, in which the trial court ordered specific performance of the agreement for a purchase price of $1.2 million, the trial court erred in awarding prejudgment interest under O.C.G.A. § 13-6-13 because § 13-6-13 only allowed interest on "damages" and did not apply to specific performance. Whether the sellers were entitled to prejudgment interest on O.C.G.A. § 7-4-15 (liquidated demands) was a question for the trial court on remand. Estate of Callaway v. Garner, 297 Ga. 52, 772 S.E.2d 668, 2015 Ga. LEXIS 292 (2015).

Prejudgment interest claims of materialmen. — No exclusion is made in O.C.G.A. § 7-4-15 to liquidated demands underpinning a materialman's lien and prejudgment interest is not precluded merely because the aggregate amount of liens exceeds the contract price under O.C.G.A. § 44-14-361.1. Gaster Lumber Co. v. Browning, 219 Ga. App. 435, 465 S.E.2d 524, 1995 Ga. App. LEXIS 1053 (1995), cert. denied, No. S96C0583, 1996 Ga. LEXIS 397 (Ga. Mar. 8, 1996), aff'd, 267 Ga. 72, 475 S.E.2d 576, 1996 Ga. LEXIS 536 (1996).

Fact that defendant claimed a credit against undisputed specific amount that the plaintiff claimed the plaintiff was fully owed under the executed contract would not render the plaintiff's claim unliquidated. The credit only reduced the net balance on the liquidated claim; it would not render the claim unliquidated. Gold Kist Peanuts v. Alberson, 178 Ga. App. 253, 342 S.E.2d 694, 1986 Ga. App. LEXIS 1637 (1986); Hendricks v. Blake & Pendleton, Inc., 221 Ga. App. 651, 472 S.E.2d 482.

Taxes do not bear interest as liquidated demands. — Taxes are not debts in ordinary sense of word so as to bear interest as liquidated demands. State v. Southwestern R.R., 70 Ga. 11, 1883 Ga. LEXIS 295 (1883).

Prejudgment interest. — When a claim was undisputed, the defendant was entitled to prejudgment interest at the rate of seven percent per annum from the date the debt became due and the trial court's judgment of prejudgment interest of 18% per annum was in excess of the statutorily required amount. Turner Constr. Co. v. Electrical Distribs., Inc., 202 Ga. App. 726, 415 S.E.2d 325, 1992 Ga. App. LEXIS 164 (1992).

Because there was no dispute about the specific amount that a realty firm was entitled to receive from the firm's owner if the firm earned the full commission set forth in the operative contracts, that amount was liquidated, and the fact that the owner offered to pay only one-half of that amount did not render the realty firm's claim unliquidated; hence, the realty firm was entitled to prejudgment interest on the unpaid commission from the date of closing. Tommy McBride Realty v. Nicholson, 286 Ga. App. 135, 648 S.E.2d 468, 2007 Ga. App. LEXIS 702 (2007).

Trial court erred when the court concluded upon default that only liquidated damages were involved and awarded a manufacturer damages without an evidentiary hearing in the manufacturer's breach of contract action against a distributor because the complaint did not contain sufficient information to allow the trial court to ascertain the amount owed under the contract and that the amount was fixed and certain; the trial court could not properly award damages and prejudgment interest under O.C.G.A. § 7-4-15 to the manufacturer without an evidentiary hearing because the manufacturer's complaint did not show that the manufacturer's claims were for liquidated damages. Kitchen Int'l, Inc. v. Evans Cabinet Corp., 310 Ga. App. 648, 714 S.E.2d 139, 2011 Ga. App. LEXIS 622 (2011).

Plaintiff's claim for statutory interest was improperly denied as sovereign immunity did not bar the plaintiff's breach of contract claim against the Georgia Lottery Corporation and, thus, it did not bar the award of prejudgment interest in the plaintiff's breach of contract action; however, whether the plaintiff made a sufficient demand for prejudgment interest and was otherwise entitled to recover interest were questions to be resolved on remand. Patel v. Ga. Lottery Corp., 350 Ga. App. 883, 830 S.E.2d 393, 2019 Ga. App. LEXIS 396 (2019).

When the plaintiff sued the Georgia Lottery Corporation for breach of contract after the Corporation denied the plaintiff's claim for a $5,000,000 lottery prize, because the amount due on the lottery ticket was fixed, the damages sought were liquidated, and O.C.G.A. § 7-4-15 was applicable to the award of prejudgment interest; however, whether the plaintiff made a sufficient demand for prejudgment interest and was otherwise entitled to recover interest were questions to be resolved on remand. Patel v. Ga. Lottery Corp., 350 Ga. App. 883, 830 S.E.2d 393, 2019 Ga. App. LEXIS 396 (2019).

Ascertainable amount, liquidated. — Because the amount due on a note and a personal guaranty was ascertainable under their instrumental terms, the damages sought were liquidated. Consulting Constr. Corp. v. Edwards, 207 Ga. App. 296, 427 S.E.2d 789, 1993 Ga. App. LEXIS 164 (1993).

Accounts

Open accounts bear interest from due date, at which time the accounts are considered liquidated demands. Intercompany Servs. Corp. v. Kleeb, 140 Ga. App. 512, 231 S.E.2d 505, 1976 Ga. App. LEXIS 1542 (1976).

Account not liquidated demand until amount due is expressly or impliedly fixed and determined. Rice-Stix Dry Goods Co. v. Friedlander Bros., 30 Ga. App. 312, 117 S.E. 762, 1923 Ga. App. LEXIS 425 (1923), aff'd, 158 Ga. 303, 122 S.E. 890, 1924 Ga. LEXIS 137 (1924); Insurance Co. of N. Am. v. Folds, 42 Ga. App. 306, 155 S.E. 782, 1930 Ga. App. LEXIS 377 (1930); Firemen's Ins. Co. v. Oliver, 53 Ga. App. 638, 186 S.E. 706, 1936 Ga. App. LEXIS 349 (1936).

Assent to correctness of open accounts makes the accounts liquidated demands. Anderson v. State, 2 Ga. 370, 1847 Ga. LEXIS 56 (1847); Kelley & McWilliams v. Terhune, Nixon & Co., 113 Ga. 365, 38 S.E. 839, 1901 Ga. LEXIS 266 (1901); Council v. Hixon, 11 Ga. App. 818, 76 S.E. 603, 1912 Ga. App. LEXIS 207 (1912). But see Fell v. Abbot, 1 Ga. Rpt. Ann. (R.M.C. 452) 278 (1835).

Verbal acknowledgment of open account does not render it liquidated. — Verbal acknowledgment of indebtedness on open account accompanied by promise to pay does not constitute a liquidated demand. Fell v. Abbot, 1 Ga. Rpt. Ann. (R.M.C. 452) 278 (1835).

Written acknowledgment of open account renders account a liquidated demand. — Acknowledgment of open account by letter is such a liquidation of demand as will enable creditor to obtain interest from date of acknowledgment. Hicks v. Thomas, 1 Ga. Rpt. Ann. (Dud. 218) 472 (1825).

Decedent's assent, during lifetime, of correctness of account rendered account liquidated. — When decedent in decedent's lifetime assented to correctness of account rendered decedent it became after such assent, a liquidated

Accounts (Cont'd)

demand. Anderson v. State, 2 Ga. 370, 1847 Ga. LEXIS 56 (1847); Bartee v. Andrews, 18 Ga. 407, 1855 Ga. LEXIS 215 (1855); Kelley & McWilliams v. Terhune, Nixon & Co., 113 Ga. 365, 38 S.E. 839, 1901 Ga. LEXIS 266 (1901).

Written guarantee to pay future indebtedness of another, on open account, is not liquidated. Hargroves v. Cooke, 15 Ga. 321, 1854 Ga. LEXIS 43 (1854).

Insurance

Policy not liquidated demand until amount of loss and liability established. — Fire insurance policies which insure against all direct loss or damage by fire to an amount not exceeding named sums are not themselves liquidated demands, nor is there originally any amount ascertained payable under those policies. The process of adjustment may result in ascertainment of amount of loss, though liability be denied, in which case interest may be recovered when liability is established. Merchants Ins. Co. v. Lilgeomont, Inc., 84 F.2d 685, 1936 U.S. App. LEXIS 4583 (5th Cir. 1936).

In a suit on a property damage insurance policy (e.g., fire, lightning, windstorm, etc.), when liability is not disputed but when the amount of damage is disputed, the amount is unliquidated. Braner v. Southern Trust Ins. Co., 255 Ga. 117, 335 S.E.2d 547, 1985 Ga. LEXIS 880 (1985).

In a suit against an insurer under a policy covering rugs, because there was a bona fide dispute between the parties as to the extent of water damage to the rugs that was not resolved until trial, it was only after entry of the judgment that the claim became liquidated, and the trial court did not err in denying an award of prejudgment interest on that claim. Holloway v. State Farm Fire & Cas. Co., 245 Ga. App. 319, 537 S.E.2d 121, 2000 Ga. App. LEXIS 875 (2000), cert. denied, No. S00C1976, 2001 Ga. LEXIS 75 (Ga. Jan. 19, 2001).

Interest accrues on loss from time amount payable becomes certain and due. — It is the general rule that interest is recoverable on a loss by fire from time when amount payable has been made certain and has become due. Insurance Co. of N. Am. v. Folds, 42 Ga. App. 306, 155 S.E. 782, 1930 Ga. App. LEXIS 377 (1930); Firemen's Ins. Co. v. Oliver, 53 Ga. App. 638, 186 S.E. 706, 1936 Ga. App. LEXIS 349 (1936).

Claim for face amount of policy is liquidated demand when loss total. — Claim for face amount of fire insurance policy on dwelling is to be deemed fixed, certain, and determined under contract, so as to authorize interest thereon, when loss was admittedly total, and insurance company neither prior to nor in action on policy in any way questioned the amount, but based its sole defense on alleged forfeiture of policy by breaches of its conditions. National Fire Ins. Co. v. Thompson, 51 Ga. App. 625, 181 S.E. 101, 1935 Ga. App. LEXIS 424 (1935).

When jury was authorized to find that an insurance company agreed to pay the full face amount of the policy covering undisputed total loss, the verdict was not illegal because the verdict included interest. Sentinel Fire Ins. Co. v. McRoberts, 50 Ga. App. 732, 179 S.E. 256, 1934 Ga. App. LEXIS 586 (1934).

Employer's claim for amount recovered by employee as a liquidated demand. — Demand of employer against insurance company under "Employers' Liability Policy," for loss or damage sustained by the employer by reason of a judgment (together with the cost and expenses thereof) recovered by an employee accidentally injured, is a liquidated demand upon which interest may be claimed. Georgia Iron & Coal Co. v. Ocean Accident & Guar. Corp., 133 Ga. 326, 65 S.E. 775, 1909 Ga. LEXIS 210 (1909).

Liability at legal rate on optional no-fault benefits. — Insurer is indebted for prejudgment interest at the legal rate on optional no-fault benefits, from the date of demand until the date of tender, less the 30-day statutory exclusion under O.C.G.A. § 33-34-6(b). International Indem. Co. v. Enfinger, 181 Ga. App. 420, 352 S.E.2d 575, 1986 Ga. App. LEXIS 2830 (1986), aff'd, 257 Ga. 385, 359 S.E.2d 884, 1987 Ga. LEXIS 878 (1987).

O.C.G.A. § 7-4-15 is inapplicable to prejudgment interest on life insurance

proceeds. Southwestern Life v. Middle Ga. Neurological, 262 Ga. 273, 416 S.E.2d 496, 1992 Ga. LEXIS 497 (1992).

O.C.G.A. § 33-25-10 governs the entitlement to prejudgment interest on life insurance proceeds and does not require the payment of prejudgment interest when the insured dies within 12 months of issuance of the policy. O.C.G.A. § 7-4-15 is inapplicable to prejudgment interest on life insurance proceeds. Middle Ga. Neurological Specialists v. Southwestern Life Ins. Co., 967 F.2d 536, 1992 U.S. App. LEXIS 17558 (11th Cir. 1992).

Insurer subject to prejudgment interest on claim despite agent improperly binding risk. — When an insurer had to pay the insured because of the agent's negligence in binding a risk not within insurer's guidelines, prejudgment interest was appropriate given the fact that the amount in dispute had been at all times certain and fixed, and there has been no dispute over whether the sums paid to insured were excessive or in any other way inappropriate. Valiant Ins. Co. v. Birdsong, 665 F. Supp. 918, 1987 U.S. Dist. LEXIS 6454 (M.D. Ga. 1987).

Prejudgment interest but not punitive damages or attorney fees were warranted on liquidated claim. — When an insurance company was awarded damages for fraudulent claims submitted by the owner of an insured in the amount of the fraudulent claims on which the company paid, the company was entitled to prejudgment interest on the award of damages pursuant to O.C.G.A. § 7-4-15 because the award was fixed and certain, but was not entitled to interest on its claims for punitive damages and attorney fees because such claims were unliquidated. Cincinnati Ins. Co. v. Porter (In re Porter), No. 05-44583-PWB, No. 06-5002-PWB, 2007 Bankr. LEXIS 2185 (Bankr. N.D. Ga. May 23, 2007).

Prejudgment interest warranted on liquidated claim for total loss with no dispute as to value. — Damages for cargo stolen from an insured's truck were liquidated under O.C.G.A. § 7-4-15 because the insured presented the invoice price of the stolen cargo at trial, and it was undisputed that the total cargo was lost; the insurer did not contest the amount of the invoices or present an alternate calculation of the amount. The insurer was therefore liable for prejudgment interest on the liquidated amount. Certain Underwriters at Lloyds, London v. DTI Logistics, Inc., 300 Ga. App. 715, 686 S.E.2d 333, 2009 Ga. App. LEXIS 1249 (2009).

When Interest Is Recoverable

Interest is recoverable from date when amount of claim has been liquidated and determined. Insurance Co. of N. Am. v. Folds, 42 Ga. App. 306, 155 S.E. 782, 1930 Ga. App. LEXIS 377 (1930).

Interest due on amount recovered begins after entry of judgment. — Trial court properly granted a title insurance company's motion for directed verdict as to the insured's claim for prejudgment interest under O.C.G.A. § 7-4-15 because damages were properly argued and precedent has established that when on entering upon trial the insurer disputes the amount of loss claimed by the insured, interest on the amount recovered begins after entry of judgment. Old Republic Nat'l Title Ins. Co. v. RM Kids, LLC, 337 Ga. App. 638, 788 S.E.2d 542, 2016 Ga. App. LEXIS 385 (2016), cert. denied, No. S16C1843, 2017 Ga. LEXIS 117 (Ga. Feb. 27, 2017).

Prejudgment interest on liquidated demands accrues from the time of demand. International Indem. Co. v. Terrell, 178 Ga. App. 570, 344 S.E.2d 239, 1986 Ga. App. LEXIS 2550 (1986).

When a guardian disputed whether the guardian was owed commissions for stocks and bonds under former O.C.G.A. § 29-2-42(a) (see now O.C.G.A. § 29-5-50), not the amount paid for such commissions, the estate's administrator was entitled to prejudgment interest under O.C.G.A. § 7-4-15; the fact that the guardian disputed liability at trial did not convert the claim into a claim for an uncertain and, therefore, unliquidated amount. In re Estate of Miraglia, 290 Ga. App. 28, 658 S.E.2d 777, 2008 Ga. App. LEXIS 229 (2008), cert. denied, No. S08C1169, 2008 Ga. LEXIS 632 (Ga. July 7, 2008).

When Interest Is Recoverable (Cont'd)

Interest on unpaid interest. — When a promissory note calls for payment of the principal at a fixed time and for payment of interest on the principal at fixed times during the term of the note, the failure to pay the interest when due renders the past due interest a liquidated demand which would itself bear interest prior to judgment. Bryant v. Kenerly, 238 Ga. App. 153, 518 S.E.2d 172, 1999 Ga. App. LEXIS 753 (1999), cert. denied, No. S99C1322, 1999 Ga. LEXIS 821 (Ga. Oct. 15, 1999).

Rate of prejudgment interest payable on past due interest is determined by the note if the note provides for the interest to be charged on past due interest, but if no such provision is made, then the applicable statutory rate of interest would control. Bryant v. Kenerly, 238 Ga. App. 153, 518 S.E.2d 172, 1999 Ga. App. LEXIS 753 (1999), cert. denied, No. S99C1322, 1999 Ga. LEXIS 821 (Ga. Oct. 15, 1999).

Award of interest on past due interest under O.C.G.A. § 7-4-15 is subject to the limitation that, in the absence of a contrary agreement, no such interest on interest may be awarded when the interest installments mature after the principal itself has fallen due. Bryant v. Kenerly, 238 Ga. App. 153, 518 S.E.2d 172, 1999 Ga. App. LEXIS 753 (1999), cert. denied, No. S99C1322, 1999 Ga. LEXIS 821 (Ga. Oct. 15, 1999).

Interest on services or property of readily ascertainable value. — When amount for which recovery is sought, even though not liquidated, is based upon readily ascertainable value of services or property, the general and better considered rule is to allow interest, at least in absence of strong equities to the contrary. Erickson's Inc. v. Travelers Indem. Co., 330 F. Supp. 380, 1971 U.S. Dist. LEXIS 13462 (S.D. Ga. 1971), aff'd, 454 F.2d 884, 1972 U.S. App. LEXIS 11647 (5th Cir. 1972).

Interest awarded from time of theft of bailed good. — Court does not err in instructing the jury that the jury may award interest from the time of the theft of a bailed good until trial when the jury finds that the sum awarded is a liquidated sum. Wheels & Brakes, Inc. v. Capital Ford Truck Sales, Inc., 167 Ga. App. 532, 307 S.E.2d 13, 1983 Ga. App. LEXIS 2537 (1983).

Award of interest on salary obligation. — Though interest on unpaid wages was not expressly claimed, jury could allow interest from time wages became due according to terms of contract for amount of money wages was liquidated by contract, and would bear interest from time payment ought to have been made. Ansley v. Jordan, 61 Ga. 482, 1878 Ga. LEXIS 163 (1878).

There is a definite contractual relation between every employee and employer, whether the employee is a public officer or not, which entitles the employee to payment of the employee's salary, and when demand is made therefor and refused, the court may award interest on the salary. Undercofler v. Scott, 220 Ga. 406, 139 S.E.2d 299, 1964 Ga. LEXIS 570 (1964).

Interest upon valid obligation of a county. — Interest upon valid subsisting obligation of county is of same nature as principal, and is collectible upon same terms and in same manner as principal. Hartley v. Nash, 157 Ga. 402, 121 S.E. 295, 1924 Ga. LEXIS 60 (1924).

Interest recoverable from one who sells land the seller does not own. — When one fraudulently sold land which one did not own and received part of purchase money, the buyer would be entitled to recover interest on sum so paid from date of payment; if no fraud, interest from date of demand for repayment of money; and if no fraud and no demand, interest from date of filing plea of set-off. Phillips v. O'Neil, 85 Ga. 142, 11 S.E. 581, 1890 Ga. LEXIS 14 (1890).

Application of rule for ascertaining interest recoverable on building contract. — Fair rule to be applied in building contracts is to ascertain the stated debt due at a certain time and deduct therefrom a reasonable amount for remedying defects. The former should bear interest from the date it is ascertained or demanded; the latter should bear interest only from the time the dispute is resolved, even if it is at trial. J.A. Jones Constr. Co. v. Greenbriar Shopping Ctr., 332 F. Supp. 1336, 1971

U.S. Dist. LEXIS 14645 (N.D. Ga. 1971), aff'd, 461 F.2d 1269, 1972 U.S. App. LEXIS 8461 (5th Cir. 1972).

Interest on court orders runs as on other liquidated demands. — Orders absolute given by inferior courts of counties in this state for payment of money to persons in liquidation of debts due by those courts draw interest just as other liquidated demands do. State ex rel. Greer v. Speer, 33 Ga. 93 (1864).

Funds whose disposition is affected by court order or garnishment. — When payment of funds to rightful owner is prohibited by court order or by garnishment proceeding, interest does not accrue until order or garnishment has been dissolved. Cochran v. Bank of Hancock County, 118 Ga. App. 100, 162 S.E.2d 765, 1958 Ga. App. LEXIS 948 (1958).

Note stipulating it is without interest accrues interest after demand. — When promissory note specifies that stated sum "without interest" is to be paid on certain date, phrase "without interest" refers only to time between execution of note and date of maturity as interest will accrue from date holder has right to make demand for payment. Jenkins v. Morgan, 100 Ga. App. 561, 112 S.E.2d 23, 1959 Ga. App. LEXIS 665 (1959).

Interest on earnest money. — Having found there was no jury issue as to whether the buyers owed the earnest money payment plus interest to sellers under the contract, as well as under principles of promissory estoppel, the trial court erred in failing to award such interest for the period money was due until final judgment. Ware v. Renfroe, 231 Ga. App. 529, 499 S.E.2d 907, 1998 Ga. App. LEXIS 493 (1998).

Cash sale of property bears interest from date, although day of payment may be postponed until a particular event transpires. Parke v. Foster, 26 Ga. 465, 1858 Ga. LEXIS 347 (1858).

Rent obligation which is certain and payable on a day certain bears interest therefrom at rate imposed by law if contract is silent as to rate. In re Cent. of Ga. Ry., 47 F. Supp. 786, 1942 U.S. Dist. LEXIS 2155 (D. Ga. 1942).

Interest for remaindermen does not run until death of tenant for life, the estate being in money. McCook v. Harp, 81 Ga. 229, 7 S.E. 174, 1888 Ga. LEXIS 99 (1888).

Judgment for support bears interest from date rendered. — When cash award of year's support to widow could not be paid until four years after judgment, the widow was entitled to interest from the date of judgment. Clark v. Georgia R.R. Bank & Trust Co., 182 Ga. 472, 185 S.E. 716, 1936 Ga. LEXIS 456 (1936).

Factor entitled to interest upon draft paid upon faith of produce which was never received. Field & Adams v. Reid, 21 Ga. 314, 1857 Ga. LEXIS 59 (1857); Howard v. Behn & Foster, 27 Ga. 174, 1859 Ga. LEXIS 27 (1859).

Interest recoverable on money fraudulently received or wrongfully detained. — One who has fraudulently received or wrongfully detained money of another is chargeable with interest thereon from the time the person received the money. Anderson v. State, 2 Ga. 370, 1847 Ga. LEXIS 56 (1847).

Liability of agent for interest on principal's money held by agent. — Agent who admits money in agent's hands belonging to agent's principal is liable for interest thereon from time the agent received the money. Anderson v. State, 2 Ga. 370, 1847 Ga. LEXIS 56 (1847).

Partner misapplying partnership funds liable for interest. — When one partner misapplies partnership funds to the partner's own use, that partner will be held liable for the misapplication, with interest thereon from time of such misapplication. Solomon v. Solomon, 2 Ga. 18, 1847 Ga. LEXIS 2 (1847).

Interest condemnee must refund to condemnor. — When interest is computed on amount which condemnee must refund to condemnor, interest is computed only from the date of adjudication of the principal amount. State Hwy. Dep't v. Rogers, 118 Ga. App. 626, 165 S.E.2d 172, 1968 Ga. App. LEXIS 1481 (1968).

No interest accrued when demand not made upon surety before execution. — When there was no evidence in the record of any demand

When Interest Is Recoverable (Cont'd)

upon surety of tax commissioner prior to the date of execution, an execution against the surety could not properly be issued for interest alleged to have accrued prior to the date thereof. Keen v. Lewis, 215 Ga. 166, 109 S.E.2d 764, 1959 Ga. LEXIS 423 (1959).

Interest runs from time county treasurer refuses payment of warrant. — Former Code 1933, § 23-1608 (see now O.C.G.A. § 36-11-5) assumed that the county treasurer would pay the warrant when payment was demanded, and if the treasurer failed to do so, the section contemplated that interest would run by virtue of former Code 1933, §§ 57-101 and 57-110 (see now O.C.G.A. §§ 7-4-2 and 7-4-15) from the date of demand. Marion County v. First Nat'l Bank, 193 Ga. 263, 18 S.E.2d 475, 1942 Ga. LEXIS 375 (1942).

Preferred claim against insolvent bank not entitled to interest when none produced. — When bank became insolvent and was taken in charge for liquidation by superintendent of banks for this state, and one had claim to funds held for it by bank which was afterwards adjudicated to be a preferred claim for a specified sum, and when, after final adjudication in favor of standing of claim as a preferred claim, the superintendent of banks paid over amount of principal to the claimant, mandamus would not lie to compel the superintendent to pay interest accruing on amount of preferred claim after the superintendent took charge of such bank since the fund had not produced interest. Macon Grocery Co. v. Mobley, 174 Ga. 185, 162 S.E. 711, 1931 Ga. LEXIS 19 (1931).

Award of interest in breach of contract action. — Award of prejudgment interest was proper in a hospital's breach of contract action, wherein the hospital was awarded judgment in the hospital's favor on a claim for recovery of monies due that had been loaned to a doctor, who did not repay the full sum; pursuant to O.C.G.A. §§ 7-4-15 and 13-6-13, when the balance was a liquidated amount, as here, the court was authorized to award prejudgment interest. Walker v. Gwinnett Hosp. Sys., 263 Ga. App. 554, 588 S.E.2d 441, 2003 Ga. App. LEXIS 1184 (2003).

Plaintiff properly identified both O.C.G.A. §§ 7-4-15 and 13-6-13 as a basis for prejudgment interest and both statutes applied to unliquidated damages; thus, defendant was not entitled to summary judgment on the issue of prejudgment interest. Hi Tech. Corp. v. Quality & Inv. Props. Suwanee, 369 Ga. App. 859, 894 S.E.2d 666, 2023 Ga. App. LEXIS 537 (2023).

Suit by attorney to recover fee. — In breach of contract action brought by attorney to recover legal fees from a client, attorney was entitled to prejudgment interest on one-third of the cash settlement as of the date the client received a settlement check; the contract was clear that the attorney was entitled to the cash settlement and when the client received the settlement check, the attorney's one-third share of the cash payment was liquidated and due. Hardnett v. Ogundele, 291 Ga. App. 241, 661 S.E.2d 627, 2008 Ga. App. LEXIS 450 (2008).

Effect of Tender

Tender to prevent running of interest must be continuing. — Using money after refusal by creditor to receive the money destroys this necessary attribute of a legal tender. Fortson v. Strickland, 23 Ga. App. 607, 99 S.E. 147, 1919 Ga. App. LEXIS 237 (1919).

Interest not allowed from time tender of payment refused or waived. — Formal tender of payment of note was in effect waived by a statement on the part of the plaintiff, when the defendant offered to pay the note, that amount due thereon would not be accepted unless amount due on former note was also paid, and the plaintiff could not recover interest from that time on the first mentioned note. Washington Exch. Bank v. Smith, 23 Ga. App. 356, 98 S.E. 418, 1919 Ga. App. LEXIS 121 (1919), rev'd, 149 Ga. 650, 101 S.E. 769, 1920 Ga. LEXIS 356 (1920).

When proof of tender is insufficient, note bears interest after maturity. Dumas v. Pepper, 43 Ga. 361, 1871 Ga. LEXIS 247 (1871).

RESEARCH REFERENCES

Am. Jur. 2d.
44B Am. Jur. 2d, Interest and Usury, § 36.
C.J.S.
10 C.J.S., Bills and Notes, §§ 82, 231, 301. 47 C.J.S., Interest and Usury Consumer Credit, § 42 et seq.
ALR.
Right to interest for period before advances under a loan to be advanced to the borrower in installments, 40 A.L.R. 825.
Time from which interest is recoverable on demand note or like demand instrument containing no provision as to interest, 45 A.L.R.2d 1202.

7-4-16. When interest runs on commercial accounts; maximum interest rate on commercial accounts.

Unless otherwise provided in writing signed by the obligor, a commercial account becomes due and payable upon the date a statement of the account is rendered to the obligor. The owner of a commercial account may charge interest on that portion of a commercial account which has been due and payable for 30 days or more at a rate not in excess of 1 1/2 percent per month calculated on the amount owed from the date upon which it became due and payable until paid. As used in this Code section, the term "commercial account" means an obligation for the payment of money arising out of a transaction to sell or furnish, or the sale of, or furnishing of, goods or services other than a "retail installment transaction" as defined in paragraph (10) of subsection (a) of Code Section 10-1-2.

History.
Ga. L. 1858, p. 90, § 1; Code 1863, § 2030; Code 1868, § 2031; Ga. L. 1873, p. 22, § 1; Code 1873, § 2057; Code 1882, § 2057; Civil Code 1895, § 2885; Civil Code 1910, § 3435; Code 1933, § 57-111; Ga. L. 1980, p. 514, § 1; Ga. L. 2024, p. 1052, § 1(a)(39)/SB 448, effective July 1, 2024.
Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "As used in this Code section, the term 'commercial account'" for "'Commercial account'" at the beginning of the third sentence.
Law reviews.
For survey article on recent developments in Georgia law of remedies, see 34 Mercer L. Rev. 397 (1982).
For annual survey on construction law, see 65 Mercer L. Rev. 67 (2013).

JUDICIAL DECISIONS

Analysis

General Considerations
Prejudgment Interest
Procedure

General Considerations

No application to security deposit. — O.C.G.A. § 7-4-16 was inapplicable in the case of a "security deposit" which represented one party's obligation to return money to another party arising out of the termination of their business relationship; since the security deposit did not represent an obligation for the payment of any goods or services, the first party's right to secure a refund of its security deposit did not render it the owner of a "commercial account." Race, Inc. v. Wade Leasing, Inc., 201 Ga. App. 340, 411 S.E.2d 56, 1991 Ga. App. LEXIS 1353 (1991).

O.C.G.A. § 7-4-16 is applicable only to obligations to pay for goods and services on a commercial account and is inapplicable to obligations to return money arising out of the termination of a business agreement. Hayden v. Sigari, 220 Ga. App. 6, 467 S.E.2d 590, 1996 Ga. App. LEXIS 79 (1996), cert. denied, No. S96C0820, 1996 Ga. LEXIS 541 (Ga. Apr. 25, 1996).

Commercial account due and payable. — Summary judgment was properly granted to a buyer as: (1) a seller's claim was time-barred under O.C.G.A. § 11-2-725 since a document dated May 5, 2000, was not an invoice to the buyer, but was a compilation of invoices previously submitted to the buyer; (2) even if the seller provided the buyer with services in conjunction with the goods it sold, § 11-2-725 applied as the predominant element of the agreement was the sale of goods; (3) under O.C.G.A. § 7-4-16, a commercial account became due and payable upon the date a statement of the account was rendered to the obligor; and (4) the seller's claim that the six-year limitation period contained in O.C.G.A. § 9-3-24 applied was rejected as there was no contract and the claim was not raised before the trial court. All Tech Co. v. Laimer Unicon, LLC, 281 Ga. App. 579, 636 S.E.2d 753, 2006 Ga. App. LEXIS 1177 (2006).

In a case brought under the Perishable Agricultural Commodities Act, 1930 (PACA), 7 U.S.C. §§ 499(a)-499(o), in which: (1) a produce company's president had defalcated within the meaning of the law on the president's trust duties; (2) the president was personally liable to a produce wholesaler in the amount of the company's PACA trust for the president's failures as trustee; (3) the wholesaler's invoices provided for interest on unpaid accounts at the rate of one and one-half percent per month; and (4) the invoices provided that the customer must pay the attorney fees and costs incurred in the collection of all past due invoices, in its grant of summary judgment in favor of the wholesaler, the district court awarded the wholesaler the principal amount that was owed; in addition, pursuant to O.C.G.A. § 13-1-11, the wholesaler was entitled to attorney fees and under O.C.G.A. § 7-4-16 the wholesaler was entitled to interest payments at the rate stated on the invoices. Cee Bee Produce, Inc. v. Tucker, No. 5:06-CV-181, 2007 U.S. Dist. LEXIS 67339 (M.D. Ga. Sept. 12, 2007).

Because account invoices sued upon by two contractors represented obligations for the payment of money arising out of transactions to furnish labor and materials, none of which involved a retail installment transaction, and involved liquidated claims, the trial court did not err in determining that those accounts were commercial accounts. Thus, an award of prejudgment interest as to the amounts owed was upheld on appeal. Hampshire Homes, Inc. v. Espinosa Constr. Servs., 288 Ga. App. 718, 655 S.E.2d 316, 2007 Ga. App. LEXIS 1280 (2007).

Appellate court properly dismissed an attorney's direct appeal in a case wherein the attorney sued a client for attorney fees as the judgment the attorney recovered was one for damages in an amount under $10,000, and as such, it was subject to appeal as a matter of discretion under O.C.G.A. § 5-6-35(a)(6), rather than of right. The failure of the attorney to recover on the claims of prejudgment interest or attorney fees did not transform the judgment into a finding on liability adverse to the attorney so as to render an appeal of the matter outside the ambit of § 5-6-35(a)(6). Cooney v. Burnham, 283 Ga. 134, 657 S.E.2d 239, 2008 Ga. LEXIS 134 (2008).

Trial court did not err in awarding a seller pre-judgment interest under

O.C.G.A. § 7-4-16 in the seller's breach of contract action against a buyer to recover damages for unpaid principal on shipped material and unpurchased material because the seller's invoices were a due and payable liquidated debt on a commercial account subject to interest under § 7-4-16; because certain materials were delivered by the seller and accepted by the buyer, the buyer was responsible for payment according to the agreed-upon price. Scovill Fasteners, Inc. v. Northern Metals, Inc., 303 Ga. App. 246, 692 S.E.2d 840, 2010 Ga. App. LEXIS 323 (2010).

Jury's interest award on a supplier's claim against a guarantor was not arbitrary as the claim was based on a collection of commercial interest that had accrued on a customer's unpaid invoices and the amount of award was within the range of evidence. Fletcher v. C. W. Matthews Contr. Co., 322 Ga. App. 751, 746 S.E.2d 230, 2013 Ga. App. LEXIS 604 (2013).

Section inapplicable in action for breach of contract. — Maximum allowable interest on past due licensing fees was $117,373 as provided in the parties' licensing agreement. The trial court erred in using the calculation allowed under O.C.G.A. § 7-4-16 because that statute applied in actions for open account, not actions for breach of contract. Noons v. Holiday Hospitality Franchising, Inc., 307 Ga. App. 351, 705 S.E.2d 166, 2010 Ga. App. LEXIS 922 (2010), cert. denied, No. S11C0654, 2011 Ga. LEXIS 423 (Ga. May 16, 2011).

Maximum interest rate not mandatory. — O.C.G.A. § 7-4-16 merely authorizes, but does not mandate, charging the maximum interest therein specified. Nodvin v. West, 197 Ga. App. 92, 397 S.E.2d 581, 1990 Ga. App. LEXIS 1179 (1990), cert. denied, No. S91C0088, 1990 Ga. LEXIS 489 (Ga. Oct. 24, 1990).

Physician comes within purview of former Code 1933, § 57-111. Martin v. Mayer, 63 Ga. App. 387, 11 S.E.2d 218, 1940 Ga. App. LEXIS 106 (1940).

Section inapplicable to suits based on quantum meruit. — When the plaintiff sought recovery on a quantum meruit basis and not for a liquidated demand former Code 1933, §§ 57-110 and 57-111 (see now O.C.G.A. §§ 7-4-15 and 7-4-16) were not applicable. Noble v. Hunt, 95 Ga. App. 804, 99 S.E.2d 345, 1957 Ga. App. LEXIS 924 (1957).

What constitutes "statement," in the defendant's business is clearly a commercial account and is not a retail installment transaction. McNair v. Gold Kist, Inc., 166 Ga. App. 782, 305 S.E.2d 478, 1983 Ga. App. LEXIS 2330 (1983).

Statement. — Farm supplies supplied to a farmer in the farmer's business is clearly a commercial account. The owner of a commercial account can charge interest on that portion of the commercial account which had been due and payable for 30 days or more at a rate not in excess of 1-1/2% per month calculated on the amount owed from the date upon which the amount became due and payable until paid and that a commercial account is classified or defined as an obligation for the payment of money arising out of a transaction to sell or furnish, or the sale of, or furnishing of goods and services other than a retail installment. McNair v. Gold Kist, Inc., 166 Ga. App. 782, 305 S.E.2d 478, 1983 Ga. App. LEXIS 2330 (1983).

Trial court erred in failing to award interest at 18 percent per annum on the amount proved by the undisputed invoices for materials purchased by the plaintiff/subcontractor from the defendant/general contractor since the plaintiff conceded that the invoices might be construed as a "statement" within the meaning of O.C.G.A. § 7-4-16. American Aluminum Prods. Co. v. Binswanger Glass Co., 194 Ga. App. 703, 391 S.E.2d 688, 1990 Ga. App. LEXIS 307 (1990).

Claim for interest not novation. — Creditor's claim for interest in an action against the debtor and personal guarantor on an open account agreement did not result in a novation of the agreement. Charles S. Martin Distrib. Co. v. Berhardt Furn. Co., 213 Ga. App. 481, 445 S.E.2d 297, 1994 Ga. App. LEXIS 608 (1994).

Action between contractor and subcontractor. — Evidence that the contractor and subcontractor had been doing business for several years, that their relationship was invoice-based and not contract-based, combined with an

General Considerations (Cont'd)

explicit statement on the subcontractor's bid that it did not cover the entirety of the work, supported the latter's claim based on O.C.G.A. § 7-4-16. Wheat Enters., Inc. v. Redi-Floors, Inc., 231 Ga. App. 853, 501 S.E.2d 30, 1998 Ga. App. LEXIS 540 (1998).

Subcontractor was entitled to recover from an insurer on a payment bond because a pay-when-paid clause in a contract of the contractor and subcontractor could not be used as a defense by the insurer when the insurer denied the subcontractor a federal remedy under the Miller Act. Thus, the subcontractor met the requirements of 40 U.S.C. §§ 3131 and 3133, and was entitled to summary judgment for the amount of the contractor's outstanding debt plus prejudgment interest under O.C.G.A. § 7-4-16. United States ex rel. McKenney'S, Inc. v. Gov't Tech. Servs., LLC, 531 F. Supp. 2d 1375, 2008 U.S. Dist. LEXIS 6536 (N.D. Ga. 2008).

Action by subcontractor's supplier against general contractor. — When the sums owed to the subcontractor's supplier arose out of the furnishing of goods to the subcontractor on the project, not out of the furnishing of goods by the supplier to the general contractor, the supplier's action against the general contractor and the surety on the lien bond was not based on a commercial account with the subcontractor but on the supplier's rights under the lien bond — that is, the supplier's rights as a lien claimant. Accordingly, the general contractor's liability did not arise out of failure to pay the amounts owed to the supplier on a commercial account, and O.C.G.A. § 7-4-16 thus was not applicable. Turner Constr. Co. v. Electrical Distribs., Inc., 202 Ga. App. 726, 415 S.E.2d 325, 1992 Ga. App. LEXIS 164 (1992).

Contractor's claim against owner. — Although a jury did not ultimately award the entire amount of a contractor's original claim against an owner, the amount of the unpaid balance as determined by the jury was a due and payable liquidated debt on a commercial account, and therefore subject to prejudgment interest under O.C.G.A. § 7-4-16. The trial court erred in declining to award prejudgment interest under the statute. Elec. Works CMA, Inc. v. Baldwin Tech. Fabrics, LLC, 306 Ga. App. 705, 703 S.E.2d 124, 2010 Ga. App. LEXIS 1031 (2010).

Action for unpaid sales commissions under an employment contract was not based on a commercial account and the trial court erred in charging the jury that the jury could award prejudgment interest at the rate of 1.5 percent a month. Southern Water Techs. v. Kile, 224 Ga. App. 717, 481 S.E.2d 826, 1997 Ga. App. LEXIS 80 (1997), cert. denied, No. S97C0844, 1997 Ga. LEXIS 447 (Ga. May 9, 1997).

Retail installment contract for purchase of automobile. — After the plaintiff filed a verified complaint, the trial court erred in granting the plaintiff's motion to strike the defendant's unverified answer and for judgment on the pleadings as the retail installment contract for the purchase of an automobile was not the type of contract that was the appropriate subject matter for a suit on an open account, and the defendant was not required to verify the defendant's responsive pleadings because retail installment transactions were expressly excluded from the definition of a commercial account; and the contract provided a number of remedies to the plaintiff in the event of non-payment by the defendant that deviated from the traditional understanding of what constituted an open account. Scott v. Prestige Fin. Servs., 345 Ga. App. 530, 813 S.E.2d 610, 2018 Ga. App. LEXIS 223 (2018).

Action between attorney and client for attorney fees. — Attorney was authorized by statute to charge interest at the rate charged and to apply the client's payments first to the interest due and then to the principal. At all times, the client could have avoided any obligation to pay interest by paying the principal in full each month as the client agreed to do. William J. Cooney, P.C. v. Rowland, 240 Ga. App. 703, 524 S.E.2d 730, 1999 Ga. App. LEXIS 1459 (1999), cert. denied, No.

S00C0418, 2000 Ga. LEXIS 234 (Ga. Mar. 3, 2000).

Trial court did not err in denying the client's motion for a directed verdict on the attorney's claim for prejudgment interest on attorney fees the attorney sought from the client for legal representation of the client because the fees requested were liquidated as the client did not object to the actual amount of the bill and were subject to pre-judgment interest. Patton v. Turnage, 260 Ga. App. 744, 580 S.E.2d 604, 2003 Ga. App. LEXIS 403 (2003).

Interest on Retail Installment and Home Solicitation Sales Act transactions. — Charges of one and a half percent per month on the unpaid balance on a commercial account were not authorized by the Retail Installment and Home Solicitation Sales Act, O.C.G.A. § 10-1-1 et seq., even though the agreement involved was the form set forth in that Act because that statute applied only to purchases for personal, family, or household use. Gold Kist, Inc. v. McNair, 166 Ga. App. 66, 303 S.E.2d 290, 1983 Ga. App. LEXIS 2069, cert. denied, Officenters International Corp. v. Interstate North Associates, 464 U.S. 937, 104 S. Ct. 347, 78 L. Ed. 2d 313, 1983 U.S. LEXIS 2135 (1983) (decided prior to 1980 amendment).

Once there is usury, the usury infects any renewal note for the same debt or any part thereof unless the usury is purged. A determination as to the application of former O.C.G.A. § 7-4-7, which provided for no limit of interest rates on loans of $100,000.00 or more, cannot be decided without a complete accounting to purge all usurious interest (to be applied to principal, if paid) and then a determination made as to whether or not the principal of the original note was for $100,000 or more, which would insulate it against the defense of usury. McNair v. Gold Kist, Inc., 166 Ga. App. 782, 305 S.E.2d 478, 1983 Ga. App. LEXIS 2330 (1983).

Application of rule that change in law will not change transaction's usurious nature. — Rule that change in the law will not change the usurious character of a transaction applies only to renewals of an originally usurious transaction, and is not applicable when separate purchases are made on an open account, resulting in an entirely new indebtedness. Gold Kist, Inc. v. McNair, 166 Ga. App. 66, 303 S.E.2d 290, 1983 Ga. App. LEXIS 2069, cert. denied, Officenters International Corp. v. Interstate North Associates, 464 U.S. 937, 104 S. Ct. 347, 78 L. Ed. 2d 313, 1983 U.S. LEXIS 2135 (1983).

Interest charged outside of agreement. — When the supplier made no attempt to charge interest prior to trial, an instruction to the jury, and consequent award, to increase damages by one and a half percent per month was error. Prince v. Lee Roofing Co., 161 Ga. App. 181, 288 S.E.2d 135, 1982 Ga. App. LEXIS 1805 (1982).

When the creditor made no attempt to collect interest on the overdue account prior to filing suit, but alleged in the creditor's complaint that the creditor was entitled to interest, there was no error in permitting evidence concerning the accrual of interest on the indebtedness or in charging the provisions of O.C.G.A. § 7-4-16. Tench v. United States Tsubaki, Inc., 191 Ga. App. 248, 381 S.E.2d 319, 1989 Ga. App. LEXIS 534 (1989).

Summary judgment precluded. — When evidence in an action against a defendant-farmer on open account indicated that the plaintiff was basing the plaintiff's estimation of the defendant's indebtedness on the business records of another corporation it had purchased and the defendant denied indebtedness in the amount claimed by the plaintiff, and since the plaintiff's affidavit failed to establish the defendant's account to be a commercial one authorizing a certain annual finance charge pursuant to O.C.G.A. § 7-4-16, there were issues of material fact yet to be resolved and the plaintiff was precluded from summary judgment. Paulk v. Carolina E. Inc., 172 Ga. App. 669, 324 S.E.2d 527, 1984 Ga. App. LEXIS 2627 (1984).

Disallowing interest on open accounts does not affect law of set-off. Meriwether v. Bird, 9 Ga. 594, 1851 Ga. LEXIS 62 (1851).

Claim not barred. — Trial court erred by granting summary judgment in favor of a debtor on all of the invoices that made

General Considerations (Cont'd)

up a creditor's claim against the debtor on the ground that the complaint was barred by the four-year limitation period for a suit on account because the trial court's grant of summary judgment was based on a purported admission by the creditor that its claims accrued on April 3, 2001, but the trial court misread the document, and the creditor submitted authenticated invoices, which showed dates more recent than four years prior to the date suit was filed; unless otherwise provided in the agreement, claims are barred if the claims are asserted more than four years after invoices are submitted to the buyer. Avery Enters. v. Lyndhurst Builders, LLC, 304 Ga. App. 353, 696 S.E.2d 389, 2010 Ga. App. LEXIS 523 (2010).

Prejudgment Interest

Error in calculating pre-judgment interest. — Because the trial court in an action involving a tax lien encumbrance erred in calculating pre-judgment interest pursuant to O.C.G.A. § 7-4-16, which applies to commercial accounts, remand for re-calculation based on O.C.G.A. § 7-4-15 was required. Homeland Communities, Inc. v. Rahall & Fryer, P.C., 235 Ga. App. 440, 509 S.E.2d 714, 1998 Ga. App. LEXIS 1530 (1998).

Trial court erred in modifying a judgment to add prejudgment interest as the court could not award prejudgment interest for the debt which was based on a contract claim, an asset purchase agreement; therefore, the debt was not a commercial debt to which O.C.G.A. § 7-4-16 applied. Capital Cargo, Inc. v. Port of Port Royal, 261 Ga. App. 803, 584 S.E.2d 54, 2003 Ga. App. LEXIS 777 (2003).

In the action involving the City of Griffin and the Commissioners of the Board of Commissioners of Spalding County in which an unlawful tax was alleged, the trial court improperly assessed prejudgment interest under O.C.G.A. § 7-4-16 because that statute applied only to commercial accounts. McDaniel v. City of Griffin, 281 Ga. App. 350, 636 S.E.2d 62, 2006 Ga. App. LEXIS 1102 (2006).

Heating system installer's invoices did not specify terms per O.C.G.A. § 7-4-16 as the invoice did not define the interest sought as that applicable to commercial accounts, and did not list a specific rate of interest; therefore, the trial court erred when the court granted prejudgment interest at the rate allowed by that statute. Carrier Corp. v. Rollins, Inc., 316 Ga. App. 630, 730 S.E.2d 103, 2012 Ga. App. LEXIS 623 (2012).

When contract specified no rate of interest and complaint merely prayed for "interest" without specifying the rate thereof, pre-judgment interest only at the applicable "legal rate" of seven percent was authorized pursuant to O.C.G.A. § 7-4-2(a)(1). Gold Kist Peanuts v. Alberson, 178 Ga. App. 253, 342 S.E.2d 694, 1986 Ga. App. LEXIS 1637 (1986).

Request for prejudgment interest must be specific. — If the rate allowed under O.C.G.A. § 7-4-16 is sought before trial, the trial court is authorized to grant pre-judgment interest at that rate, but the request must specify the interest rate sought. Spears v. Allied Eng'g Assocs., 186 Ga. App. 878, 368 S.E.2d 818, 1988 Ga. App. LEXIS 475 (1988).

Unpublished decision: Defendant was not entitled to pre-judgment interest under O.C.G.A. § 7-4-16 on the defendant's suit on account counterclaim because the defendant did not comply with the requirement that a commercial creditor make a pre-trial invocation of the applicability of that provision (while the standard terms and conditions provided that outstanding amounts would bear one and a half percent interest, it did not apply to the debts underlying the defendant's counterclaim); the defendant's pre-trial efforts to seek interest under O.C.G.A. § 7-4-16 did not specify the rate of interest being sought. Discrete Wireless, Inc. v. Coleman Techs., Inc., 422 Fed. Appx. 777, 2011 U.S. App. LEXIS 7043 (11th Cir. 2011).

Prejudgment interest not excessive. — Prejudgment interest based on unpaid rent and unpaid taxes was not excessive. Georgia Color Farms, Inc. v. K. K. L., Ltd. Pshp., 234 Ga. App. 849, 507 S.E.2d 817, 1998 Ga. App. LEXIS 1321 (1998), cert. denied, No. S99C0293, 1999 Ga. LEXIS 185 (Ga. Feb. 19, 1999).

Prejudgment interest on invoices. — Invoices which were a liquidated debt on a commercial account were subject to

prejudgment interest. Trebor Corp. v. Nutmeg Indus., Inc., 208 Ga. App. 697, 431 S.E.2d 402, 1993 Ga. App. LEXIS 570 (1993), cert. denied, No. S93C1373, 1993 Ga. LEXIS 932 (Ga. Oct. 5, 1993).

Prejudgment interest awarded by a jury in an action on an account should have been stricken by a trial judge because a fixed sum was owed by a purchaser and the fact that the jury did not award the entire amount sought did not make the damages unliquidated; further, the parties stipulated that interest under O.C.G.A. § 7-4-16 was a matter for the court to decide. Kroger Co. v. U. S. Foodservice of Atlanta, Inc., 270 Ga. App. 525, 607 S.E.2d 177, 2004 Ga. App. LEXIS 1516 (2004).

Post-judgment interest. — A commercial account is not, by virtue of O.C.G.A. § 7-4-16, transformed into such an "obligation" as would come within the exception to the standard post-judgment interest rate of 12 percent per year that is established by O.C.G.A. § 7-4-12. ADC Constr. Co. v. Hall, 202 Ga. App. 119, 413 S.E.2d 522, 1991 Ga. App. LEXIS 1718 (1991).

O.C.G.A. § 7-4-16 does not authorize a creditor to recover both pre-judgment and post-judgment interest at the same rate. It would only permit creditor to recover pre-judgment interest at a rate which is "greater than the post-judgment rate" of 12 percent per year that "all judgments in this state shall bear" pursuant to O.C.G.A. § 7-4-12. ADC Constr. Co. v. Hall, 202 Ga. App. 119, 413 S.E.2d 522, 1991 Ga. App. LEXIS 1718 (1991).

Portion awarding interest in a foreclosure judgment was vacated and the case remanded for recalculation of the interest rate pursuant to O.C.G.A. § 7-4-2 because § 7-4-2 governed the rate of interest in contracts when the interest rate was not specified and since the maximum legal rate specified in the declaration, which was not a commercial account, was not definite and ascertainable, the trial court erred in awarding 18 percent interest rather than the seven percent. Northside Bank v. Mountainbrook of Bartow County Homeowners Ass'n, 338 Ga. App. 126, 789 S.E.2d 378, 2016 Ga. App. LEXIS 449 (2016).

Prejudgment interest when unliquidated damages. — FDIC's demand was for $10 million, the limit under the insurance policy and the amount the insurer ultimately paid, and the only thing left to dispute was whether the insurer's policy covered the wrongful renovations done by the bank at all, but a dispute as to liability did not make a claim unliquidated, and given that the insurer paid the money, it could assert that the claim was unliquidated; declaratory judgments were not coercive, and the entire lawsuit had been dedicated to extensively litigating prejudgment interest, which clearly sufficed under Georgia law. FDIC v. Certain Underwriters at Lloyd's of London, 45 F.4th 1301, 2022 U.S. App. LEXIS 23203 (11th Cir. 2022).

Procedure

In the absence of a liquidated demand, O.C.G.A. § 7-4-16 is inapplicable. Typo-Repro Servs., Inc. v. Bishop, 188 Ga. App. 576, 373 S.E.2d 758, 1988 Ga. App. LEXIS 1129 (1988).

When there was a question of adequate statement of account regarding charges to a subcontractor, the debts were not liquidated because it was not certain how much was due to the general contractor from the subcontractor. American Aluminum Prods. Co. v. Binswanger Glass Co., 194 Ga. App. 703, 391 S.E.2d 688, 1990 Ga. App. LEXIS 307 (1990).

Pretrial pleading is an adequate means of invoking O.C.G.A. § 7-4-16. Jack V. Heard Contractors, Inc. v. Moriarity, 185 Ga. App. 317, 363 S.E.2d 822, 1987 Ga. App. LEXIS 2482 (1987).

Request for repudiation must be specific. — When a sales contract was not repudiated, and the due date was not extended as to any of the invoices at issue, the statute of limitations began to run on the date the last invoice was received; a letter requesting an offset did not qualify as repudiation since the letter only requested, but did not condition repayment upon an offset. Advance Tufting, Inc. v. Daneshyar, 259 Ga. App. 415, 577 S.E.2d 90, 2003 Ga. App. LEXIS 117 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Unpaid interest as liquidated demand. — When a commercial account provides that unpaid interest becomes a "liquidated demand," such interest may be treated as part of that portion of the account which has been due and payable, within the meaning of O.C.G.A. § 7-4-16; when such interest has been due and payable for 30 days or more, it may itself accrue interest at the contract rate. 1983 Op. Att'y Gen. No. U83-9.

ADVISORY OPINIONS OF THE STATE BAR

Interest charged by attorneys on overdue bills. — State Disciplinary Board is of the opinion that an attorney may ethically unilaterally charge interest on client's overdue bills. A lawyer may ethically do so provided that the lawyer complies with all applicable law, specifically O.C.G.A. § 7-4-16, the Federal Truth in Lending and Fair Credit Billing Acts contained in Title I of the Consumer Credit Protection Act as amended (15 U.S.C. § 1601 et seq.) and EC 2-19. Adv. Op. No. 85-45 (March 15, 1985).

RESEARCH REFERENCES

C.J.S.
47 C.J.S., Interest and Usury Consumer Credit, § 101.

7-4-17. Payment applied first to interest; no interest on unpaid interest; exceptions.

When a payment is made upon any debt, it shall be applied first to the discharge of any interest due at the time, and the balance, if any, shall be applied to the reduction of the principal. If the payment does not extinguish the interest then due, no interest shall be calculated on such balance of interest and interest shall be calculated only on the principal amount up to the time of the next payment. Notwithstanding the foregoing restrictions against charging interest on unpaid interest:

(1) On loans having first priority on real estate and on loans secured by the pledge or assignment of instruments evidencing loans having first priority on real estate, the parties by written contract may lawfully agree that unpaid interest when due shall be added to the unpaid principal balance of the indebtedness and that the increased principal balance of the indebtedness bear interest pursuant to the terms of the contract; and

(2) On loans secured by real estate or secured by real estate and other collateral, the parties by written contract may lawfully agree that, in the event of bankruptcy, the lender or creditor may include interest on its claim pursuant to the terms of the contract.

History.
Orig. Code 1863, § 2028; Code 1868, § 2029; Code 1873, § 2055; Code 1882, § 2055; Civil Code 1895, § 2883; Civil

Code 1910, § 3433; Code 1933, § 57-109; Ga. L. 1982, p. 420, §§ 1, 2; Ga. L. 1984, p. 949, § 6; Ga. L. 1995, p. 956, § 1.

Law reviews.

For article discussing methods of computation of finance charges in Georgia consumer credit contracts, see 30 Mercer L. Rev. 281 (1978).

For article on Georgia's usury laws and interest on interest, see 8 Ga. St. U.L. Rev. 291 (1992).

JUDICIAL DECISIONS

Prepayments applied first to interest due, absent contrary agreement. — In absence of agreement to contrary, prepayments on a loan must first be applied to interest due and owing at time they are made and then to principal. First Nat'l Bank v. Appalachian Indus., Inc., 146 Ga. App. 630, 247 S.E.2d 422, 1978 Ga. App. LEXIS 2488 (1978).

Section does not prohibit creditor from applying payment upon principal. — Since former Code 1910, § 3433 was for the benefit of creditor, it did not seem that the debtor could be heard to complain on account of interest-bearing principal having been reduced, with a consequent reduction to the debtor of the indebtedness, by application of the entire payment to principal instead of first extinguishing accrued interest. Rice-Stix Dry Goods Co. v. Friedlander Bros., 30 Ga. App. 312, 117 S.E. 762, 1923 Ga. App. LEXIS 425 (1923), aff'd, 158 Ga. 303, 122 S.E. 890, 1924 Ga. LEXIS 137 (1924).

Creditor may apply payment made before interest is due to reduction of principal. — When payment was made by the debtor, before interest was due on principal of debt, and the debtor did not direct that payment be applied to any particular claim, the creditor had the right to apply the payment to reduction of the principal of the debt. Massell Realty Co. v. Chamberlin, 47 Ga. App. 718, 171 S.E. 311, 1933 Ga. App. LEXIS 623 (1933).

In the case of a demand note, no time for payment is expressed; therefore, no interest would be due until payment is demanded. Unless the debtor has stipulated otherwise, the creditor has the right to apply any payments to the reduction of the principal of the debt when no interest was due at the time of payment. Spillers v. First S. Bank, 185 Ga. App. 580, 365 S.E.2d 151, 1988 Ga. App. LEXIS 153 (1988).

When mortgaged property is sold proceeds go to payment of interest notes, though they may have been transferred by payee. Berrie v. Smith, 97 Ga. 782, 25 S.E. 757, 1895 Ga. LEXIS 580 (1895).

Right to recover interest after payment of principal. — It is the general rule that the right to recover interest after payment of principal sum due depends upon whether interest is due by terms of the contract, or whether it is merely an implied incident to the debt and is allowed by way of damages. If it is due by terms of the contract, payment of principal is no bar to a subsequent recovery of interest, but if it is not due by such terms, payment of principal sum is generally a bar to recovery, except that when the obligation is one which by statute bears interest, this is taken as an equivalent contractual obligation to pay interest, and in such a case payment of entire principal does not defeat subsequent recovery of accrued interest. Rice-Stix Dry Goods Co. v. Friedlander Bros., 30 Ga. App. 312, 117 S.E. 762, 1923 Ga. App. LEXIS 425 (1923), aff'd, 158 Ga. 303, 122 S.E. 890, 1924 Ga. LEXIS 137 (1924).

County's payment to landowners who were awarded $ 16.5 million in a condemnation action was not sufficient to pay principal and interest on the judgment the landowners obtained, and the appellate court held that the landowners were entitled to collect post-judgment interest on the amount which the county still owed. Threatt v. Forsyth County, 262 Ga. App. 186, 585 S.E.2d 159, 2003 Ga. App. LEXIS 866 (2003).

Borrower waived and released the borrower's claim. — Borrower's breach of contract claim against a lender based on a violation of O.C.G.A. § 7-4-17, forbidding the calculation of interest upon interest, was barred because the lender

had executed loan modification agreements in which the borrower waived and released any claims the borrower had against the lender. Heritage Creek Dev. Corp. v. Colonial Bank, 268 Ga. App. 369, 601 S.E.2d 842, 2004 Ga. App. LEXIS 920 (2004).

Payment of attorneys fees. — There is no statutory requirement that credit for proceeds must be applied to attorney fees first. Presumably, this matter is one which may be contractually agreed to by the parties. Bulman v. First Nat'l Bank, 165 Ga. App. 843, 303 S.E.2d 29, 1983 Ga. App. LEXIS 2039 (1983).

Attorney was authorized by statute to charge interest at the rate charged and to apply the client's payments first to the interest due and then to the principal. At all times, the client could have avoided any obligation to pay interest by paying the principal in full each month as the client agreed to do. William J. Cooney, P.C. v. Rowland, 240 Ga. App. 703, 524 S.E.2d 730, 1999 Ga. App. LEXIS 1459 (1999), cert. denied, No. S00C0418, 2000 Ga. LEXIS 234 (Ga. Mar. 3, 2000).

Res judicata. — Trial court did not err in granting a lender's motion for summary judgment because the doctrine of res judicata barred a debtor's suit alleging that the lender incorrectly charged interest on the debtor's unsecured revolving line of credit; the same matters were already litigated between the same parties in an action previously adjudicated on the merits by a court of competent jurisdiction. Rose v. Household Fin. Corp., 316 Ga. App. 282, 728 S.E.2d 879, 2012 Ga. App. LEXIS 537 (2012).

RESEARCH REFERENCES

Am. Jur. 2d.

44B Am. Jur. 2d, Interest and Usury, § 56.

C.J.S.

47 C.J.S., Interest and Usury Consumer Credit, § 131.

ALR.

When statute of limitations begins to run against action to recover interest, 36 A.L.R. 1085.

When contract construed to require interest to be paid in advance, 39 A.L.R. 951.

Right to have usurious payments of interest applied as credit on principal as affected by statute of limitations, 101 A.L.R. 741.

Check in payment of interest or installment of principal as an acknowledgment sufficient to take case out of statute of limitation, 125 A.L.R. 271.

Option of borrower to convey or transfer to lender in full satisfaction of balance due, property covered by mortgage or collateral securing loan, as affecting character as "interest," of payments by borrower, 163 A.L.R. 719.

What is "compound interest" within meaning of statutes prohibiting the charging of such interest, 10 A.L.R.3d 421.

7-4-18. Criminal penalty for excessive interest.

(a) Any person, company, or corporation who shall reserve, charge, or take for any loan or advance of money, or forbearance to enforce the collection of any sum of money, any rate of interest greater than 5 percent per month, either directly or indirectly, by way of commission for advances, discount, exchange, or the purchase of salary or wages; by notarial or other fees; or by any contract, contrivance, or device whatsoever shall be guilty of a misdemeanor; provided, however, that regularly licensed pawnbrokers, as defined in Code Section 44-12-130, are limited in the amount of interest they may charge only by the limitations set forth in Code Section 44-12-131.

(b) This Code section shall not be construed as repealing or impairing the usury laws now existing but shall be construed as being cumulative thereof.

(c) Nothing contained in Code Section 7-4-2 or 7-4-3 shall be construed to amend or modify the provisions of this Code section.

(d) Notwithstanding the foregoing, fees and other charges agreed upon by a financial institution and depositor, as defined in Code Section 7-1-4, in a written agreement governing a deposit, share, or other account, including, but not limited to, overdraft and nonsufficient funds, delinquency or default charges, returned payment charges, stop payment charges, or automated teller machine charges, shall not be considered interest.

History.

Ga. L. 1908, p. 83, §§ 1, 2; Civil Code 1910, §§ 3444, 3445; Penal Code 1910, § 700; Code 1933, §§ 57-117, 57-9901; Ga. L. 1983, p. 1146, § 5; Ga. L. 2000, p. 1526, § 1; Ga. L. 2014, p. 213, § 2/HB 824.

Editor's notes.

Ga. L. 2014, p. 213, § 3/HB 824, not codified by the General Assembly, provides that: "It is not the intent of the General Assembly to affect the law applicable to litigation pending as of February 19, 2014."

Law reviews.

For comment on Zink v. Davis Fin. Co., 61 Ga. App. 39, 5 S.E.2d 588 (1939), see 2 Ga. B.J. 57 (1940).

For comment on Georgia Inv. Co. v. Norman, 231 Ga. 821, 204 S.E.2d 740 (1974), see 26 Mercer L. Rev. 321 (1974).

For note discussing whether a holder in due course takes free of claims of violations of the usury laws, see 12 Ga. L. Rev. 814 (1978).

For note, "State-Imposed Interest Rate Ceilings and Home Equity Loan Scandal in Georgia," see 11 Ga. St. U.L. Rev. 591 (1995).

For article, "Business Associations," see 53 Mercer L. Rev. 109 (2001).

Cross references.

Illegal payday loans, § 16-17-1 et seq.

JUDICIAL DECISIONS

Analysis

General Consideration
Constitutionality
Application

General Consideration

Former Code 1933, § 57-117 (see now O.C.G.A. § 7-4-18) was not designed to repeal or impair existing usury laws. Wall v. Lewis, 192 Ga. 652, 16 S.E.2d 430, 1941 Ga. LEXIS 544 (1941).

Former Code 1933, §§ 57-102 and 57-117 (see now O.C.G.A. §§ 7-4-1 and 7-4-18) were to be construed and applied as one law. Wall v. Lewis, 192 Ga. 652, 16 S.E.2d 430, 1941 Ga. LEXIS 544 (1941).

Effect of violation of statute. — Loan violative of O.C.G.A. § 7-4-18 is illegal, with the result that the lender forfeits the interest but may collect the principal. Norris v. Sigler Daisy Corp., 260 Ga. 271, 392 S.E.2d 242, 1990 Ga. LEXIS 223 (1990).

Construed with § 7-4-2. — O.C.G.A. § 7-4-18 has its own definition of interest which prevails over the definition of

General Consideration (Cont'd)

interest set forth in O.C.G.A. § 7-4-2(a)(3). Moore v. Comfed Sav. Bank, 908 F.2d 834, 1990 U.S. App. LEXIS 13548 (11th Cir. 1990).

Construed with § 44-12-131. — There is no conflict between O.C.G.A. §§ 7-4-18 and 44-12-131 since what is authorized by the pawnshop statute is a combination of charges up to 25% per month, not the imposition of interest alone at a rate of 25% per month. Fryer v. Easy Money Title Pawn, Inc., 183 B.R. 654, 1995 Bankr. LEXIS 886 (Bankr. S.D. Ga. 1995).

O.C.G.A. § 44-12-131, not O.C.G.A. § 7-4-18, governs pawnshop transactions. Glinton v. And R, Inc., 271 Ga. 864, 524 S.E.2d 481.

O.C.G.A. § 44-12-131, the pawnshop statute, and O.C.G.A. § 7-4-18 are in conflict and cannot be reconciled. Hooks v. Cobb Ctr. Pawn & Jewelry Brokers, Inc., 241 Ga. App. 305, 527 S.E.2d 566, 1999 Ga. App. LEXIS 1624 (1999), cert. denied, No. S00C0615, 2000 Ga. LEXIS 406 (Ga. May 5, 2000).

Amount of interest on a pawn transaction was regulated by O.C.G.A. § 7-4-18 and was not governed by the five percent limit imposed on general loans by the usury statute. Hooks v. Cobb Ctr. Pawn & Jewelry Brokers, Inc., 241 Ga. App. 305, 527 S.E.2d 566, 1999 Ga. App. LEXIS 1624 (1999), cert. denied, No. S00C0615, 2000 Ga. LEXIS 406 (Ga. May 5, 2000).

Charges included in interest. — Whether an origination fee is considered a "commission for advances," part of "other fees," or a "contrivance" or "device," it is within the scope of the word "interest" as it is used in O.C.G.A. § 7-4-18. That being so, it is considered interest and not principal for the purpose of deciding whether a loan violates that section. Norris v. Sigler Daisy Corp., 260 Ga. 271, 392 S.E.2d 242, 1990 Ga. LEXIS 223 (1990).

Charging a nonrebatable, prepaid finance charge may result in a rate of interest greater than five percent for the first month of the loan; if so, this violates O.C.G.A. § 7-4-18. Evans v. Avco Fin. Servs. of Ga., Inc., 130 B.R. 357, 1991 Bankr. LEXIS 1100 (Bankr. S.D. Ga. 1991).

"Per month." — Phrase "per month" implies an average. Johnson v. Fleet Fin., Inc., 785 F. Supp. 1003, 1992 U.S. Dist. LEXIS 2586 (S.D. Ga. 1992).

O.C.G.A. § 7-4-18 prohibits loans with interest rates in excess of five percent "per month." It does not forbid a lender from collecting or accruing the right to collect more than five percent interest "in any month." Johnson v. Fleet Fin., Inc., 785 F. Supp. 1003, 1992 U.S. Dist. LEXIS 2586 (S.D. Ga. 1992).

Despite the decision in Johnson v. Fleet Finance, Inc., 785 F. Supp. 1003 (S.D. Ga. 1992), the bankruptcy court disagreed that "per month" implied a monthly average, stating that the legislature required that a criminal usury analysis be on a "per month" basis; however, since the most recent expression of the law by the district court specifically overruled a prior decision of a bankruptcy court within the district, Johnson, supra, the bankruptcy court was bound by that district court decision. Wright v. Transamerica Fin. Servs., Inc., 144 B.R. 943, 1992 Bankr. LEXIS 1358 (Bankr. S.D. Ga. 1992).

Rate of interest per month must be calculated based upon the ratio of total interest paid to the total number of months in the loan. Fleet Fin., Inc. v. Jones, 263 Ga. 228, 430 S.E.2d 352, 1993 Ga. LEXIS 487 (1993).

Amortization of initial charges. — Initial charges in the form of discount points and other interest charges during the first month of the loan should be amortized over the life of the loan to calculate what interest rate was charged "per month." Johnson v. Fleet Fin., Inc., 785 F. Supp. 1003, 1992 U.S. Dist. LEXIS 2586 (S.D. Ga. 1992).

Nonrefundable points and origin fees. — O.C.G.A. § 7-4-18 cannot be construed so as to attribute nonrefundable points and origination fees to the first month of a loan when those items are actually paid over the life of the loan. Fleet Fin., Inc. v. Jones, 263 Ga. 228, 430 S.E.2d 352, 1993 Ga. LEXIS 487 (1993).

Legislative intent to protect needy by criminal statute. — It was the evident purpose of the legislature to make

criminal a rate of interest which shocks the moral sense, and to protect the needy by criminal statute from a rate of interest exceeding five percent per month. Wall v. Lewis, 192 Ga. 652, 16 S.E.2d 430, 1941 Ga. LEXIS 544 (1941).

Availability of civil remedies. — Because the wife of the debtor company's president provided the debtor with two short term loans at monthly interest rates of 27.6 percent and 41.45 percent, respectively, the trustee for the debtor was entitled to recover the amount the debtor paid in interest under O.C.G.A. § 7-4-18. Ogier v. Johnson (In re Healing Touch, Inc.), No. 02-91845, No. 04-6051, 2005 Bankr. LEXIS 1399 (Bankr. N.D. Ga. May 6, 2005).

Section intended to enhance civil penalties. — Design of former Code 1933, § 57-117 was still to condemn usury, and when usury reached such proportions as more than 5 percent per month, to enhance existing penalties of civil forfeitures by adding criminal penalty of misdemeanor, which would attach and apply to person of usurer. Wall v. Lewis, 192 Ga. 652, 16 S.E.2d 430, 1941 Ga. LEXIS 544 (1941).

Sole purpose of section. — Sole purpose of Ga. L. 1908, p. 83, §§ 1 and 2 is to make it penal to reserve, charge, or take interest for use of money in excess of five percent per month under any contract when the relation of debtor or creditor is created or survives. Jackson v. State, 5 Ga. App. 177, 62 S.E. 726, 1908 Ga. App. LEXIS 58 (1908); Wall v. Lewis, 192 Ga. 652, 16 S.E.2d 430, 1941 Ga. LEXIS 544 (1941).

Section does not authorize five percent per month interest. — Former Code 1933, §§ 57-101 and 57-117 (see now O.C.G.A. §§ 7-4-2 and 7-4-18) considered as they must be with former Code 1933, § 57-101 (see now O.C.G.A. § 7-4-1) do not authorize a regularly licensed pawnbroker who lends money on personal property which is taken into the pawnbroker's actual physical possession and stored by the pawnbroker, to charge interest on money so advanced at a rate of five percent per month. Wall v. Lewis, 192 Ga. 652, 16 S.E.2d 430, 1941 Ga. LEXIS 544 (1941).

Application of rule that change in law does not change transaction's usurious nature. — Rule that change in the law will not change the usurious character of a transaction applies only to renewals of an originally usurious transaction, and is not applicable when separate purchases are made on an open account, resulting in an entirely new indebtedness. Gold Kist, Inc. v. McNair, 166 Ga. App. 66, 303 S.E.2d 290, 1983 Ga. App. LEXIS 2069, cert. denied, Officenters International Corp. v. Interstate North Associates, 464 U.S. 937, 104 S. Ct. 347, 78 L. Ed. 2d 313, 1983 U.S. LEXIS 2135 (1983).

Interest rate not in excess of maximum. — Trial court did not err by rejecting a debtor's argument that a lender's temporary acceptance of lowered payments without waiving full payment transformed the loan into a usurious transaction because the interest rate of the loan was not in excess of the maximum applicable legal rate of five percent per month under O.C.G.A. § 7-4-18(a). Latimore v. Vatacs Group, Inc., 317 Ga. App. 98, 729 S.E.2d 525, 2012 Ga. App. LEXIS 567 (2012).

In a suit by a lender on a note and guaranties, the note's postdefault interest rate was only three percent higher than the predefault rate of five percent, so the total rate of eight percent per year was well within the legal limit of 60 percent and was permissible under O.C.G.A. §§ 7-4-2(a)(1)(B) and 7-4-18(a). MMA Capital Corp. v. ALR Oglethorpe, LLC, 336 Ga. App. 360, 785 S.E.2d 38, 2016 Ga. App. LEXIS 182 (2016).

Class action certification. — In a suit challenging the bank's overdraft fees, the trial court did not abuse the court's discretion in certifying the class because the legality of fees required the examination of a common set of terms in identical form contracts that applied to all members of the putative class as the claims arising from an interpretation of form agreements were classic cases for treatment as a class action. SunTrust

General Consideration (Cont'd)

Bank v. Bickerstaff, 349 Ga. App. 794, 824 S.E.2d 717, 2019 Ga. App. LEXIS 214 (2019), cert. denied, No. S19C1080, 2019 Ga. LEXIS 862 (Ga. Dec. 23, 2019).

Constitutionality

Section not a constitutional deprivation of rights. — Former Civil Code 1910, §§ 3444 and 3445 did not violate the Constitution of this state; nor did it violate the ninth or fourteenth amendments to the Constitution of United States. King v. State, 136 Ga. 709, 71 S.E. 1093, 1911 Ga. LEXIS 194 (1911).

Former Code 1933, § 57-117 (see now O.C.G.A. § 7-4-18) was not violative of the Constitution of the United States on ground that it was a deprivation of the lender's rights. Atterberry v. State, 212 Ga. 778, 95 S.E.2d 787, 1956 Ga. LEXIS 530 (1956).

Application

O.C.G.A. § 7-4-18 applies only to loans of money and is inapplicable to credit purchases. Gold Kist, Inc. v. McNair, 166 Ga. App. 66, 303 S.E.2d 290, 1983 Ga. App. LEXIS 2069, cert. denied, Officenters International Corp. v. Interstate North Associates, 464 U.S. 937, 104 S. Ct. 347, 78 L. Ed. 2d 313, 1983 U.S. LEXIS 2135 (1983).

Substance of transaction controls in determining legality. — When profit received by money lender, by whatever name it may be called, and whether lawful on its face or not, is in reality a contrivance or device to obtain amount greater than lawful interest, and is made with intent to violate usury laws, the transaction is illegal, and name by which it is called is altogether immaterial. Tribble v. State, 89 Ga. App. 593, 80 S.E.2d 711, 1954 Ga. App. LEXIS 521 (1954).

Effect of "loan fee". — When the combination of the simple interest charged on a loan during the first month of the loan and a nonrebatable "loan fee," which attached upon the signing of the note, resulted in a total interest charge in the first month of the loan which exceeded five percent, the loan was usurious. Dent v. Associates Equity Servs. Co., 130 B.R. 623, 1991 Bankr. LEXIS 1218 (Bankr. S.D. Ga. 1991).

Whether contract is mere scheme to evade usury laws is jury question. — When controlling question is whether contracts for purchase of stock by borrowers named in indictments were bona fide contracts for value received, or whether the contracts were mere schemes and devices to evade usury laws, this question is one of fact, and is for the jury to determine. Southern Loan & Inv. Co. v. State, 68 Ga. App. 75, 22 S.E.2d 108, 1942 Ga. App. LEXIS 40 (1942).

Question whether one intended to exact usury under cover of contrivance or device, or whether charge alleged in contract was a bona fide one for value received, is for jury to determine in prosecutions on charges relating to taking of usurious interests. Tribble v. State, 89 Ga. App. 593, 80 S.E.2d 711, 1954 Ga. App. LEXIS 521 (1954).

Absolute sale of property is not included within terms of Ga. L. 1908, p. 83, §§ 1, 2. Jackson v. State, 5 Ga. App. 177, 62 S.E. 726, 1908 Ga. App. LEXIS 58 (1908).

Section does not impair right to sell and assign choses in action arising ex contractu. — Right to purchase salary or wages of another, right of latter to sell their salary or wages, and right to charge greater rate of discount on such purchases than five percent are not affected. King v. State, 136 Ga. 709, 71 S.E. 1093, 1911 Ga. LEXIS 194 (1911); Ison Co. v. Atlantic Coast Line R.R., 17 Ga. App. 459, 87 S.E. 754, 1916 Ga. App. LEXIS 685 (1916).

Loan with fixed monthly payments and no threat of default. — Loans which had fixed payments every month, gave no threat of default at closing by the deduction of points and origination fees, gave no threat of default through high interest charges in any given month, and required a set amount of interest every month under the 5 percent permitted by law did not violate the intent of O.C.G.A. § 7-4-18. Fleet Fin., Inc. v. Jones, 263 Ga. 228, 430 S.E.2d 352, 1993 Ga. LEXIS 487 (1993).

Purchaser of interest in promissory note at discount. — When the borrower had full use of the funds it borrowed

originally, the discounted sale of the note did not raise the issue of usury, even though the borrower argued that the purchaser improperly prevented it from sharing in the benefits derived from the discount and the borrower could recover the unpaid loan origination fee. First Alliance Bank v. Westover, Inc., 222 Ga. App. 524, 474 S.E.2d 717.

Assignment of wages are not unlawful unless connected with usurious loan. Jackson v. Johnson, 157 Ga. 189, 121 S.E. 230, 1924 Ga. LEXIS 13 (1924).

Former Civil Code 1910, §§ 3444 and 3445 (see now O.C.G.A. § 7-4-18) did not make unlawful a transaction wherein there was a charge by way of commission for advances, discount, exchange, or fees, or purchase of salary or wages, unless connected with a loan and directly or indirectly constituting all or part of reservation, charge, or taking, for loan or advance of money, or forbearance to enforce collection of sum of money, a rate of interest greater than 5 percent per month. King v. State, 136 Ga. 709, 71 S.E. 1093, 1911 Ga. LEXIS 194 (1911).

Series of transactions under guise of wage assignments constituted usury. — Series of transactions under guise of successive assignments of wages, which constituted a scheme and device for purpose of evading laws against usury, by which sum of $20.00 was loaned to the defendant at interest in sum of $4.00 payable every two weeks, necessarily was usury. Jackson v. Bloodworth, 41 Ga. App. 216, 152 S.E. 289, 1930 Ga. App. LEXIS 505 (1930).

Former Civil Code 1910, §§ 3444 and 3445 did not attempt to annul contracts violating the contract's provisions. West v. Atlanta Loan & Sav. Co., 22 Ga. App. 184, 95 S.E. 721, 1918 Ga. App. LEXIS 227 (1918); Citizens Bank v. N.C. Hoyt & Co., 25 Ga. App. 222, 102 S.E. 837, 1920 Ga. App. LEXIS 697 (1920).

Usurious contracts as misdemeanor. — Fact that the charging or taking of interest in excess of five percent per month is made a misdemeanor, punishable by fine and imprisonment, does not render the mortgage absolutely void since laws of this state provide for status of usurious contracts, including mortgages. Croom v. Jordan, 20 Ga. App. 802, 93 S.E. 538, 1917 Ga. App. LEXIS 1093 (1917).

Charge for procuring insurance to extent of loan not counted as interest. — Lender may by contract with borrower obtain insurance to protect former from loss to the extent of the loan, and charge cost of procuring such insurance to the borrower, and such cost cannot be counted as interest charged for money loaned. Peebles v. State, 87 Ga. App. 649, 75 S.E.2d 35, 1953 Ga. App. LEXIS 820 (1953).

Effect of assignment of insurance policy to lender who is also insurer. — Good faith assignment of insurance policy by borrower to lender does not render transaction usurious merely because of fact that it is taken out with lender which is itself an insurance company, if it does not appear that premium charge was excessive or that borrower was compelled as condition precedent to loan to make a tie-in purchase of insurance with company advancing loan. Tribble v. State, 89 Ga. App. 593, 80 S.E.2d 711, 1954 Ga. App. LEXIS 521 (1954).

Attorney's fees in bankruptcy proceedings. — Creditor which violated the Georgia criminal usury statute could only recover the principal. The attorney's fees provision of the note, security agreement, and deed to secure debt were unenforceable and, therefore, under § 506 of the Federal Bankruptcy Code, 11 U.S.C. § 506, there was no enforceable provision for recovery of attorney's fees. Dent v. Associates Fin. Servs., Inc., 137 B.R. 78, 1992 Bankr. LEXIS 313 (Bankr. S.D. Ga. 1992).

Pawnbrokers. — O.C.G.A. § 7-4-18 is applicable to pawn brokers by the clear direct reference to pawnbrokers in the statute and the plain language of the statute. Fryer v. Easy Money Title Pawn, Inc., 183 B.R. 322, 1995 Bankr. LEXIS 788 (Bankr. S.D. Ga. 1995).

Pawnshop charge which included a 23% service charge for the customer's use of the pawned automobile, the risk to the lender of that continued use, checking and processing the title to the automobile apparently in addition to an itemized title fee charged under the contract, verifying

Application (Cont'd)

insurance on the automobile, and making a log for the sheriff's department, constituted interest rather than pawnshop charges since it did not reimburse specific expenses actually incurred by the pawnbroker in connection with the transaction. Fryer v. Easy Money Title Pawn, Inc., 183 B.R. 322, 1995 Bankr. LEXIS 788 (Bankr. S.D. Ga. 1995).

OPINIONS OF THE ATTORNEY GENERAL

If a second imposition of fee permitted by O.C.G.A. § 7-3-14(2) (see now O.C.G.A. § 7-3-11) would result in a violation of usury provisions of O.C.G.A. § 7-4-18 such a second imposition would be illegal. 1982 Op. Att'y Gen. No. 82-43.

RESEARCH REFERENCES

Am. Jur. 2d.

44B Am. Jur. 2d, Interest and Usury, § 300 et seq.

C.J.S.

47 C.J.S., Interest and Usury Consumer Credit, § 402 et seq.

ALR.

Right to have usurious payments made on previous obligation applied as payment of principal on renewal, 13 A.L.R. 1244.

Validity of agreement to pay interest on interest, 37 A.L.R. 325; 76 A.L.R. 1484.

Usury as affected by repayment, or borrower's option to repay, loan before maturity, 130 A.L.R. 73; 75 A.L.R.2d 1265.

Retrospective application and effect of statutory provision for interest or changed rate of interest, 4 A.L.R.2d 932; 40 A.L.R.4th 147; 41 A.L.R.4th 694.

Provision for interest after maturity at a rate in excess of legal rate as usurious or otherwise illegal, 28 A.L.R.3d 449.

Reformation of usurious contract, 74 A.L.R.3d 1239.

Practice of exacting usury as a nuisance or ground for injunction, 83 A.L.R.2d 848.

Contingency as to borrower's receipt of money or other property from which loan is to be repaid as rendering loan usurious, 92 A.L.R.3d 623.

Application of usury laws to transactions characterized as "leases," 94 A.L.R.3d 640.

Validity and construction of state statute or rule allowing or changing rate of prejudgment interest in tort actions, 40 A.L.R.4th 147.

Retrospective application and effect of state statute or rule allowing interest or changing rate of interest on judgments or verdicts, 41 A.L.R.4th 694.

7-4-19. Civil action to enforce chapter.

The Department of Banking and Finance may bring an appropriate civil action to enforce any provision of this chapter whether by injunction or otherwise in any superior court of this state having jurisdiction over one or more defendants.

History.

Code 1981, § 7-4-19, enacted by Ga. L. 1983, p. 1146, § 6; Ga. L. 1989, p. 14, § 7; Ga. L. 2020, p. 156, § 4/SB 462.

7-4-20. Election to forgo application of federal usury laws.

In enacting Code Sections 7-4-2 through 7-4-5, the General Assembly exercises its prerogative:

(1) Under subsection (b)(2) of Section 501 of the Depository

Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221 (12 U.S.C. Section 1735f-7, notes), and declares that the provisions of subsection (a)(1) of Section 501 do not apply to loans, mortgages, credit sales, and advances made in the State of Georgia on and after March 31, 1983; and

(2) Under Section 512 of that act, Public Law 96-221 (12 U.S.C. Section 86a, notes), and declares that the provisions which preempt the law of this state in Section 511 of that act do not apply to business and agricultural loans in amounts of $1,000.00 or more made in the State of Georgia on and after March 31, 1983.

History.
Code 1981, § 7-4-20, enacted by Ga. L. 1983, p. 1146, § 7; Ga. L. 2004, p. 631, § 7.

7-4-21. Class action barred on claims for violation of interest laws on loans secured by real estate.

A claim of violation on any loan secured by an interest in real estate may be asserted in an individual action only and may not be the subject of a class action under Code Section 9-11-23 or any other provisions of law.

Nothing contained in this Code section shall be construed to affect any class action which was pending in any court of this state, including any United States courts, on February 15, 1983, as to the parties to and subject matter then before such court.

History.
Code 1981, § 7-4-21, enacted by Ga. L. 1983, p. 1316, § 1; Ga. L. 1984, p. 22, § 7.
Law reviews.
For annual survey article on domestic relations, see 50 Mercer L. Rev. 217 (1998).

ARTICLE 2

RESIDENTIAL SECOND MORTGAGES

7-4-30 through 7-4-36. [Reserved]

History.
Ga. L. 1966, p. 574, §§ 2-6; Ga. L. 1967, p. 637, §§ 1, 2; Ga. L. 1968, p. 1086, § 1; Ga. L. 1975, p. 1114, § 1; Ga. L. 1976, p. 726, §§ 1, 2; Ga. L. 1979, p. 1281, §§ 1, 2; Ga. L. 1980, p. 511, § 3; Ga. L. 1982, p. 3, § 7; repealed by Ga. L. 1983, p. 1146, § 8, effective March 31, 1983.
Editor's notes.
Ga. L. 1983, p. 1146, § 8 repealed and reserved this article, effective March 31, 1983.

CHAPTER 5

CREDIT CARDS AND CREDIT CARD BANKS

Sec.		Sec.	
7-5-1.	Short title.	7-5-5.	Regulation of credit card banks; enforcement; rules and regulations.
7-5-2.	Definitions.		
7-5-3.	Organization, ownership, and control of credit card banks.	7-5-6.	Applicability of banking laws.
7-5-4.	Credit card charges and fees; terms and conditions.		

Cross references.

Criminal penalties for illegal use of credit cards, bank services cards, and other financial resources, § 16-9-30 et seq.

Editor's notes.

Ga. L. 1987, p. 268, § 1, effective March 19, 1987, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of §§ 7-5-1 through 7-5-7, which dealt with lender credit card charges and was based on Ga. L. 1969, p. 87, §§ 1-6; Ga. L. 1981, p. 732, §§ 1, 2; Ga. L. 1981, Ex. Sess., p. 8.

Law reviews.

For article discussing federal truth in lending provisions and their relation to state laws, see 6 Ga. St. B.J. 19 (1969).

For note discussing transfer fees in home loan assumptions in reference to the Georgia usury laws, see 9 Ga. L. Rev. 454 (1975).

For article, "Ohio v. American Express: Misunderstanding Two-Sided Platforms; The Charge Card 'Market;' and the Need for Procompetitive Justifications," see 70 Mercer L. Rev. 437 (2019).

RESEARCH REFERENCES

ALR.

Liability of holder of credit card or plate for purchases made thereon by another person, 15 A.L.R.3d 1086.

Credit card issuer's liability, under state laws, for wrongful billing, cancellation, dishonor, or disclosure, 53 A.L.R.4th 231.

Extension of Credit Under Consumer Credit Protection Act Provisions (18 U.S.C.A. §§ 891 to 894) Prohibiting Extortionate Credit Transactions, 35 A.L.R. Fed. 3d 2.

7-5-1. Short title.

This chapter shall be known and may be cited as "The Credit Card and Credit Card Bank Act."

History.

Code 1981, § 7-5-1, enacted by Ga. L. 1987, p. 268, § 1.

RESEARCH REFERENCES

Am. Jur. Proof of Facts.

Violation of the Truth-In-Lending Act and Regulation Z, 73 POF3d 275.

ALR.

What constitutes Truth in Lending Act violation which "was not intentional and resulted from bona fide error not withstanding maintenance of procedures reasonably adapted to avoid any such error" within meaning of § 130(c) of Act (15 USCA § 1640(c)), 153 A.L.R. Fed. 193.

Validity, construction, and application of Truth in Lending Act (TILA) and regulations promulgated thereunder — United States Supreme Court cases, 67 A.L.R. Fed. 2d 567.

7-5-2. Definitions.

As used in this chapter, the term:

(1) "Affiliate" means the same as that set forth in paragraph (1) of Code Section 7-1-4.

(2) "Commissioner" and "department" shall have the meanings provided in paragraphs (13) and (16) of Code Section 7-1-4.

(3) "Credit card" means any type of arrangement or loan agreement pursuant to which a domestic lender or credit card bank gives a debtor the privilege of using a credit card or other credit confirmation or device of any type in transactions out of which debt arises:

(A) By the domestic lender or credit card bank honoring a draft or similar order for the payment of money created, authorized, issued, or accepted by the debtor; or

(B) By the domestic lender or credit card bank paying or agreeing to pay the debtor's obligation.

(4) "Credit card account" means an arrangement between a domestic lender or credit card bank and a debtor for the creation of debt pursuant to a credit card and under which:

(A) The domestic lender or credit card bank may permit the debtor to create debt from time to time;

(B) The unpaid balance of principal of such debt and the loan, finance, or other appropriate charges are debited to an account;

(C) A loan finance charge is computed or an interest rate imposed upon the outstanding balances of the debtor's account from time to time; and

(D) The domestic lender or credit card bank is to render bills or statements to the debtor at regular intervals, the amount of which bills or statements is payable by and due from the debtor on a specified date as stated in such bill or statement or, at the option of the debtor, but subject to the terms and conditions of the credit card account, may be paid by the debtor in installments.

(5) "Credit card bank" means a national bank located in this state or a bank organized under the laws of this state which, in either event, the activities of which are limited to those permitted under Code Section 7-5-3.

(6) "Domestic lender" means any bank, savings and loan association, savings bank, credit union, or other business organization organized or chartered under the laws of this state or the United States, which in any event is authorized by law to accept deposits and make loans and has its principal place of business in this state.

(7) "Foreign lender" means any bank, savings and loan association, savings bank, credit union, or other business organization organized or chartered under the laws of the United States, or any state other than this state, or the District of Columbia, which in any event is authorized by law to accept deposits and make loans and has its principal place of business outside this state.

(8) "Holding company" means any company that controls a domestic or foreign lender or a credit card bank. The term "company" and "control" shall have the meanings set forth in Code Section 7-1-605.

(9) "Qualifying organization" means a corporation, partnership, or other entity which at all times maintains an office in the State of Georgia at which it employs at least 250 persons residing in this state who are directly or indirectly engaged in providing the following services, either for the qualifying organization or on behalf of other domestic or foreign lenders or credit card banks:

(A) The distribution of credit cards or other devices designed and effective to access credit card accounts;

(B) The preparation of periodic statements of amounts due under credit card accounts;

(C) The receipt from credit card holders of amounts paid on or with respect to such accounts; or

(D) The maintenance of financial records reflecting the status of such accounts from time to time.

The term "qualifying organization" shall also include any domestic bank and credit card bank satisfying the employment and activities requirements set forth in this paragraph.

History.
Code 1981, § 7-5-2, enacted by Ga. L. 1987, p. 268, § 1; Ga. L. 1988, p. 13, § 7; Ga. L. 1999, p. 674, § 41; Ga. L. 2016, p. 864, § 7/HB 737.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, annotations decided under former O.C.G.A. § 7-5-2 are included in the annotations for this Code section.

Applicability of chapter. — Line of credit arrangement accessed through special drafts drawn on the lender which the borrower may make payable to a third party is clearly governed by the Lender Credit Card Act. The drafts are "lender credit cards" within the meaning of former § 7-5-3(2) since the drafts constitute "credit confirmation or identification." 1985 Op. Att'y Gen. No. 85-32 (decided under former § 7-5-2).

When the financial institution issues special drafts which the borrower may make payable only to the issuing financial institution and to draw on the line of credit, the borrower must either come back to the financial institution and cash one of the drafts or deposit the draft into the borrower's checking account at the financial institution and then use the borrower's personal check drawn on the borrower's deposit account, the third party would have no reason to know that a credit transaction was transpiring. Thus, lacking the requisite "credit confirmation or identification," it would not be governed by the Lender Credit Card Act, but, rather, would be governed by Georgia's usury provisions found at O.C.G.A. § 7-4-1. 1985 Op. Att'y Gen. No. 85-32 (decided under former § 7-5-2).

When the drawee bank extends a line of credit to the customer against which the customer may draw by writing checks that would otherwise overdraw the drawee's checking account, because the customer's checks do not indicate the customer has overdraft protection nor is the customer given any article which the customer could present to a third party to give notification of overdraft protection, this arrangement would be governed by Georgia's general usury provisions rather than the Lender Credit Card Act. 1985 Op. Att'y Gen. No. 85-32 (decided under former § 7-5-2).

RESEARCH REFERENCES

C.J.S.
47 C.J.S., Interest and Usury Consumer Credit, § 523 et seq.

7-5-3. Organization, ownership, and control of credit card banks.

Subject to the provisions of this chapter and to the approval of the commissioner, any domestic lender, foreign lender, or holding company may organize, own, and control a credit card bank on the terms and conditions provided in this Code section:

(1) If the credit card bank is to be organized under the laws of this state, such bank shall be organized as provided in Part 8 of Article 2 of Chapter 1 of this title;

(2) In connection with the application to organize, or to own and control a credit card bank, the applicant shall pay applicable fees established by regulation of the department to defray the costs of the investigation and review of the application;

(3) The shares of a credit card bank shall be owned solely by a domestic lender, a foreign lender, or a holding company;

(4) The credit card bank shall conduct its limited deposit taking business only from a single location in this state;

(5) The credit card bank shall at all times maintain capital stock and paid-in surplus as required by regulatory policies of the department but in no event less than $2 million;

(6) The credit card bank may only engage in the business of soliciting, processing, and making loans pursuant to credit card accounts and conducting such other activities as may be necessary incidents thereto;

(7) The credit card bank may not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others, and it may not accept savings or time deposits of less than $100,000.00;

(8) The credit card bank must operate in a manner that is not likely to attract customers from the general public in this state to the substantial detriment of other domestic lenders;

(9) The credit card bank shall have, within one year of the date it commences operations, no fewer than 50 employees located in this state devoted to its credit card activities; provided, however, that, where the credit card bank contracts with a qualifying organization for the performance of services incidental to offering credit card activities, the minimum number of employees in this state shall be determined by the commissioner at a level to assure the continued and substantive presence of the credit card bank in this state for the purpose of conducting its corporate affairs and performing the credit underwriting function and such other activities not subject to contract with the qualifying organization as may be incidental to its servicing of credit card accounts; and

(10) A domestic lender is not required to establish a credit card bank to issue credit cards and create credit card accounts.

History.
Code 1981, § 7-5-3, enacted by Ga. L. 1987, p. 268, § 1; Ga. L. 1999, p. 674, § 42; Ga. L. 2003, p. 843, § 23; Ga. L. 2004, p. 631, § 7; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2024, p. 1052, § 1(a)(40)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (9).

7-5-4. Credit card charges and fees; terms and conditions.

(a)(1) Notwithstanding the provisions of any other law prescribing, regulating, or limiting interest rates, any domestic lender or credit card bank may charge and collect in connection with a credit card account:

(A) Finance charges at such periodic interest rate or rates computed or imposed on the outstanding balances on the credit card account in any manner as provided in the written agreement governing such credit card account, and such periodic interest rate or rates may vary from time to time in accordance with a schedule or formula contained in such agreement; and

(B) Such other fees and charges as the domestic lender or credit card bank and the debtor may agree upon in the written agreement governing the credit card account, including, but not limited to, cash advance charges, charges for exceeding preestablished credit limits, late fees, delinquency or default charges, returned payment charges, stop payment charges, automated teller machine charges or similar electronic or interchange fees or charges, annual or membership fees, application fees, transaction fees and minimum charges for each scheduled billing period, premiums for credit life, accident, health, or loss of income insurance, documentary evidence fees, fees or charges for services rendered or for reimbursement of expenses incurred by any domestic lender or credit card bank or their respective agents in connection with the credit card account, and other fees incident to the application for or the opening, administration, and termination of the credit card account, including, without limitation, commitment, application, and processing fees, official fees and taxes, and costs incurred by reason of examination of title, title insurance, inspection, appraisal, recording, mortgage satisfaction, filing fees, or other formal acts necessary or appropriate to the security for the credit card account.

(2) For the purposes of this Code section, Section 85 of the National Bank Act (12 U.S.C. Section 85), and Sections 521, 522, and 523 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. Sections 1831d, 1831e, and 1831f), the finance charges under subparagraph (a)(1)(A) of this Code section and the charges and fees under subparagraph (a)(1)(B) of this Code section shall be deemed to be, and may be charged and collected as, interest by the domestic lender or credit card bank.

(b) The terms and conditions contained in the written agreement governing the credit card account between the domestic lender or credit card bank and the debtor shall be deemed to be material to the determination of interest, including, but not limited to:

(1) Those provisions relating to the computation and charging of finance charges authorized by subparagraph (a)(1)(A) of this Code section;

(2) The fees and charges authorized by subparagraph (a)(1)(B) of this Code section; and

(3) All other terms and conditions of such written agreement.

(c) A credit card account between any domestic lender or credit card bank and a debtor shall be governed solely by the laws of the State of Georgia and federal law unless otherwise expressly agreed in writing by the parties. A domestic lender or credit card bank may, as specified in the written agreement governing a credit card account, modify in any respect any terms or conditions of such credit card account, upon such prior written notice of such modification as specified by the terms of the written agreement governing the credit card account or by the Truth in Lending Act (15 U.S.C. Section 1601, et seq.). Any such notice provided by a domestic lender or credit card bank shall specify that the debtor has the right to surrender the credit card whereupon the debtor shall have the right to continue to pay off his credit card account in the same manner and under the same terms and conditions as then in effect. The debtor's failure to surrender the credit card prior to the modification's becoming effective shall constitute a consent to the modification.

History.
Code 1981, § 7-5-4, enacted by Ga. L. 1987, p. 268, § 1; Ga. L. 1990, p. 1, § 1; Ga. L. 1991, p. 94, § 7; Ga. L. 1997, p. 143, § 7; Ga. L. 1999, p. 674, § 43; Ga. L. 2001, p. 4, § 7.

RESEARCH REFERENCES

ALR.
Construction and application of Consumer Credit Protection Act provisions (18 USCS §§ 891-894) prohibiting extortionate credit transactions, 106 A.L.R. Fed. 33.

What constitutes "finance charge" under § 106(a) of the Truth in Lending Act (15 USCA § 1605(a)) or applicable regulations, 154 A.L.R. Fed. 431.

7-5-5. Regulation of credit card banks; enforcement; rules and regulations.

(a) All credit card banks organized under the laws of this state shall be subject to the supervision, regulation, and examination of the department, and the department shall have all enforcement powers with respect thereto as are provided in Chapter 1 of this title.

(b) In the event any credit card bank does not conduct its activities within the limitations provided in Code Section 7-5-3, the department may require such credit card bank to cease all unauthorized activities. In the event such credit card bank fails to abide by such order, the department may in addition to all other rights, remedies, and powers it may have under Chapter 1 of this title:

(1) Impose upon the credit card bank or its parent holding company or domestic lender or foreign lender a penalty of up to $10,000.00 per day for each day such order is violated; and

(2) Require divestiture of such credit card bank by any domestic lender, foreign lender, or holding company not qualified to acquire such credit card bank on the date it ceased to operate within the limitations imposed by Code Section 7-5-3 and became a bank for purposes of Part 18 or Part 19 of Article 2 of Chapter 1 of this title.

(c) The department shall have the power to promulgate rules and regulations implementing the provisions of this chapter.

History. Code 1981, § 7-5-5, enacted by Ga. L. 1987, p. 268, § 1; Ga. L. 2020, p. 493, § 7/SB 429.

7-5-6. Applicability of banking laws.

(a) A credit card bank shall be subject to the provisions of Chapter 1 of this title except when any rights, powers, privileges, or provisions of Chapter 1 of this title are inconsistent with the rights, powers, privileges, provisions, or limitations of this chapter.

(b) A credit card bank shall not be considered a bank for purposes of Part 18 or Part 19 of Article 2 of Chapter 1 of this title; provided, however, that every domestic lender, foreign lender, or holding company owning a credit card bank shall be subject to the provisions of Code Section 7-1-607, which concerns registration, reporting, and examination.

History. Code 1981, § 7-5-6, enacted by Ga. L. 1987, p. 268, § 1; Ga. L. 1999, p. 674, § 44; Ga. L. 2020, p. 493, § 7/SB 429.

CHAPTER 6

CREDIT OR LOAN DISCRIMINATION

Sec.		Sec.	
7-6-1.	Discrimination in extending credit or making loans prohibited.	7-6-2.	Cause of action for individual discriminated against.

Cross references.
Prohibition of discrimination in sale, lease, or financing of housing accommodations, § 8-3-200 et seq.

7-6-1. Discrimination in extending credit or making loans prohibited.

(a) No bank, lending company, financial institution, retail installment seller, or person extending credit may discriminate or provide requirements which discriminate in the extending of credit or the making of loans solely on the basis of sex, race, religion, national origin, or marital status.

(b) Any person, firm, or corporation which willfully violates any provision of this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed $1,000.00.

History.
Ga. L. 1975, p. 772, §§ 1, 3.

Law reviews.
For article, "Religious Exercise as Credit Risk," see 10 Bank. Dev. J. 119 (1993-1994).

RESEARCH REFERENCES

ALR.
Recovery of damages as remedy for wrongful discrimination under state or local civil rights provisions, 85 A.L.R.3d 351.

Discrimination based on marital status under Equal Credit Opportunity Act (15 U.S.C.A. §§ 1691 et seq.) as defense to liability for financial obligations, 16 A.L.R. Fed. 3d 9.

Discrimination Against Credit Applicant on Basis of Marital Status Under Equal Credit Opportunity Act (15 U.S.C.A. §§ 1691 et seq.), 18 A.L.R. Fed. 3d 5.

7-6-2. Cause of action for individual discriminated against.

Any person denied a loan or credit solely on the basis of discrimination because of sex, race, religion, national origin, or marital status shall have a right to bring an action for damages in any court of competent jurisdiction in an individual, but not in a representative, capacity against the person, firm, or corporation violating this chapter.

History.
Ga. L. 1975, p. 772, § 2.

RESEARCH REFERENCES

ALR.

Recovery of damages for emotional distress resulting from discrimination because of sex or marital status, 61 A.L.R.3d 944.

Recovery of damages as remedy for wrongful discrimination under state or local civil rights provisions, 85 A.L.R.3d 351.

Requiring apology as "affirmative action" or other form of redress under State Civil Rights Act, 85 A.L.R.3d 402.

Discrimination based on marital status under Equal Credit Opportunity Act (15 U.S.C.A. §§ 1691 et seq.) as defense to liability for financial obligations, 16 A.L.R. Fed. 3d 9.

CHAPTER 6A

GEORGIA FAIR LENDING ACT

Sec.		Sec.	
7-6A-1.	Short title.	7-6A-9.	Failure to comply by creditors, servicers, or insurers providing insurance through premiums financed by creditor.
7-6A-2.	Definitions.	7-6A-10.	Severability of chapter.
7-6A-3.	Limitations of home loans.	7-6A-11.	Preemption of local regulation.
7-6A-4.	Flipping home loans prohibited; costs and attorneys' fees.	7-6A-12.	Application; preemption by federal law.
7-6A-5.	Limitations of high-cost home loans.	7-6A-13.	Rules and regulations; reliance on guidance from department.
7-6A-6.	Affirmative claims and defenses against creditors; conditions for relief; actions intending to evade chapter prohibited.		
7-6A-7.	Violation of chapter.		
7-6A-8.	Enforcement of chapter; penalties for violations.		

Cross references.

Underwriting and rate risking, § 33-24-90 et seq.

Law reviews.

For note on the 2002 enactment of this chapter, see 19 Ga. St. U.L. Rev. 14 (2002).

For note on the 2003 amendments to O.C.G.A. §§ 7-6A-1 through 7-6A-11, see 20 Ga. St. U.L. Rev. 1 (2003).

For comment, "Amidst the Walking Dead: Judicial and Nonjudicial Approaches for Eradicating Zombie Mortgages," see 65 Emory L.J. 795 (2016).

For article, "Foreclosure Diversion and Mediation in the States," see 33 Ga. St. U.L. Rev. 411 (2017).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — Offenses arising under O.C.G.A. § 7-6A-1 et seq. and designated as misdemeanors under O.C.G.A. § 7-6A-8 require fingerprinting. 2002 Op. Att'y Gen. No. 2002-7.

RESEARCH REFERENCES

Am. Jur. 2d.

17 Am. Jur. 2d., Consumer and Borrower Protection, § 264 et seq.

17 Am. Jur. 2d, Consumer and Borrower Protection, § 292 et seq.

C.J.S.

59 C.J.S., Mortgages, § 32 et seq.

7-6A-1. Short title.

This chapter shall be known and may be cited as the "Georgia Fair Lending Act."

History.

Code 1981, § 7-6A-1, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1.

Cross references.

Vehicle protection product warranty cannot be condition to car loan, § 33-34A-9.

Law reviews.

For survey article on real property law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 397 (2003).

JUDICIAL DECISIONS

Mortgage loans. — Chapter 13 debtor's allegations that a title insurance company, a bank, and the FNMA failed to honor a lender's promise that the debtor could buy down the interest rate on the debtor's mortgage and refused to cancel the debtor's mortgage after the debtor was charged a higher rate failed to state claims for relief under the RESPA, 12 U.S.C. § 2601 et seq., the TILA, 15 U.S.C. § 1601 et seq., and the Georgia Fair Lending Act, O.C.G.A. § 7-6A-1 et seq.; however, the court allowed the debtor to amend the debtor's complaint to cure deficiencies in the debtor's allegations that a LLC that serviced the debtor's loan violated the RESPA when the LLC failed to respond to qualified written requests for information the debtor sent to the LLC. Hughes v. J.P. Morgan Chase (In re Hughes), No. 17-5169-LRC, 2018 Bankr. LEXIS 1143 (Bankr. N.D. Ga. Apr. 13, 2018).

7-6A-2. Definitions.

As used in this chapter, the term:

(1) "Acceleration" means a demand for immediate repayment of the entire balance of a home loan.

(2) "Affiliate" means any company that controls, is controlled by, or is under common control with another company, as set forth in 12 U.S.C. Section 1841, et seq.

(3) "Annual percentage rate" means the annual percentage rate for the loan calculated at closing according to the provisions of 15 U.S.C. Section 1606, the regulations promulgated thereunder by the Board of Governors of the Federal Reserve System, and the Official Staff Commentary on Regulation Z published by the Board of Governors of the Federal Reserve System.

(4) "Bona fide discount points" means loan discount points knowingly paid by the borrower for the express purpose of reducing, and which in fact do result in a bona fide reduction of, the interest rate applicable to the home loan; provided, however, that the undiscounted interest rate for the home loan does not exceed by more than one percentage point the average prime offer rate as defined in 12 C.F.R. 1026.35 that applies to a comparable transaction, as published by the United States Consumer Financial Protection Bureau as of the last date the discounted interest rate for the transaction is set before consummation.

(5) "Borrower" means any natural person obligated to repay the loan including a coborrower or cosigner.

(6) "Creditor" means a person who both regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments and is a person to whom the debt arising from the home loan transaction is initially payable. Creditor shall also mean any person brokering a home loan, which shall include any person who directly or indirectly for compensation solicits, processes, places, or negotiates home loans for others or offers to solicit, process, place, or negotiate home loans for others or who closes home loans which may be in the person's own name with funds provided by others and which loans are thereafter assigned to the person providing the funding of such loans, provided that creditor shall not include a person who is an attorney providing legal services in association with the closing of a home loan. A creditor shall not include: (A) a servicer; (B) an assignee; (C) a purchaser; or (D) any state or local housing finance agency or any other state or local governmental or quasi-governmental entity.

(7) "High-cost home loan" means a home loan in which the terms of the loan meet or exceed one or more of the thresholds as defined in paragraph (17) of this Code section.

(8) "Home loan" means a loan, including an open-end credit plan where the principal amount does not exceed the conforming loan size limit for a single-family dwelling as established by the Federal National Mortgage Association and the loan is secured by a mortgage, security deed, or deed to secure debt on real estate located in this state upon which there is located or there is to be located a structure or structures, including a manufactured home, designed principally for occupancy of from one to four families and which is or will be occupied by a borrower as the borrower's principal dwelling, except that home loan shall not include:

(A) A reverse mortgage transaction;

(B) A loan that provides temporary financing for the acquisition of land by the borrower and initial construction of a borrower's dwelling thereon or the initial construction of a borrower's dwelling on land owned by the borrower;

(C) A bridge loan made to a borrower pending the sale of the borrower's principal dwelling or a temporary loan made to a borrower and secured by the borrower's principal dwelling pending the borrower's obtaining permanent financing for such principal dwelling;

(D) A loan secured by personal property including, but not limited to, a motor vehicle, motor home, boat, or watercraft and

also secured by the borrower's principal dwelling to provide the borrower with potential income tax advantages when such personal property is the primary collateral for such loan;

(E) A new loan secured by a borrower's principal dwelling as a result of a lien taken in connection with a debt previously contracted or incurred when the loan documents for such new loan do not include a mortgage, security deed, or deed to secure debt expressly securing such new loan; or

(F) A loan primarily for business, agricultural, or commercial purposes.

(9) "Make" or "makes" means to originate a loan or to engage in brokering of a home loan including the soliciting, processing, placing, or negotiating of a home loan made or offered by a person brokering a home loan.

(10) "Manufactured home" means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length or, when erected on site is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with a permanent foundation when erected on land secured in conjunction with the real property on which the manufactured home is located and connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq. Such term does not include rental property or second homes or manufactured homes when not secured in conjunction with the real property on which the manufactured home is located.

(11) "Open-end credit plan" or "open-end loan" means a loan in which (A) a creditor reasonably contemplates repeated transactions; (B) the creditor may impose a finance charge from time to time on an outstanding balance; and (C) the amount of credit that may be extended to the borrower during the term of the loan, up to any limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid.

(12) "Points and fees" means:

(A) All items included in the definition of finance charge in 12 C.F.R. 1026.4(a) and 12 C.F.R. 1026.4(b) except interest or the

time price differential. All items excluded under 12 C.F.R. 1026.4(c) are excluded from points and fees, provided that for items under 12 C.F.R. 1026.4(c)(7) the creditor does not receive direct or indirect compensation in connection with the charge and the charge is not paid to an affiliate of the creditor;

(B) All compensation paid directly or indirectly to a mortgage broker from any source, including a broker that originates a loan in its own name in a table funded transaction, including but not limited to yield spread premiums, yield differentials, and service release fees, provided that the portion of any yield spread premium that is both disclosed to the borrower in writing and used to pay bona fide and reasonable fees to a person other than the creditor or an affiliate of the creditor for the following purposes is exempt from inclusion in points and fees: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determination; appraisal fees; fees for inspection performed prior to closing; credit reports; surveys; attorneys' fees, if the borrower has the right to select the attorney from an approved list or otherwise; notary fees; escrow charges, so long as not otherwise included under subparagraph (A) of this paragraph; title insurance premiums; and fire and hazard insurance and flood insurance premiums, provided that the conditions set forth in 12 C.F.R. 1026.4(d)(2) are met;

(C) Premiums or other charges for credit life, credit accident, credit health, credit personal property, or credit loss-of-income insurance, debt suspension coverage or debt cancellation coverage, whether or not such coverage is insurance under applicable law, that provides for cancellation of all or part of a borrower's liability in the event of loss of life, health, personal property, or income or in the case of accident written in connection with a home loan and premiums or other charges for life, accident, health, or loss-of-income insurance without regard to the identity of the ultimate beneficiary of such insurance. In determining points and fees for the purposes of this paragraph, premiums or other charges shall only include those payable at or before loan closing and are included whether they are paid in cash or financed and whether the amount represents the entire premium for the coverage or an initial payment;

(D) The maximum prepayment fees and penalties that may be charged or collected under the terms of the loan documents. Mortgage interest that may accrue in advance of payment in full of a loan made under a local, state, or federal government sponsored mortgage insurance or guaranty program, including a Federal Housing Administration program, shall not be considered to be a prepayment fee or penalty;

(E) All prepayment fees or penalties that are charged to the borrower if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor;

(F) For open-end loans, points and fees are calculated in the same manner as for loans other than open-end loans, based on the minimum points and fees that a borrower would be required to pay in order to draw on the open-end loan an amount equal to the total credit line; and

(G) Points and fees shall not include:

(i) Taxes, filing fees, recording, and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest;

(ii) Bona fide and reasonable fees paid to a person other than the creditor or an affiliate of the creditor for the following: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determination; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorneys' fees, if the borrower has the right to select the attorney from an approved list or otherwise; notary fees; escrow charges, so long as not otherwise included under subparagraph (A) of this paragraph; title insurance premiums; and fire and hazard insurance and flood insurance premiums, provided that the conditions in 12 C.F.R. 1026.4(d)(2) are met;

(iii) Bona fide fees paid to a federal or state government agency that insures payment of some portion of a home loan, including, but not limited to, the Federal Housing Administration, the Department of Veterans Affairs, the United States Department of Agriculture for rural development loans, or the Georgia Housing and Finance Authority; and

(iv) Notwithstanding any provision to the contrary in this chapter, compensation in the form of premiums, commissions, or similar charges paid to a creditor or any affiliate of a creditor for the sale of: (I) title insurance; or (II) insurance against loss of or damage to property or against liability arising out of the ownership or use of property, provided that the conditions in 12 C.F.R. 1026.4(d)(2) are met.

(13) "Process," "processes," or "processing" means to act as a processor.

(14) "Processor" means any person that prepares paperwork necessary for or associated with the closing of a home loan, including but not limited to promissory notes, disclosures, deeds, and closing

statements, provided that processor shall not include persons on the grounds that they are engaged in data processing or statement generation services for home loans.

(15) "Servicer" means the same as set forth in 12 C.F.R. 1024.2.

(16) "Servicing" means the same as set forth in 12 C.F.R. 1024.2.

(17) "Threshold" means:

(A) Without regard to whether the loan transaction is or may be a "residential mortgage transaction" as that term is defined in 12 C.F.R. Section 1026.2(a)(24), the annual percentage rate of the loan is such that it equals or exceeds that set out in Section 152 of the Home Ownership and Equity Protection Act of 1994, 15 U.S.C. Section 1602(bb), and the regulations adopted pursuant thereto by the Federal Reserve Board, including 12 C.F.R. Section 1026.32; or

(B) The total points and fees payable in connection with the loan, excluding not more than two bona fide discount points, exceed: (i) 5 percent of the total loan amount if the total loan amount is $20,000.00 or more or (ii) the lesser of 8 percent of the total loan amount or $1,000.00 if the total loan amount is less than $20,000.00.

(18) "Total loan amount" means the amount calculated as set forth in 12 C.F.R. 1026.32(a) and under the Official Staff Commentary of the Board of Governors of the Federal Reserve System. For open-end loans, the total loan amount shall be calculated using the total credit line available under the terms of the home loan as the amount financed.

History.

Code 1981, § 7-6A-2, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1; Ga. L. 2020, p. 320, § 24/HB 781; Ga. L. 2021, p. 323, § 38/HB 111; Ga. L. 2022, p. 220, § 47/HB 891; Ga. L. 2024, p. 354, § 2-1/HB 876, effective June 1, 2024.

Amendments.

The 2022 amendment, effective July 1, 2022, substituted "12 C.F.R. Section 1026.2(a)(24)" for "12 C.F.R. 1026.2(a)(24)", "15 U.S.C. Section 1602(bb)" for "15 U.S.C. Section 1602(aa)", and "12 C.F.R. Section 1026.32" for "Section 12 C.F.R. 1026.32" in subparagraph (17)(A).

The 2024 amendment, effective June 1, 2024, at the end of paragraph (4), substituted "average prime offer rate as defined in 12 C.F.R. 1026.35 that applies to a comparable transaction, as published by the United States Consumer Financial Protection Bureau as of the last date the discounted interest rate for the transaction is set before consummation" for "required net yield for a 90 day standard mandatory delivery commitment for a home loan with a reasonably comparable term from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater".

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2002, a comma was inserted following "are excluded from points and fees" in subparagraph (13)(A) (now subparagraph (12)(A)).

JUDICIAL DECISIONS

Finance charges. — Because O.C.G.A. § 7-6A-2(11) did not prohibit any particular practice of a lender to charge finance charges, the plaintiff did not allege a violation of the Georgia Fair Lending Act, O.C.G.A. § 7-6A-1 et seq., and the trial court did not err by dismissing the plaintiff's claim for violation of the Act; further, because plaintiff's claim for punitive damages was derivative of a claim for violation of the Act, the trial court did not err by dismissing the claim for punitive damages. Steffey v. Ameris Bank, 366 Ga. App. 699, 883 S.E.2d 918, 2023 Ga. App. LEXIS 62 (2023).

Home loan. Trial court erred in granting summary judgment on the question of whether the loan at issue met the definition of a "home loan" under O.C.G.A. § 7-6A-2(8) of the Georgia Fair Lending Act, because there were genuine issues of material fact as to whether the house on the property was the borrower's principal dwelling and as to whether the loan to him was primarily for business or commercial purposes. Crowe v. Scissom, 365 Ga. App. 124, 877 S.E.2d 659, 2022 Ga. App. LEXIS 395 (2022).

7-6A-3. Limitations of home loans.

All home loans shall be subject to the following limitations and prohibited practices:

(1) No creditor shall make a home loan that finances, directly or indirectly:

(A) Any credit life, credit accident, credit health, credit personal property, or credit loss-of-income insurance, debt suspension coverage, or debt cancellation coverage, whether or not such coverage is insurance under applicable law, that provides for cancellation of all or part of a borrower's liability in the event of loss of life, health, personal property, or income or in the case of accident written in connection with a home loan; or

(B) Any life, accident, health, or loss-of-income insurance without regard to the identity of the ultimate beneficiary of such insurance;

provided, however, that, for the purposes of this Code section, any premiums or charges calculated and paid on a monthly basis shall not be considered financed directly or indirectly by the creditor;

(2) No creditor or servicer shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a home loan that refinances all or any portion of such existing loan or debt;

(3) No creditor or servicer may charge a borrower a late payment charge unless the loan documents specifically authorize the charge, the charge is not imposed unless the payment is past due for ten days or more, and the charge does not exceed 5 percent of the amount of

the late payment. A late payment charge may not be imposed more than once with respect to a particular late payment. If a late payment charge is deducted from a payment made on the home loan and such deduction results in a subsequent default on a subsequent payment, no late payment charge may be imposed for such default. A lender may apply any payment made in the order of maturity to a prior period's payment due even if the result is late payment charges accruing on subsequent payments due; and

(4) No creditor or servicer may charge a fee for informing or transmitting to any person the balance due to pay off a home loan or to provide a release upon prepayment. When such information is provided by facsimile or if it is provided upon request within 60 days of the fulfillment of a previous request, a creditor or servicer may charge a processing fee up to $10.00. Payoff balances shall be provided within a reasonable time but in any event no more than five business days after the request.

History.

Code 1981, § 7-6A-3, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1; Ga. L. 2024, p. 1052, § 1(a)(41)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in the undesignated text at the end of paragraph (1).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2002, in paragraph (1), a colon was substituted for a comma in the introductory paragraph and "Any" was substituted for "any" at the beginning of subparagraphs (1)(A) and (1)(B).

JUDICIAL DECISIONS

Improper late fees. — Mortgage borrower stated a claim under O.C.G.A. § 7-6A-3(3) by alleging that a loan servicer improperly assessed late fees even though the borrower made all contractually required payments in a timely manner. However, the borrower could not recover statutory damages under O.C.G.A. § 7-6A-7 for a violation of § 7-6A-3(3). Stroman v. Bank of Am. Corp., 852 F. Supp. 2d 1366, 2012 U.S. Dist. LEXIS 54677 (N.D. Ga. 2012).

No violation shown. — Plaintiff's claim under the Georgia Fair Lending Act, O.C.G.A. § 7-6A-1 et seq., failed as the plaintiff did not allege that the defendants made the loan to finance insurance, encouraged the plaintiff to default on an existing loan, improperly charged late payment fees, or charged a fee for informing the plaintiff of the pay-off balance and, thus, the plaintiff did not allege a violation of the Act. Steffey v. Ameris Bank, No. A22A1368, 2023 Ga. App. LEXIS 28 (Ga. Ct. App. Jan. 23, 2023).

Litigation following denial of borrowers' request to modify loan. — Summary judgment was improperly denied to the lender on the borrowers' claim for alleged violations of the Georgia Fair Lending Act (GFLA), O.C.G.A. § 7-6A-1 et seq., because the evidence did not establish that there was a planned refinance of the loans as the lender denied the borrowers' request for modification of the loans. Further, even if the borrowers' application for a modification could be characterized as a "planned closing" under the GFLA, because there was no ensuing loan, there was no scheduled payment under the loan triggering the time period for bringing an action, nor was there any interest paid on the loan

under which statutory damages could be assessed. Oconee Fed. S&L Ass'n v. Brown, 351 Ga. App. 561, 831 S.E.2d 222, 2019 Ga. App. LEXIS 444 (2019), cert. dismissed, No. S20C0074, 2020 Ga. LEXIS 201 (Ga. Mar. 13, 2020).

7-6A-4. Flipping home loans prohibited; costs and attorneys' fees.

(a) No creditor may knowingly or intentionally engage in the unfair act or practice of "flipping" a home loan. Flipping a home loan is the consummating of a high-cost home loan to a borrower that refinances an existing home loan that was consummated within the prior five years when the new loan does not provide reasonable, tangible net benefit to the borrower considering all of the circumstances including, but not limited to, the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances.

(b) The home loan refinancing transaction shall be presumed to be a flipping where a high-cost home loan refinances an existing home loan that was consummated within the prior five years and that is a special mortgage originated, subsidized, or guaranteed by or through a state, tribal, or local government or a nonprofit organization, which either bears a below-market interest rate at the time the loan was originated or has nonstandard payment terms beneficial to the borrower, such as payments that vary with income, are limited to a percentage of income, or where no payments are required under specified conditions and where, as a result of the refinancing, the borrower will lose one or more of the benefits of the special mortgage. Notwithstanding any provision to the contrary contained in this chapter, home loan refinancing transactions of first mortgage loans originated by, purchased by, or assigned to the Georgia Housing and Finance Authority shall not be presumed to be a flipping under this subsection.

(c) Notwithstanding any provision to the contrary contained in this chapter regarding costs and attorneys' fees, in any action instituted by a borrower who alleges that the defendant violated this Code section, the borrower shall be entitled to costs and attorneys' fees only if the presiding judge, in the judge's discretion, allows reasonable attorneys' fees and costs to the borrower as prevailing party, such fees and costs to be taxed as a part of the court costs and payable by the losing party upon a finding by the presiding judge that the party charged with the violation has willfully engaged in the act or practice and there was unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such action.

History.
Code 1981, § 7-6A-4, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1; Ga. L. 2004, p. 631, § 7.

JUDICIAL DECISIONS

Preemption. — Debtors' claims that a bank violated O.C.G.A. §§ 7-6A-4 and 7-6A-5 were preempted by federal law given an order issued by the Office of the Comptroller of the Currency clearly stating that the provisions of the Georgia Fair Lending Act, O.C.G.A. § 7-6A-1 et seq., affecting national banks' real estate lending were either preempted by federal law or were moot as a result of the preemption. Salvador v. Bank of Am., N.A. (In re Salvador), 456 B.R. 610, 2011 Bankr. LEXIS 1772 (Bankr. M.D. Ga. 2011).

7-6A-5. Limitations of high-cost home loans.

High-cost home loans shall be subject to the following limitations and prohibited practices:

(1) No prepayment fees or penalties shall be provided for in the loan documents for a high-cost home loan or charged the borrower after the last day of the twenty-fourth month following the loan closing or which exceed in the aggregate:

(A) In the first 12 months after the loan closing, more than 2 percent of the loan amount prepaid; or

(B) In the second 12 months after the loan closing, more than 1 percent of the amount prepaid;

(2) A high-cost home loan shall not contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower;

(3) A high-cost home loan shall not include payment terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due;

(4) A high-cost home loan shall not contain a provision that increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided that the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness;

(5) A high-cost home loan shall not include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower;

(6) Without regard to whether a borrower is acting individually or on behalf of others similarly situated, any provision of a high-cost home loan agreement that allows a party to require a borrower to assert any claim or defense in a forum that is less convenient, more

costly, or more dilatory for the resolution of a dispute than a judicial forum established in this state where the borrower may otherwise properly bring the claim or defense or limits in any way any claim or defense the borrower may have is unconscionable and void;

(7) A creditor shall not make a high-cost home loan without first receiving certification from a counselor with a third-party nonprofit organization approved by the United States Department of Housing and Urban Development or the Georgia Housing and Finance Authority that the borrower has received counseling on the advisability of the loan transaction. No creditor, servicer, or its institution shall be required to contribute to the funding of any nonprofit organization that provides counseling required pursuant to this paragraph;

(8) A creditor shall not make a high-cost home loan unless a reasonable creditor would believe at the time the loan is consummated that the borrower residing in the home will be able to make the scheduled payments associated with the loan based upon a consideration of his or her current and expected income, current obligations, employment status, and other financial resources, other than the borrower's equity in the collateral that secures repayment of the loan. There is a rebuttable presumption that the borrower residing in the home is able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, said borrower's total monthly debts, including amounts under the loan, do not exceed 50 percent of said borrower's monthly gross income as verified by tax returns, payroll receipts, and other third-party income verification;

(9) A creditor or servicer shall not pay a contractor under a home improvement contract from the proceeds of a high-cost home loan unless:

(A) The creditor or servicer is presented with an affidavit of the contractor that the work has been completed, which affidavit meets the requirements of Code Section 44-14-361.2; and

(B) The proceeds are disbursed in an instrument payable to the borrower or jointly to the borrower and the contractor or, at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the drafter of the instrument, and the contractor prior to the disbursement;

(10) A creditor or servicer shall not charge a borrower any fees or other charges to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan;

(11) A creditor who makes a high-cost home loan and who has the legal right to foreclose shall provide notice of the intent to foreclose to

the borrower in writing by certified mail, return receipt requested, to the address of the borrower last known to the creditor. Such notice shall be sent to the borrower at least 14 days prior to the publication of the legal advertisement required by Code Section 44-14-162;

(12) If a creditor or servicer asserts that grounds for acceleration of a high-cost home loan exist and requires the payment in full of all sums secured by the security instrument, the borrower or anyone authorized to act on the borrower's behalf shall have the right at any time, up to the time title is transferred by means of foreclosure by judicial proceeding and sale or otherwise, to cure the default and reinstate the high-cost home loan by tendering the total amount of principal, interest, late fees, and escrow deposits in arrears, not including any acceleration. Cure of default as provided in this paragraph shall reinstate the borrower to the same position as if the default had not occurred and shall nullify as of the date of the cure any acceleration of any obligation under the security instrument or note arising from the default;

(13)(A) To cure a default under this Code section, a borrower shall not be required to pay any charge, fee, or penalty attributable to the exercise of the right to cure a default as provided for in this Code section, other than the fees specifically allowed by this Code section. The borrower shall not be liable for any attorneys' fees relating to the borrower's default that are incurred by the creditor or servicer prior to or during the 30 day period set forth in this paragraph, nor for any such fees in excess of $100.00 that are incurred by the creditor or servicer after the expiration of the 30 day period but prior to the time the creditor or servicer files a foreclosure action or takes other action to seize or transfer ownership of the home. After the creditor or servicer files a foreclosure action or takes other action to seize or transfer ownership of the home, the borrower shall only be liable for attorneys' fees that are reasonable and actually incurred by the creditor or servicer based on a reasonable hourly rate and a reasonable number of hours plus any other reasonable and necessary expenses incurred by the creditor or servicer.

(B) If a default is cured prior to the initiation of any action to foreclose or to seize or transfer a home, the creditor or servicer shall not institute the foreclosure proceeding or other action for that default. If a default is cured after the initiation of any action to foreclose, the creditor or servicer shall take such steps as are necessary to terminate the foreclosure proceeding or other action.

(C) Before any action is filed to foreclose upon the home or other action is taken to seize or transfer ownership of a home, a notice of the right to cure the default must be delivered to the borrower informing the borrower of the following:

(i) The nature of the default claimed on the high-cost home loan and of the borrower's right to cure the default by paying the sum of money required to cure the default. If the amount necessary to cure the default will change during the 30 day period after the effective date of the notice due to the application of a daily interest rate or the addition of late fees as allowed by this chapter, the notice shall give sufficient information to enable the borrower to calculate the amount at any point during the 30 day period;

(ii) The date by which the borrower shall cure the default to avoid acceleration and initiation of foreclosure or other action to seize the home which date shall not be less than 30 days after the date the notice is effective and the name and address and phone number of a person to whom the payment or tender shall be made;

(iii) That, if the borrower does not cure the default by the date specified, the creditor or servicer may take steps to terminate the borrower's ownership in the property by commencing a foreclosure proceeding or other action to seize the home; and

(iv) The name and address of the creditor or servicer and the telephone number of a representative of the creditor or servicer whom the borrower may contact if the borrower disagrees with the creditor's or servicer's assertion that a default has occurred or the correctness of the creditor's or servicer's calculation of the amount required to cure the default;

(14) A high-cost home loan shall not contain nor shall a creditor or servicer enforce a provision that permits a creditor or servicer, in its sole discretion, to accelerate the indebtedness. This paragraph does not prohibit acceleration of the loan in good faith due to the borrower's failure to abide by the material terms of the loan; and

(15) All high-cost home loan documents that create a debt or pledge property as collateral shall contain the following notice on the first page in a conspicuous manner: "Notice: This is a mortgage subject to special rules under the 'Georgia Fair Lending Act.' Purchasers or assignees of this mortgage may be liable for all claims and defenses by the borrower with respect to the mortgage."

History. Code 1981, § 7-6A-5, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1; Ga. L. 2004, p. 631, § 7.

JUDICIAL DECISIONS

Preemption. — Debtors' claims that a bank violated O.C.G.A. §§ 7-6A-4 and

7-6A-5 were preempted by federal law given an order issued by the Office of the Comptroller of the Currency clearly stating that the provisions of the Georgia Fair Lending Act, O.C.G.A. § 7-6A-1 et seq., affecting national banks' real estate lending were either preempted by federal law or were moot as a result of the preemption. Salvador v. Bank of Am., N.A. (In re Salvador), 456 B.R. 610, 2011 Bankr. LEXIS 1772 (Bankr. M.D. Ga. 2011).

RESEARCH REFERENCES

C.J.S.
59 C.J.S., Mortgages, §§ 346 et seq., 472 et seq.

7-6A-6. Affirmative claims and defenses against creditors; conditions for relief; actions intending to evade chapter prohibited.

(a) Notwithstanding any other provision of law, where a home loan was made, arranged, or assigned by a person selling home improvements to the dwelling of a borrower, the borrower may assert against the creditor all affirmative claims and any defenses that the borrower may have against the seller or home improvement contractor, provided that this subsection shall not apply to loans other than high-cost home loans unless applicable law requires a certificate of occupancy, inspection, or completion to be obtained and said certificate is not obtained.

(b) Notwithstanding any other provision of law, any person who purchases, is assigned, or otherwise becomes a holder of a high-cost home loan shall be subject to all affirmative claims and any defenses with respect to the high-cost home loan that the borrower could assert against the creditor of the high-cost home loan, unless the purchaser or holder demonstrates, by a preponderance of the evidence, that the purchaser or holder exercised reasonable due diligence at the time of purchase of the home loans, or within a reasonable time thereafter, intended to prevent the purchaser or holder from purchasing or taking assignment of high-cost home loans.

(c) The relief granted in an action pursuant to subsection (b) of this Code section:

(1) May be asserted by the borrower only in an individual action and shall not exceed the sum of the amount of all remaining indebtedness of the borrower under such loan and reasonable attorneys' fees in such individual action;

(2) May be sought by the borrower of a high-cost home loan after notice of acceleration or foreclosure of the high-cost home loan, asserting a violation of Code Section 7-6A-4 or 7-6A-5 in an individual action to enjoin foreclosure or to preserve or obtain possession of the home secured by the high-cost home loan; and

(3) Must be brought within one year from the date of the occurrence of the violation; provided, however, a borrower shall not be barred from asserting a violation of Code Section 7-6A-5 in an action to collect the debt which was brought more than one year from the date of the occurrence of such a violation as a matter of defense by recoupment or set-off in such action except as otherwise provided by law.

(d) It shall be a violation of this chapter for any person to attempt in bad faith to avoid the application of this chapter by dividing any loan transaction into separate parts or structuring a home loan transaction as an open-end loan for the purpose of evading the provisions of this chapter when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan or engaging in any other subterfuge with the intent of evading any provision of this chapter.

History.
Code 1981, § 7-6A-6, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1.

RESEARCH REFERENCES

C.J.S.
59 C.J.S., Mortgages, §§ 472 et seq., 575 et seq., 650 et seq.

7-6A-7. Violation of chapter.

(a) Any creditor found by a preponderance of the evidence to have violated this chapter shall be liable to the borrower for the following:

(1) Actual damages, including consequential and incidental damages;

(2) Statutory damages equal to the recovery of two times the interest paid under the loan and forfeiture of interest under the loan for any violation of paragraph (1) or (2) of Code Section 7-6A-3, any violation of Code Section 7-6A-4, or any violation of Code Section 7-6A-5;

(3) Punitive damages subject to Code Section 51-12-5.1; and

(4) Costs and reasonable attorneys' fees.

(b) A borrower may be granted injunctive, declaratory, and such other equitable relief as the court deems appropriate in an action to enforce compliance with this chapter including, but not limited to, the following:

(1) Notwithstanding any other provision of law, a court shall have the discretion not to require a borrower of a high-cost home loan

seeking injunctive or other equitable relief under the provisions of this chapter to make a tender upon a showing that the borrower has a reasonable likelihood of being successful on the merits. When tender is not required by the court, upon application to the court by the creditor, the court shall require the borrower to pay into the registry of the court all regularly scheduled home loan payments including property taxes and homeowners hazard insurance premiums if required by escrow agreement which are the responsibility of the borrower payable to the creditor or servicer under the terms of the home loan agreement which become due after the filing of the legal action, said home loan payments to be paid as such become due, and such other expenses provided under the home loan agreement as the court may deem just, provided that regularly scheduled payments shall not include any payments allegedly due under any acceleration provision of the home loan. If the creditor or servicer and the borrower disagree as to the amount of the home loan payments due, either or both of them may submit to the court any written home loan agreement for the purpose of establishing the amount of home loan payments to be paid into the registry of the court;

(2) If the borrower should fail to make any regularly scheduled payment under a high-cost home loan as it becomes due after the filing of this action, upon application to the court by the creditor or servicer, the court may issue an order denying the borrower's petition for injunctive or other equitable relief, and vacating any decree for injunctive or equitable relief previously entered by the court; and

(3) The court shall order the clerk of the court to pay to the creditor or any person the creditor may designate the payments claimed under the high-cost home loan agreement paid into the registry of the court as said payments are made; provided, however, that, if the borrower claims that he or she is entitled to all or any part of the funds and such claim is an issue of controversy in the litigation, the court shall order the clerk to pay to the creditor or any person the creditor may designate without delay only that portion of the funds to which the borrower has made no claim in the proceedings or may make such other order as is appropriate under the circumstances. That part of the funds which is a matter of controversy in the litigation shall remain in the registry of the court until a determination of the issues by the trial court. If either party appeals the decision of the trial court, that part of the funds equal to any sums found by the trial court to be due from the creditor or servicer to the borrower shall remain in the registry of the court until a final determination of the issues. The court shall order the clerk to pay to the creditor or any person the creditor may designate without delay the remaining funds in court and all payments of future home loan payments made into court pursuant to paragraph (1) of this subsec-

tion unless the borrower can show good cause that some or all of such payments should remain in court pending a final determination of the issues.

(c) The remedies provided in this chapter shall be cumulative.

(d) Any violation of this chapter may be enforced pursuant to Code Section 9-11-23.

(e) The right of rescission granted and defined under 15 U.S.C. Section 1601, et seq., and a right of rescission for any violation of paragraph (1) or (2) of Code Section 7-6A-3, any violation of Code Section 7-6A-4, or any violation of Code Section 7-6A-5 shall be available to a borrower of a high-cost home loan at any time during the term of the loan not to exceed a period of five years after the consummation of the loan.

(f) The brokering of a home loan by a broker registered or licensed or required to be registered or licensed as a broker under the laws of this state or any other jurisdiction that violates the provisions of this chapter shall constitute a violation of such provisions.

(g) Without regard to whether a borrower is acting individually or on behalf of others similarly situated, any provision of a home loan agreement that allows a party to require a borrower to assert any claim or defense in a forum that is less convenient, more costly, or more dilatory for the resolution of a dispute than a judicial forum established in this state where the borrower may otherwise properly bring the claim or defense or limits in any way any claim or defense the borrower may have is unconscionable and void.

(h) An action under this chapter may be brought within five years after the date of the first scheduled payment by the borrower under the home loan.

(i) The remedies provided in this chapter are not intended to be the exclusive remedies available to a borrower nor must the borrower exhaust any administrative remedies provided under this chapter or any other applicable law before proceeding under this Code section.

History.
Code 1981, § 7-6A-7, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1.

JUDICIAL DECISIONS

Litigation following denial of borrowers' request to modify loan. — Summary judgment was improperly denied to the lender on the borrowers' claim for alleged violations of the Georgia Fair Lending Act (GFLA), O.C.G.A. § 7-6A-1 et seq., because the evidence did not establish that there was a planned refinance of the loans as the lender denied the borrowers' request for modification of

the loans. Further, even if the borrowers' application for a modification could be characterized as a "planned closing" under the GFLA, because there was no ensuing loan, there was no scheduled payment under the loan triggering the time period for bringing an action, nor was there any interest paid on the loan under which statutory damages could be assessed. Oconee Fed. S&L Ass'n v. Brown, 351 Ga. App. 561, 831 S.E.2d 222, 2019 Ga. App. LEXIS 444 (2019), cert. dismissed, No. S20C0074, 2020 Ga. LEXIS 201 (Ga. Mar. 13, 2020).

Statutory damages. — Mortgage borrower stated a claim under O.C.G.A. § 7-6A-3(3) by alleging that a loan servicer improperly assessed late fees even though the borrower made all contractually required payments in a timely manner. However, the borrower could not recover statutory damages under O.C.G.A. § 7-6A-7 for a violation of § 7-6A-3(3). Stroman v. Bank of Am. Corp., 852 F. Supp. 2d 1366, 2012 U.S. Dist. LEXIS 54677 (N.D. Ga. 2012).

7-6A-8. Enforcement of chapter; penalties for violations.

(a) The Attorney General, the district attorneys of this state, and the commissioner of banking and finance shall have jurisdiction to enforce this chapter through their general regulatory powers and through civil process. The Commissioner of Insurance shall have like authority to enforce paragraph (1) of Code Section 7-6A-3.

(b) Any person, including members, officers, and directors of a creditor, who knowingly violates this chapter is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding $1,000.00 for each violation or to imprisonment not exceeding six months, or both.

History.
Code 1981, § 7-6A-8, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Offenses arising under O.C.G.A. § 7-6A-1 et seq. and designated as misdemeanors under O.C.G.A. § 7-6A-8 require fingerprinting. 2002 Op. Att'y Gen. No. 2002-7.

7-6A-9. Failure to comply by creditors, servicers, or insurers providing insurance through premiums financed by creditor.

A creditor or servicer or an insurer providing insurance through premiums financed by a creditor of a home loan who, when acting in good faith, fails to comply with the provisions of this chapter will not be deemed to have violated this chapter if the creditor or servicer or insurer providing insurance through premiums financed by a creditor establishes that either:

(1) Within 90 days of the loan closing and prior to receiving any notice from the borrower of the compliance failure, (A) the creditor or servicer has offered appropriate restitution to the borrower and

appropriate adjustments are made to the loan or (B) to correct a compliance failure of paragraph (1) of Code Section 7-6A-3, an insurer providing insurance through premiums financed by a creditor may provide appropriate restitution to the borrower by returning premiums paid plus interest charged on the premiums to the borrower upon receipt of notice of the compliance failure; or

(2) Within 90 days of discovering a compliance failure and prior to receiving any notice of the compliance failure and the compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, the borrower is notified of the compliance failure, appropriate restitution is offered to the borrower, and appropriate adjustments are made to the loan. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this chapter is not a bona fide error.

History.
Code 1981, § 7-6A-9, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1.

7-6A-10. Severability of chapter.

The provisions of this chapter shall be severable and, if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this chapter shall not be affected thereby. If any provision of this chapter is declared to be inapplicable to any category of persons or any specific category, type, or kind of loan or portions thereof, the provisions of this chapter shall nonetheless continue to apply with respect to all other persons and all other loans or portions thereof.

History.
Code 1981, § 7-6A-10, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1.

7-6A-11. Preemption of local regulation.

No municipality or county shall enact any ordinance or law that regulates the terms of home loans or that makes the eligibility of any person or entity to do business with the municipality or county dependent upon the terms of home loans originated or serviced by such person or entity.

History.
Code 1981, § 7-6A-11, enacted by Ga. L. 2002, p. 455, § 1; Ga. L. 2003, p. 1, § 1.

7-6A-12. Application; preemption by federal law.

The provisions of this chapter shall not apply to any bank, trust company, savings and loan, savings bank, credit union, or subsidiary thereof, respectively, that is chartered under the laws of this state or any other state only to the extent federal law precludes or preempts or has been determined to preclude or preempt the application of the provisions of this chapter to any federally chartered bank, trust company, savings and loan, savings bank, or credit union, respectively, and such federal preclusion or preemption shall apply only to the same type of state chartered entity as the federally chartered entity affected; provided, however, that the provisions of this chapter, including subsection (f) of Code Section 7-6A-7, shall be applicable to an independent mortgage broker for any loan originated or brokered by the broker that is initially funded by any state or federally chartered bank, trust company, savings and loan, savings bank, or credit union.

History.
Code 1981, § 7-6A-12, enacted by Ga. L. 2003, p. 1, § 1; Ga. L. 2020, p. 493, § 7/SB 429.

Law reviews.
For note on the 2003 enactment of this Code section, see 20 Ga. St. U.L. Rev. 1 (2003).

7-6A-13. Rules and regulations; reliance on guidance from department.

Without limitations on the power conferred by Chapter 1 of this title, the Department of Banking and Finance shall have the authority to promulgate rules and regulations not inconsistent with law for the enforcement of this chapter to effectuate the purposes of this chapter and to clarify the meaning of terms. In complying with this chapter, a creditor's good faith reliance on any formal or informal written guidance of the Department of Banking and Finance previously made available to the general public shall constitute prima-facie evidence of compliance with this chapter. The provisions of this Code section shall apply even if, following the reliance, such guidance is amended, rescinded, or determined by any judicial or other authority to be invalid.

History.
Code 1981, § 7-6A-13, enacted by Ga. L. 2003, p. 1, § 1.

Law reviews.
For note on the 2003 enactment of this Code section, see 20 Ga. St. U.L. Rev. 1 (2003).

CHAPTER 7

LOAN BROKERS

Sec.		Sec.	
7-7-1.	Definitions.	7-7-5.	Operation of chapter not limitable by contract or agreement.
7-7-2.	Prohibited practices.		
7-7-3.	Liability of principals.		
7-7-4.	Borrower's remedies for violation of chapter.	7-7-6.	Penalties.

7-7-1. Definitions.

As used in this chapter, the term:

(1) "Advance fee" means any consideration which is assessed or collected, prior to the closing of a loan, by a loan broker.

(2) "Borrower" means a person obtaining or desiring to obtain a loan of money, a credit card, or a line of credit.

(3) "Loan broker" means any person, firm, or corporation who does not operate or maintain an office that is open regularly to the public for the transaction of business and where potential borrowers actually visit to transact, discuss, or negotiate potential loans and:

(A) For or in expectation of consideration, arranges or attempts to arrange or offers to fund a loan of money, a credit card, or a line of credit;

(B) For or in expectation of consideration, assists or advises a borrower in obtaining or attempting to obtain a loan of money, a credit card, a line of credit, or related guarantee, enhancement, or collateral of any kind or nature;

(C) Acts for or on behalf of a loan broker for the purpose of soliciting borrowers; or

(D) Holds himself out as a loan broker.

"Loan broker" does not include any regulated lender or any third party soliciting borrowers for a regulated lender pursuant to a written contract with the regulated lender or any mortgage banker or mortgage broker approved by a regulated lender or the federal Department of Housing and Urban Development, the Veterans' Administration, the Federal National Mortgage Corporation, or the Federal Home Loan Mortgage Corporation.

(4) "Mortgage" means any indebtedness secured by a mortgage, deed of trust, security deed, or other lien on real property.

(5) "Mortgage banker" means any person who in the regular course of business:

(A) Holds himself out as being able to make mortgage loans;

(B) Holds himself out as being able to service mortgage loans; or

(C) Holds himself out as being able to buy or sell mortgage loans.

(6) "Mortgage broker" means any person who in the regular course of business for compensation or gain or in the expectation of compensation or gain holds himself out as being able to assist a person in obtaining a mortgage loan.

(7) "Principal" means any officer, director, partner, joint venturer, branch manager, or other person with similar managerial or supervisory responsibilities for a loan broker.

(8) "Regulated lender" means any person, firm, corporation, or subsidiary thereof that is licensed by and subject to regulation or supervision of any agency of the United States or this state and is acting within the scope of the license.

History.
Code 1981, § 7-7-1, enacted by Ga. L. 1992, p. 1123, § 1.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1992, a period was substituted for a semicolon at the end of paragraph (4).

7-7-2. Prohibited practices.

No loan broker shall:

(1) Engage in unfair or deceptive acts or practices that are declared to be unlawful by Part 2 of Article 15 of Chapter 1 of Title 10, the "Fair Business Practices Act of 1975";

(2) Assess, collect, or solicit an advance fee from a borrower to provide services as a loan broker; provided, however, that nothing contained in this paragraph shall preclude a loan broker from soliciting a potential borrower to pay for or preclude a potential borrower from paying for actual services necessary to apply for a loan, including but not limited to a credit check or an appraisal of security where such payment is made by check or money order payable to a party independent of the loan broker;

(3) Make or use any false or misleading representations or omit any material fact in the offer or sale of the services of a loan broker or engage, directly or indirectly, in any act that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a loan broker, notwithstanding the absence of reliance by the buyer;

(4) Make or use any false or deceptive representation in its business dealings or to the department or conceal a material fact from the department; or

(5) Offer the services of a loan broker by making, publishing, disseminating, circulating, or placing before the public within this state an advertisement in a newspaper or other publication or an advertisement in the form of a book, notice, handbill, poster, sign, billboard, bill, circular, pamphlet, letter, photograph, or motion picture or an advertisement circulated by radio, loud-speaker, telephone, television, telegraph, or in any other way, where said offer or advertisement does not disclose the name, business address, and telephone number of the loan broker. For purposes of this Code section, the loan broker shall disclose the actual address and telephone number of the business of the loan broker in addition to the address and telephone number of any forwarding service that the loan broker may use.

History.
Code 1981, § 7-7-2, enacted by Ga. L. 1992, p. 1123, § 1.

7-7-3. Liability of principals.

Each principal of a loan broker may be sanctioned for the actions of the loan broker, including its agents or employees, in the course of business of the loan broker.

History.
Code 1981, § 7-7-3, enacted by Ga. L. 1992, p. 1123, § 1.

7-7-4. Borrower's remedies for violation of chapter.

(a) Any borrower injured by a violation of this chapter may bring civil action in a court of competent jurisdiction for recovery of damages. Judgment shall be entered for actual damages and in no case shall be less than the amount paid by the borrower to the loan broker, plus reasonable attorney's fees and costs. An award may also be entered for punitive damages.

(b) Any borrower injured by a violation of this chapter may bring an action against the surety bond or trust account, if any, of the loan broker.

(c) The remedies provided under this chapter are in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

History.
Code 1981, § 7-7-4, enacted by Ga. L. 1992, p. 1123, § 1.

7-7-5. Operation of chapter not limitable by contract or agreement.

A loan broker may not by contract, agreement, or otherwise limit the operation of this chapter, notwithstanding any other provision of law.

History.
Code 1981, § 7-7-5, enacted by Ga. L. 1992, p. 1123, § 1.

7-7-6. Penalties.

Any person who violates any provision of this chapter shall be guilty of a felony and upon conviction shall be subject to a fine not to exceed $5,000.00 or by imprisonment for not less than one nor more than five years, or both.

History.
Code 1981, § 7-7-6, enacted by Ga. L. 1992, p. 1123, § 1.

CHAPTER 8

SAFE USE OF REMOTE SERVICE TERMINALS

Sec.		Sec.	
7-8-1.	Definitions.	7-8-5.	Terminals to which chapter not applicable.
7-8-2.	Safety evaluation procedures; legislative intent; effect of violation.	7-8-6.	Rules and regulations.
7-8-3.	Date of compliance; provision of adequate lighting.	7-8-7.	Inapplicability to persons or entities that are not a financial depository institution or operator.
7-8-4.	Notices to customers of basic safety precautions.	7-8-8.	Preemption.

Law reviews.

For article, "Introduction to the Symposium: Consumer Financial Services Law in the 1990s," see 9 Ga. St. U.L. Rev. 737 (1993).

For article, "Electronic Money in the 1990s: A Net Benefit or Merely a Trade-Off?," see 9 Ga. St. U.L. Rev. 747 (1993).

For article, "Consumer Pricing for ATM Services: Antitrust Constraints and Legislative Alternatives," see 9 Ga. St. U.L. Rev. 839 (1993).

7-8-1. Definitions.

As used in this chapter, the term:

(1) "Access area" means any paved walkway or sidewalk which is within 50 feet of any remote service terminal. The term does not include any street or highway open to the use of the public or any adjacent sidewalk.

(2) "Access device" shall have the same meaning as set forth in Federal Reserve Board Regulation E, 12 C.F.R. Part 205, promulgated pursuant to the federal Electronic Fund Transfer Act, 15 U.S.C. Section 1601, et seq.

(3) "Candlefoot power" means the light intensity of candles on a horizontal plane at 36 inches above ground level and five feet in front of the area to be measured.

(4) "Control" of an access area or defined parking area means to have the present authority to determine how, when, and by whom such access area or defined parking area is to be used, maintained, lighted, and landscaped.

(5) "Customer" means a natural person to whom an access device has been issued for personal, family, or household use.

(6) "Defined parking area" means that portion of any parking area open for customer parking which is:

(A) Contiguous to an access area with respect to a remote service terminal;

(B) Regularly, principally, and lawfully used for parking by users of the remote service terminal while conducting remote service terminal transactions during the hours of darkness; and

(C) Owned or leased by the operator of the remote service terminal or owned or controlled by the party leasing the remote service terminal site to the operator.

The term does not include any parking area which is not open or regularly used for parking by users of the remote service terminal who are conducting remote service terminal transactions during the hours of darkness. A parking area is not open if it is physically closed to access or if conspicuous signs indicate that it is closed. If a multiple-level parking area satisfies the conditions of this paragraph and would therefore otherwise be a defined parking area, only the single parking level deemed by the operator of the remote service terminal to be the most directly accessible to the users of the remote service terminal shall be a defined parking area.

(7) "Financial institution" means such an institution as defined in Code Section 7-1-4.

(8) "Hours of darkness" means the period that commences 30 minutes after sunset and ends 30 minutes before sunrise.

(9) "Operator" means any bank, savings association, credit union, savings bank, or other business entity or any person who operates a remote service terminal, but does not include any person or entity whose primary function is to provide for the exchange, transfer, or dissemination of electronic fund transfer data.

(10) "Owner of an automated teller machine" means the person having the right to determine the financial institutions which will be permitted to use, or participate in the usage of, the automated teller machine but does not include any person or entity whose primary function is to provide for the exchange, transfer, or dissemination of electronic fund transfer data.

(11) "Public road" means any public right of way, including, but not limited to, structures, sidewalks, facilities, and appurtenances incidental thereto.

(12) "Remote service terminal" means any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit, or convenience account. The term does not include devices used solely to facilitate check guarantees or check authorizations or which are used in connection with the acceptance or dispensing of cash on a person-to-person basis, such as by store cashier.

History.
Code 1981, § 7-8-1, enacted by Ga. L. 1993, p. 917, § 12; Ga. L. 1994, p. 97, § 7.

7-8-2. Safety evaluation procedures; legislative intent; effect of violation.

(a) On or before July 1, 1994, with respect to all existing installed remote service terminals in this state, and any remote service terminals installed after July 1, 1993, the operator shall adopt procedures for evaluating the safety of the remote service terminals. These procedures shall include a consideration of the following:

(1) The extent to which the lighting for the remote service terminal complies or will comply with applicable standards;

(2) The presence of landscaping, vegetation, or other obstructions in the area of the remote service terminal, the access area, and the defined parking area; and

(3) The incidence of crimes of violence in the immediate neighborhood of the remote service terminal as reflected in the records of the local law enforcement agency and of which the operator has actual knowledge.

(b) It is not the intent of the General Assembly in enacting this chapter to impose a duty to relocate or modify remote service terminals upon the occurrence of any particular events or circumstances, but rather to establish a standard of good faith for the evaluation of all remote service terminals as provided in this chapter. A violation of the provisions of this chapter or any regulation made pursuant thereto will not constitute negligence per se.

History.
Code 1981, § 7-8-2, enacted by Ga. L. 1993, p. 917, § 12.

7-8-3. Date of compliance; provision of adequate lighting.

(a) Each operator of a remote service terminal installed on or after July 1, 1993, shall comply with the provisions of this chapter commencing on the date the remote service terminal is installed. Compliance with the provisions of this chapter by operators as to remote service terminals existing as of July 1, 1993, shall be optional until July 1, 1994, and mandatory thereafter. This Code section shall apply to an operator of a remote service terminal only to the extent that the operator controls the access area or defined parking area to be lighted.

(b) If an access area or defined parking area is not controlled by the operator of the remote service terminal, and if the person who leased

the remote service terminal site to the operator controls the access area or defined parking area, the person who controls the access area or defined parking area shall comply with the provisions of this chapter as to any remote service terminals installed on or after July 1, 1994, commencing on the date the remote service terminal is installed and as to any remote service terminal existing as of July 1, 1993, commencing no later than on July 1, 1994.

(c) The operator, owner, or other person responsible for the remote service terminal shall provide lighting during the hours of darkness with respect to an open and operating remote service terminal and any defined parking area, access area, and the exterior of an enclosed remote service terminal installation according to the following standards:

(1) There shall be a minimum of ten candlefoot power at the face of the remote service terminal and extending in an unobstructed direction outward five feet;

(2) There shall be a minimum of two candlefoot power within 50 feet from all unobstructed directions from the face of the remote service terminal. In the event the remote service terminal is located within ten feet of the corner of the building and the remote service terminal is generally accessible from the adjacent side, there shall be a minimum of two candlefoot power along the first 40 unobstructed feet of the adjacent side of the building; and

(3) There shall be a minimum of two candlefoot power in that portion of the defined parking area within 60 feet of the remote service terminal.

History.
Code 1981, § 7-8-3, enacted by Ga. L. 1993, p. 917, § 12.

7-8-4. Notices to customers of basic safety precautions.

Customers receiving access devices shall be furnished by the respective issuers thereof with notices of basic safety precautions which customers should employ while using a remote service terminal. This information shall be furnished by personally delivering or mailing the information to each customer whose mailing address as to the account to which the access device relates is in this state. This information shall be furnished with respect to access devices issued on or after July 1, 1994, at or before the time the customer is furnished with his or her access device. With respect to a customer to whom an access device has been issued prior to July 1, 1993, the information shall be delivered on or before July 1, 1994. Only one notice need be furnished per household, and if access devices are furnished to more than one customer for a

single account or set of accounts or on the basis of a single application or other request for access devices, only a single notice need be furnished in satisfaction of the notification responsibilities as to those customers. The information may be included with other disclosures related to the access device furnished to the customer, such as with any initial or periodic disclosure statement furnished pursuant to the federal Electronic Fund Transfer Act.

History.
Code 1981, § 7-8-4, enacted by Ga. L. 1993, p. 917, § 12.

7-8-5. Terminals to which chapter not applicable.

The provisions of this chapter shall not apply to any remote service terminal which is located:

(1) Inside a building, unless it is a freestanding installation which exists for the sole purpose of providing an enclosure for the remote service terminal;

(2) Inside a building, except to the extent a transaction can be conducted from outside the building; or

(3) In any area, including any access area, building, enclosed space, or parking area, which is not controlled by the operator.

History.
Code 1981, § 7-8-5, enacted by Ga. L. 1993, p. 917, § 12.

7-8-6. Rules and regulations.

The commissioner of the Department of Banking and Finance is empowered to enforce the provisions of this chapter and is empowered to make all necessary rules and regulations for the purpose of carrying out the purposes of this chapter.

History.
Code 1981, § 7-8-6, enacted by Ga. L. 1993, p. 917, § 12.

7-8-7. Inapplicability to persons or entities that are not a financial depository institution or operator.

The provisions of this chapter shall not be construed to create any duty, responsibility, or obligation for any person or entity whose primary function is to provide for the exchange, transfer, or dissemination of electronic fund transfer data and is not otherwise a financial depository institution or an operator, as defined in this chapter, and such person or entity shall have no liability of any nature to any

customer or user of a remote service terminal and shall not be named in any action by a customer or user of a remote service terminal for any claim concerning any provision of this chapter or relating to the use or attempted use of a remote service terminal.

History.
Code 1981, § 7-8-7, enacted by Ga. L. 1993, p. 917, § 12.

7-8-8. Preemption.

This chapter supersedes and preempts all rules, regulations, codes, statutes, or ordinances of all cities, counties, consolidated cities and counties, municipalities, and local agencies regarding customer safety at remote service terminals.

History.
Code 1981, § 7-8-8, enacted by Ga. L. 1993, p. 917, § 12.

CHAPTER 9

GEORGIA MERCHANT ACQUIRER LIMITED PURPOSE BANK

Sec.		Sec.	
7-9-1.	Short title.		ning business before authorized.
7-9-2.	Definitions.	7-9-11.	Capital stock and paid-in surplus requirements.
7-9-3.	Chartering of merchant acquirer limited purpose banks; regulation limited.	7-9-11.1.	Merger or consolidation requirements.
7-9-4.	Application; fees; minimum number of employees.	7-9-11.2.	Merger or consolidation plan; requirements.
7-9-5.	Articles of incorporation; filing; publication; registered agent; administration by board of directors.	7-9-11.3.	Notice of merger or consolidation; filing.
7-9-5.1.	Meetings.	7-9-11.4.	Merger or consolidation application; requirements.
7-9-5.2.	Bylaws.	7-9-11.5.	Merger or consolidation investigation; requirements and procedure.
7-9-5.3.	Officers and employees.	7-9-11.6.	Certificate of merger or consolidation.
7-9-5.4.	Oath of office required.	7-9-11.7.	Certificate effective upon issuance; evidence of satisfactory performance; effect of merger.
7-9-6.	Charter application requirements.	7-9-11.8.	Rights and remedies of shareholders.
7-9-7.	Investigation; requirements and procedure for background checks.	7-9-12.	Limitations on activities; deposit insurance.
7-9-8.	Issuance of certificate of incorporation or certificate of organization.	7-9-12.1.	Treatment of merchant funds.
7-9-9.	Corporate existence; shareholders; authority to regulate and supervise sale of shares; legal effect of incorporation certificate; when business may begin.	7-9-13.	Regulation and enforcement by department; rules and regulations.
7-9-10.	Liability of applicant begin-		

Administrative rules and regulations.

Merchant Acquirer Limited Purpose Banks, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Banking and Finance, Rule 80-12-1-.01 et seq.

7-9-1. Short title.

This chapter shall be known and may be cited as the "Georgia Merchant Acquirer Limited Purpose Bank Act."

History.

Code 1981, § 7-9-1, enacted by Ga. L. 2012, p. 43, § 1/HB 898.

Law reviews.

For annual survey on business corporations, see 64 Mercer L. Rev. 61 (2012).

7-9-2. Definitions.

As used in this chapter, the term:

(1) "Articles of incorporation" or "articles" means the articles or certificate of incorporation of a corporation and shall include, when used in reference to a limited liability company, the articles or certificate of organization of a limited liability company.

(2) "Bylaws" means the bylaws of a corporation and shall include, when used in reference to a limited liability company, the operating agreement, regulations, or similar documents regarding the governance and management of a limited liability company.

(3) "Commissioner" means the commissioner of banking and finance.

(4) "Control person" means any individual who directs the affairs or controls or establishes policy for a merchant acquirer limited purpose bank.

(5) "Corporation" means a corporation organized under the laws of this state, the United States, or any other state, territory, or dependency of the United States or under the laws of a foreign country. Such term shall include a similarly organized limited liability company.

(6) "Department" means the Department of Banking and Finance.

(7) "Director" means a director of a corporation and shall include, when used in reference to a limited liability company, a manager or managing member of a limited liability company, as applicable.

(8) "Eligible organization" means a corporation that at all times maintains an office in the State of Georgia at which it or its parent, affiliates, or subsidiaries employ at least 250 persons residing in this state who are directly or indirectly engaged in merchant acquiring activities or settlement activities, including providing the following services related to merchant acquiring activities or settlement activities, either for the eligible organization or on behalf of others:

(A) Administrative support;

(B) Information technology support;

(C) Financial support; and

(D) Tax and finance support.

(9) "Holding company" means any company that controls a merchant acquirer limited purpose bank. For purposes of this paragraph,

the terms "company" and "control" shall have the meanings set forth in Code Section 7-1-605.

(10) "Incorporator" means the incorporator or organizer of a corporation and shall include, when used in reference to a limited liability company, an organizer of a limited liability company.

(11) "Merchant" means an individual or entity authorized by a payment card network to accept payments in exchange for goods or services.

(12) "Merchant acquirer limited purpose bank" means a corporation organized under this chapter and the activities of which are limited to those permitted under Code Section 7-9-12.

(13) "Merchant acquiring activities" means the various activities associated with effecting transactions within payment card networks, including obtaining and maintaining membership in one or more payment card networks; signing up and underwriting merchants to accept payment card network branded payment cards; providing the means to authorize valid card transactions at client merchant locations; facilitating the clearing and settlement of the transactions through a payment card network; providing access to one or more payment card networks to merchant acquirer limited purpose bank affiliates, customers, or customers of its affiliates; sponsoring the participation of merchant acquirer limited purpose bank affiliates, customers, or customers of its affiliates in one or more payment card networks; and conducting such other activities as may be necessary, convenient, or incidental to effecting transactions within payment card networks.

(14) "Merchant funds" means funds received by a merchant acquirer limited purpose bank as a result of its performance of clearing, settlement, or any other authorized activities which are ultimately payable to a merchant.

(15) "Payment card network" means any organization, group, system, or other collection of individuals or entities that is organized to allow participants to accept or make payments for goods or services using a credit card, debit card, or any other payment device.

(16) "Self-acquiring activities" means the act of a merchant, for itself or through an affiliated entity, engaging in merchant acquiring or settlement activities on its own behalf for payments it, or its affiliated entity, receives for goods and services it, or its affiliated entity, provides to consumers.

(17) "Settlement activities" means the processing of payment card transactions to send to a payment card network for processing, to make payments to a merchant, and, ultimately, for cardholder billing.

(18) "Shareholder" means a person in whose name shares are registered in the records of a corporation and shall include, when used in reference to a limited liability company, a member of a limited liability company.

(19) "Shares" means any class of shares of capital stock of a corporation and shall include, when used in reference to a limited liability company, the membership interests of a limited liability company.

History.
Code 1981, § 7-9-2, enacted by Ga. L. 2012, p. 43, § 1/HB 898; Ga. L. 2014, p. 226, § 1/HB 883; Ga. L. 2015, p. 344, § 35/HB 184; Ga. L. 2024, p. 354, § 1-38/HB 876, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, added paragraphs (1), (2), (7), (10), (18), and (19); redesignated former paragraphs (1), (1.1), (2), (3), (4), (5), and (6) through (11) as present paragraphs (3), (4), (5), (6), (8), (9), and (11) through (17), respectively; and, in paragraph (5), added the second sentence.

7-9-3. Chartering of merchant acquirer limited purpose banks; regulation limited.

A corporation that performs merchant acquiring activities or settlement activities in this state may elect to obtain a charter from the department. Those corporations chartered by the department shall be subject to the provisions of this chapter and any rules and regulations adopted by the department for purposes of regulating chartered merchant acquirer limited purpose banks. The department shall have no authority to regulate a corporation performing merchant acquiring activities or settlement activities that has not been chartered by the department.

History.
Code 1981, § 7-9-3, enacted by Ga. L. 2012, p. 43, § 1/HB 898.

7-9-4. Application; fees; minimum number of employees.

(a) A corporation that seeks to be chartered shall file an application with the department and shall pay applicable fees established by regulation of the department to defray the costs of the investigation and review of the application.

(b) The department shall, by regulation, prescribe annual examination fees, charter fees, registration fees, and supervision fees to be paid by each merchant acquirer limited purpose bank. In addition, the department may, by regulation, prescribe reasonable application and related fees, special investigation fees, hearing fees, and fees to provide copies of any book, account, report, or other paper filed in its office or for

any certification thereof or for processing any papers as required by this title. The department, in its discretion, may require the payment of such fees in any manner deemed to be efficient, including collection through automated clearing-house arrangements or other electronic means, so that the state receives funds no later than the date the payment is required to be made. The department is authorized to net the fees authorized in this subsection to recover any costs incurred by the department related to any investigation or examination of a merchant acquirer limited purpose bank.

(c) The merchant acquirer limited purpose bank shall have, within one year after the date it begins operations, no fewer than 50 employees located in this state devoted to merchant acquiring activities; provided, however, that a merchant acquirer limited purpose bank may contract with an eligible organization for the performance of merchant acquiring activities, settlement activities, or any of the other services identified in paragraph (8) of Code Section 7-9-2, and when a merchant acquirer limited purpose bank enters into such contracts with an eligible organization for merchant acquiring activities, settlement activities, or any other services identified in paragraph (8) of Code Section 7-9-2, the minimum number of employees in this state shall be determined by the commissioner at a level to assure the continued and substantive presence of the merchant acquirer limited purpose bank in this state for the purpose of conducting its corporate affairs and operations. If a merchant acquirer limited purpose bank contracts with an eligible organization that is an affiliate of the merchant acquirer limited purpose bank, the commissioner shall consider the eligible organization's or its parent's, affiliates', or subsidiaries' employees engaged on behalf of the merchant acquirer limited purpose bank as employees of the merchant acquirer limited purpose bank for purposes of complying with this subsection.

History.

Code 1981, § 7-9-4, enacted by Ga. L. 2012, p. 43, § 1/HB 898; Ga. L. 2015, p. 344, § 36/HB 184; Ga. L. 2020, p. 493, § 7/SB 429; Ga. L. 2024, p. 354, § 1-39/HB 876, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, in subsection (c), substituted "begins operations" for "receives its charter" near the beginning and substituted "paragraph (8)" for "paragraph (4)" twice near the middle.

7-9-5. Articles of incorporation; filing; publication; registered agent; administration by board of directors.

(a) A merchant acquirer limited purpose bank shall have articles of incorporation signed by the incorporator and shall set forth in the English language:

(1) The name of the merchant acquirer limited purpose bank;

(2) The street address and county where the main office will be located;

(3) The name of the initial registered agent;

(4) The street address where its initial registered office will be located;

(5) A statement that "This corporation is subject to the 'Georgia Merchant Acquirer Limited Purpose Bank Act'" or "This limited liability company is subject to the 'Georgia Merchant Acquirer Limited Purpose Bank Act,'" as applicable;

(6) The aggregate number of shares which the merchant acquirer limited purpose bank shall have authority to issue, and:

(A) If the shares are to consist of one class only, the par value of each of the shares; or

(B) If the shares are to be divided into classes, the number of shares of each class, the par value of each share of each class, a description of each class, and a statement of the preferences, redemption provisions, qualifications, limitations, restrictions, and the special or relative rights granted to or imposed upon the shares of each class;

(7) The term for which the merchant acquirer limited purpose bank is to exist, which shall be perpetual unless otherwise limited; and

(8) Any provision not inconsistent with law which the incorporators may choose to include for the regulation of the internal affairs and business of the merchant acquirer limited purpose bank.

(b) It shall not be necessary to set forth in the articles of incorporation any of the corporate or operational powers set forth in this chapter.

(c) The applicant shall file with the department the articles of incorporation, together with any fee required by the department. Such filing shall constitute an application for a charter and approval to operate as a merchant acquirer limited purpose bank. Immediately upon the filing of the articles of incorporation, the department shall certify a copy of the articles and return it to the applicant, who shall, in conformity with Code Section 7-1-7 and on the next business day following the filing of the articles, transmit for publication in the newspaper which is the official organ of the county where the merchant acquirer limited purpose bank will be located a copy of the articles or, in lieu thereof, a statement that reads substantially as follows:

"An application for a charter to operate as a merchant acquirer limited purpose bank to be known as the _____ and to be located

at _____ in _____ County, Georgia, will be made to the Secretary of State of Georgia in accordance with Chapter 9 of Title 7 of the Official Code of Georgia Annotated, the 'Georgia Merchant Acquirer Limited Purpose Bank Act.' A copy of the charter documents of the proposed merchant acquirer limited purpose bank and the application have been filed with the Department of Banking and Finance."

The articles of incorporation or the statement shall be published once a week for two consecutive weeks with the first publication occurring within ten days of receipt by the newspaper of the articles of incorporation or statement.

(d) Each merchant acquirer limited purpose bank shall name a registered agent and inform the department and the Secretary of State of its current registered agent.

(e) The administration of business and affairs of a merchant acquirer limited purpose bank shall be the responsibility of a board of directors consisting of at least three directors, a majority of whom shall be residents of this state. Upon request by a merchant acquirer limited purpose bank, the department may waive or reduce the requirement that a majority of the directors be residents of this state.

History.

Code 1981, § 7-9-5, enacted by Ga. L. 2012, p. 43, § 1/HB 898; Ga. L. 2015, p. 344, § 37/HB 184; Ga. L. 2024, p. 354, § 1-40/HB 876, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, added "or 'This limited liability company is subject to the "Georgia Merchant Acquirer Limited Purpose Bank Act,"' as applicable" at the end of paragraph (a)(5); in subsection (c), substituted "charter documents" for "articles of incorporation" in the second paragraph and substituted "shall" for "must" in the third paragraph; and added the second sentence in subsection (e).

7-9-5.1. Meetings.

(a) The board of directors shall hold regular meetings at such times as may be fixed by the bylaws and shall, at all times, be subject to call by the chairperson of the board, the chief executive officer, the president, or any two members of the board. The board shall meet at least once in ten different months of each calendar year unless an alternative schedule is approved in writing by the department, but in no event shall the board meet less frequently than once in each calendar quarter.

(b) Unless otherwise provided in the articles or bylaws:

(1) A majority of all the directors in office shall constitute a quorum for the transaction of business; and actions of a majority of those present at a meeting at which a quorum is present shall be actions of the board;

(2) The board of directors may designate by resolution three or more of its number to constitute an executive committee or other committee which, to the extent provided in such resolution, shall have and exercise the authority of the board of directors in regard to the business of the merchant acquirer limited purpose bank; and

(3) Any action which may be taken at a meeting of the directors or of the members of an executive or other committee may be taken without a meeting if a consent or consents in writing setting forth the action shall be signed by all of the directors or all of the members of the executive or other committee and filed with the secretary of the merchant acquirer limited purpose bank.

History.
Code 1981, § 7-9-5.1, enacted by Ga. L. 2016, p. 390, § 4-1/HB 811.

7-9-5.2. Bylaws.

The board of directors shall have the power to adopt, amend, or repeal bylaws governing the regulation and management of affairs of the merchant acquirer limited purpose bank unless such power is reserved exclusively to the shareholders by the articles or bylaws previously adopted by shareholders; provided, however, that any bylaws adopted by the board of directors may be altered, amended, or repealed and new bylaws adopted by shareholders. Shareholders may prescribe that any bylaw or bylaws adopted shall not be altered, amended, or repealed by the board of directors. Copies of the bylaws and any change, addition, or amendment thereto shall be filed with the department immediately upon adoption by the directors or the shareholders.

History.
Code 1981, § 7-9-5.2, enacted by Ga. L. 2016, p. 390, § 4-1/HB 811.

7-9-5.3. Officers and employees.

(a) A merchant acquirer limited purpose bank shall maintain a chief executive officer, chief information officer, chief risk officer, and such other officers the department may require by rule or regulation. A person may hold more than one office; provided, however, that no person shall serve as both chief executive officer and chief risk officer.

(b) Except as otherwise provided for in the articles or bylaws, the board of directors shall elect officers, fix their compensation, and fill vacancies. An officer elected or appointed by the board may be removed without prejudice to any contract right of such officer upon determination by the board that such removal is in the best interests of the merchant acquirer limited purpose bank. The merchant acquirer lim-

ited purpose bank shall immediately notify the department in writing upon a change in the position of chief executive officer or president.

(c) Officers of a merchant acquirer limited purpose bank shall have such authority and perform such duties as provided for in the bylaws adopted by the board.

(d) A merchant acquirer limited purpose bank may employ such agents or employees as necessary for the prompt and orderly discharge of its business.

History.
Code 1981, § 7-9-5.3, enacted by Ga. L. 2016, p. 390, § 4-1/HB 811.

7-9-5.4. Oath of office required.

(a) Prior to assuming office, each director shall take an oath or affirmation that he or she will diligently and honestly perform his or her duties in the administration of the affairs of the merchant acquirer limited purpose bank; he or she will not permit a willful violation of law by the merchant acquirer limited purpose bank; and he or she meets the eligibility requirements of this chapter, the regulations of the department, and the articles and bylaws of the merchant acquirer limited purpose bank.

(b) Each director shall sign a copy of the oath required by this Code section and include such documentation in the meeting minutes. No director shall participate in the affairs of the board or receive any compensation for service as a director until such oath has been executed. Any person seeking to act in the capacity of a director before subscribing to the oath required by this Code section or otherwise qualifying for service pursuant to the bylaws of the merchant acquirer limited purpose bank or the laws and regulations governing the operations of the merchant acquirer limited purpose bank shall be liable for his or her actions to the same extent as if that person had qualified to serve as a director of the merchant acquirer limited purpose bank.

History.
Code 1981, § 7-9-5.4, enacted by Ga. L. 2016, p. 390, § 4-1/HB 811.

7-9-6. Charter application requirements.

(a) An application to the department to charter a merchant acquirer limited purpose bank shall include:

(1) Any information desired by the department in order to evalu-

ate the proposed institution which shall be made available in the form specified by the department;

(2) A certificate of the Secretary of State showing that the proposed name of the merchant acquirer limited purpose bank has been reserved pursuant to Code Section 7-1-131; and

(3) Applicable fees established by regulation of the department to defray the expense of the investigation required by Code Section 7-9-7.

(b) An application to the department to own or control a merchant acquirer limited purpose bank shall include:

(1) Any information desired by the department in order to evaluate the proposed transaction which shall be made available in the form specified by the department; and

(2) Applicable fees established by regulation of the department to defray the expense of the investigation.

History.
Code 1981, § 7-9-6, enacted by Ga. L. 2012, p. 43, § 1/HB 898.

7-9-7. Investigation; requirements and procedure for background checks.

(a)(1) Upon receipt of the articles of incorporation and the filings and fees from the applicant as required under this chapter, the department shall conduct such investigation as it may deem necessary to ascertain whether it should approve the proposed merchant acquirer limited purpose bank. The department shall approve the charter of a merchant acquirer limited purpose bank if it determines in its discretion that:

(A) The articles of incorporation and supporting items satisfy the requirements of this chapter;

(B) The character and fitness of the applicant, directors, and proposed officers are such as to warrant the belief that the business of the proposed merchant acquirer limited purpose bank will be honestly and efficiently conducted; and

(C) The capital structure of the merchant acquirer limited purpose bank is adequate in relation to the amount and character of the anticipated business of the merchant acquirer limited purpose bank.

(2) Within 90 days after receipt of the articles of incorporation and the filings and fees from the applicant as required by this chapter, the

department shall approve or disapprove the charter of the proposed merchant acquirer limited purpose bank. The department may impose conditions to be satisfied prior to the issuance of its approval of the charter of a merchant acquirer limited purpose bank. If the department, in its discretion, approves the charter of the proposed merchant acquirer limited purpose bank with or without conditions, it shall deliver its written approval of the articles of incorporation and charter to the Secretary of State and notify the applicant of its action. If the department, in its discretion, disapproves the charter of the proposed merchant acquirer limited purpose bank, it shall notify the applicant of its disapproval of the charter and state generally the unfavorable factors influencing its decision. The decision of the department shall be conclusive, except that it may be subject to judicial review as provided in Code Section 7-1-90.

(b) No charter shall be issued if the department finds that the applicant, or any holding company, control person, director, officer, partner, or employee of the applicant, has been convicted of a felony in any jurisdiction or of a crime which, if committed within this state, would constitute a felony under the laws of this state. No control person, director, officer, partner, or employee of a merchant acquirer limited purpose bank shall have been convicted of a felony in any jurisdiction or of a crime which, if committed within this state, would constitute a felony under the laws of this state. For any merchant acquirer limited purpose bank that is transacting business under a charter approved by the department, the department shall have the suspension and removal powers provided for in Code Section 7-1-71 with respect to any control person, director, officer, partner, or employee of the merchant acquirer limited purpose bank who has been convicted of a felony in any jurisdiction or of a crime which, if committed within this state, would constitute a felony under the laws of this state. For the purposes of this article, a person shall be deemed to have been convicted of a crime if such person shall have pleaded guilty or nolo contendere to a charge thereof before a court or federal magistrate or shall have been found guilty thereof by the decision or judgment of a court or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of sentence or the suspension thereof, and regardless of whether first offender treatment without adjudication of guilt pursuant to the charge was entered, or an adjudication or sentence was otherwise withheld or not entered on that charge, unless and until such plea of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or otherwise abrogated by lawful judicial process or until probation, sentence, or both probation and sentence of a first offender have been successfully completed and documented, or unless the person convicted of the crime shall have received a pardon thereon from the President of the United States or the governor or other pardoning authority in the

jurisdiction where the conviction occurred, or shall have received an official certification of pardon granted by the state's pardoning body where the conviction occurred which removes the legal disabilities resulting from such conviction and restores civil and political rights.

(c) As used in this Code section, the term "conviction data" means a record of a finding, verdict, or plea of guilty or plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought. The department shall be authorized to obtain conviction data with respect to any applicant, holding company, merchant acquirer limited purpose bank, or person who is a control person, director, officer, partner, or employee of the applicant or merchant acquirer limited purpose bank. The department may directly submit to the Georgia Crime Information Center two complete sets of fingerprints of such person, together with the required records search fees and such other information as may be required. Fees for background checks that the department administers shall be sent to the department by applicants and merchant acquirer limited purpose banks together with such fingerprints.

(d) Upon request by the department, each applicant, holding company, or merchant acquirer limited purpose bank or any person who is a control person, director, officer, partner, or employee of the applicant or merchant acquirer limited purpose bank shall submit to the department two complete sets of fingerprints, the required records search fees, and such other information as may be required. Fees for background checks that the department administers shall be submitted to the department by applicants and merchant acquirer limited purpose banks together with two complete sets of fingerprints, and the department is authorized to net such fees to recover any costs incurred by the department related to running the background checks. Upon receipt of fingerprints, fees, and other required information, the Georgia Crime Information Center shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its own records and records to which it has access. The Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check, or if there is no such finding. All conviction data received by the department or by the applicant or merchant acquirer limited purpose bank shall be used by the party requesting such data for the exclusive purpose of carrying out the responsibilities of this article, shall not be a public record, shall be confidential, and shall not be disclosed to any other person or agency except to any person or agency which otherwise has a legal right to inspect the file. All such records shall be maintained by the department and the applicant or merchant acquirer limited purpose bank pursuant

to laws regarding such records and the rules and regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as applicable.

(e) Every applicant and merchant acquirer limited purpose bank shall be authorized and required to obtain and maintain the results of background checks on employees. Such background checks shall be handled by the Georgia Crime Information Center pursuant to Code Section 35-3-34 and the rules and regulations of the Georgia Crime Information Center. Applicants and merchant acquirer limited purpose banks shall be responsible for any applicable fees charged by the Georgia Crime Information Center. An applicant or merchant acquirer limited purpose bank may only employ a person whose background data has been checked and been found to be in compliance with all lawful requirements prior to the initial date of hire. This provision does not apply to control persons, directors, officers, or partners, whose backgrounds have been investigated through the department before taking office, beginning employment, or securing ownership. Upon receipt of information from the Georgia Crime Information Center that is incomplete or that indicates an employee has a criminal record in any state other than Georgia, the employer shall submit to the department two complete sets of fingerprints for such person, together with the applicable fees and any other required information. The department shall submit such fingerprints as provided in subsection (d) of this Code section.

(f) Upon request by the department, an applicant or merchant acquirer limited purpose bank must take all steps necessary to have an international criminal history background check performed on any control person, director, officer, partner, or employee. The results of such international criminal history background check must be provided to the department.

(g) Applicants and merchant acquirer limited purpose banks shall have the primary responsibility for obtaining background checks on employees. The department shall be entitled to review the files of any applicant or merchant acquirer limited purpose bank to determine whether the required background checks have been run and whether all employees are qualified. The department shall be authorized to discuss the status of employee background checks with applicants or merchant acquirer limited purpose banks. Notwithstanding any other provisions in this article, the department shall retain the right to obtain conviction data on employees of applicants and merchant acquirer limited purpose banks.

(h) In the event the department denies an application to charter a merchant acquirer limited purpose bank or an application to own or control a merchant acquirer limited purpose bank, the applicant may

submit a new application at any time following notice of final denial. The applicant shall not be prejudiced by any prior denials by the department.

History.
Code 1981, § 7-9-7, enacted by Ga. L. 2012, p. 43, § 1/HB 898; Ga. L. 2015, p. 344, § 38/HB 184; Ga. L. 2016, p. 864, § 7/HB 737.

7-9-8. Issuance of certificate of incorporation or certificate of organization.

The Secretary of State shall immediately issue a certificate of incorporation or certificate of organization to a proposed merchant acquirer limited purpose bank upon submission of:

(1) Written approval of the articles of incorporation by the department with a copy attached;

(2) An affidavit executed by the duly authorized agent or publisher of a newspaper swearing that the articles of incorporation or a summary statement publication as provided for in Code Section 7-9-5 have been published; and

(3) All required fees and charges required by law

so long as name of the proposed merchant acquirer limited purpose bank continues to be reserved or is available. The Secretary of State shall retain on file a copy of the certificate, the articles of incorporation, the department's approval of the articles of incorporation, and the publisher's certificate.

History.
Code 1981, § 7-9-8, enacted by Ga. L. 2012, p. 43, § 1/HB 898; Ga. L. 2024, p. 354, § 1-41/HB 876, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, inserted "or certificate of organization" in the introductory language.

7-9-9. Corporate existence; shareholders; authority to regulate and supervise sale of shares; legal effect of incorporation certificate; when business may begin.

(a) The corporate existence of the merchant acquirer limited purpose bank shall begin upon the issuance of a certificate of incorporation by the Secretary of State. Those persons who subscribed for shares prior to filing of the articles, or their assignees, shall be shareholders in the merchant acquirer limited purpose bank. The department shall have full authority to regulate and supervise the activities of promoters, incorporators, subscribers for shares, and all persons soliciting offers to subscribe for shares in any merchant acquirer limited purpose bank established under this chapter. Any corporation in the process of seeking approval of a charter as a merchant acquirer limited purpose

bank shall be classified as a merchant acquirer limited purpose bank in formation and persons named in the articles of incorporation or approved by the department as initial directors of such entity shall not be considered "agents" or "broker-dealers" as defined in Code Section 10-5-2.

(b) A certificate of incorporation shall be conclusive evidence that a merchant acquirer limited purpose bank has been incorporated; however, the state may institute proceedings to dissolve, wind up, and terminate a merchant acquirer limited purpose bank in conformity with Code Section 7-1-92 and applicable provisions of this chapter.

(c) A merchant acquirer limited purpose bank may begin business when:

(1) Capital stock of the merchant acquirer limited purpose bank satisfies the requirements of Code Section 7-9-11;

(2) Bylaws of the merchant acquirer limited purpose bank have been filed with the department;

(3) A registered agent and registered office for the merchant acquirer limited purpose bank has been designated in conformity with Code Section 7-1-132;

(4) The merchant acquirer limited purpose bank has been organized and is ready to begin the business for which it was incorporated;

(5) All conditions imposed by the department in giving its approval of the charter of the proposed merchant acquirer limited purpose bank under this chapter have been satisfied; and

(6) The department has received an affidavit attesting that the requirements of this subsection have been satisfied signed by the president or secretary and at least a majority of the directors of the merchant acquirer limited purpose bank.

History.
Code 1981, § 7-9-9, enacted by Ga. L. 2012, p. 43, § 1/HB 898.

7-9-10. Liability of applicant beginning business before authorized.

The applicant who charters a merchant acquirer limited purpose bank which transacts business before its capital stock have been paid in as required under this chapter shall be jointly and severally liable to creditors for the amounts not paid in by subscribers or any other deficiencies. Such liability shall be deemed an asset of the merchant acquirer limited purpose bank and may be enforced by it, its successors

or assignees, by a shareholder suing derivatively, or by a receiver appointed by the department.

History.
Code 1981, § 7-9-10, enacted by Ga. L. 2012, p. 43, § 1/HB 898.

7-9-11. Capital stock and paid-in surplus requirements.

A merchant acquirer limited purpose bank shall at all times maintain capital stock and paid-in surplus as required by policies of the department but in no event less than $3 million.

History.
Code 1981, § 7-9-11, enacted by Ga. L. 2012, p. 43, § 1/HB 898.

7-9-11.1. Merger or consolidation requirements.

(a) Merchant acquirer limited purpose banks may merge or consolidate upon compliance with the requirements of this chapter and other applicable laws and regulations.

(b) A corporation other than a merchant acquirer limited purpose bank may be merged into or may be consolidated with a merchant acquirer limited purpose bank, provided that:

(1) The resulting institution of the merger or consolidation is a merchant acquirer limited purpose bank;

(2) The resulting institution of the merger or consolidation holds only assets and liabilities and is engaged only in activities which may be held or engaged in by a merchant acquirer limited purpose bank; and

(3) The merger or consolidation is not otherwise unlawful.

(c) A merger or consolidation pursuant to subsection (b) of this Code section shall be made by compliance with the requirements of this chapter. Title 14 shall not be applicable to such a merger or consolidation.

(d) In the case of a merger of a merchant acquirer limited purpose bank with any other corporation or corporations, with the merchant acquirer limited purpose bank as the resulting entity, any assets, lines of business, activities, or powers which may accrue to the resulting entity which would be prohibited for a merchant acquirer limited purpose bank shall be provided for in the plan of merger. Such plan shall include a proposal for the disposal of such prohibited assets or the termination of such prohibited line of business, activity, or power. The department shall review such plan to determine whether the prohibited

asset, line of business, activity, or power should be a basis for denial of the requested merger or consolidation or phased out within a reasonable period of time, which shall be determined by the department.

History.
Code 1981, § 7-9-11.1, enacted by Ga. L. 2016, p. 390, § 4-1/HB 811.

7-9-11.2. Merger or consolidation plan; requirements.

(a) The parties to a merger or consolidation of a merchant acquirer limited purpose bank shall:

(1) Adopt a plan stating the method, terms, and conditions of the merger or consolidation, including the rights under the plan of the shareholders of each of the parties and any agreement concerning the merger or consolidation. Such plan shall specify:

(A) The name that such merchant acquirer limited purpose bank shall have upon and after such merger or consolidation;

(B) The persons who shall constitute the board of directors of the merchant acquirer limited purpose bank after the merger or consolidation;

(C) The manner and basis of converting the shares of each merged or consolidated entity into shares or other securities or obligations of the surviving merchant acquirer limited purpose bank and, if any shares of any of the merged or consolidated entities are not to be converted solely into shares or other securities of the surviving merchant acquirer limited purpose bank, the amount of cash or securities of any other corporation, or combination of cash and such securities, which is to be paid or delivered to the holders of such shares in exchange for, or upon the surrender of, such shares. Such cash or securities may be in addition to, or in lieu of, the shares or other securities of the surviving merchant acquirer limited purpose bank;

(D) Such other provisions with respect to the proposed merger or consolidation which are deemed desirable to the parties of the merger or consolidation plan; and

(E) Any other requirements of the department, adopted through rule or regulation, deemed essential to ensure protection of creditors or shareholders of the merging or consolidating entities;

(2) Adopt a merger or consolidation plan upon affirmative vote of at least:

(A) A majority of the directors; and

(B) At a meeting of shareholders, a majority of the shareholders entitled to cast votes or the majority of holders of outstanding shares of a class, if a class of shares is entitled to vote thereon as a class; and

(3) Include a copy or summary of the merger or consolidation plan and a full statement of the rights and remedies of dissenting shareholders, the method of exercising such rights, and any limitations on such rights and remedies in the meeting notice for which a merger or consolidation is to be voted upon.

(b) Any modification of a merger or consolidation plan which has been adopted shall be made by any method provided therein or, in the absence of such provision, by the same vote as required for adoption.

History.
Code 1981, § 7-9-11.2, enacted by Ga. L. 2016, p. 390, § 4-1/HB 811.

7-9-11.3. Notice of merger or consolidation; filing.

(a) Upon adoption of the plan of merger or consolidation as provided in Code Section 7-9-11.2, parties to a merger or consolidation shall file with the department articles of a merger or consolidation pursuant to the requirements of this Code section together with the fee required by Code Section 7-1-862.

(b) The articles of merger or consolidation shall be signed by two duly authorized officers of each party to a merger or consolidation plan under their respective seals and shall contain:

(1) The names of parties to a merger or consolidation plan and the name of the resulting merchant acquirer limited purpose bank;

(2) The street address and county location of the main office and registered agent and office of each party;

(3) The votes by which the merger or consolidation plan was adopted, a copy of the notice of each meeting held in connection with such adoption, and the time and place such meeting or meetings were held;

(4) The names and addresses of the initial directors of the resulting merchant acquirer limited purpose bank;

(5) In the case of a merger, any amendments to the articles of the resulting merchant acquirer limited purpose bank;

(6) In the case of a consolidation, the requirements for articles of a new merchant acquirer limited purpose bank as provided for by paragraphs (4) through (8) of subsection (a) of Code Section 7-9-5; and

(7) The merger or consolidation plan.

(c) Together with the articles of merger or consolidation, parties to a merger or consolidation shall deliver to the department a copy of the notice of merger or consolidation and an undertaking, which may appear in the articles of merger or consolidation or be set forth in a letter or other instrument executed by an officer or any person authorized to act on behalf of such merchant acquirer limited purpose bank, that the request for publication of a notice of filing the articles of merger or consolidation and payment therefor will be made as required by subsection (d) of this Code section.

(d) No later than the next business day after filing the articles of merger or consolidation with the department, parties to a merger or consolidation shall transmit for publication, to the publisher of a newspaper which is the official organ of the county where the main office of each party is located, a notice which shall contain a statement that the articles of merger or consolidation have been filed with the department, the names of entities which are parties to the proposed merger or consolidation, and, in the case of a merger, the proposed name of the surviving merchant acquirer limited purpose bank. The parties shall include in the notice a designated location where a copy of the articles of merger or consolidation may be examined. Such notice shall be published once a week for two consecutive weeks commencing within ten days after receipt of the notice by the newspaper.

(e) In the event a merger or consolidation plan is amended as provided for in Code Section 7-9-11.2, parties shall promptly file with the department an amendment to the articles of consolidation or merger reflecting such amendment of the merger or consolidation plan.

History.
Code 1981, § 7-9-11.3, enacted by Ga. L. 2016, p. 390, § 4-1/HB 811.

7-9-11.4. Merger or consolidation application; requirements.

In addition to the filing of articles of merger and consolidation under Code Section 7-9-11.3, the parties to a merger or consolidation plan shall also file with the department:

(1) An application including any information desired by the department in order to evaluate the proposed merger or consolidation, which shall be made available in the form specified by the department;

(2) Applicable fees established by regulation of the department to defray the expenses of the investigation required by Code Section 7-9-11.5; and

(3) If the merger or consolidation involves the adoption of a new

name, a certificate issued by the Secretary of State reserving such name under Code Section 7-1-131.

History.
Code 1981, § 7-9-11.4, enacted by Ga. L. 2016, p. 390, § 4-1/HB 811.

7-9-11.5. Merger or consolidation investigation; requirements and procedure.

(a) Upon receipt of the articles of merger or consolidation and the filings required by Code Section 7-9-11.4, the department shall conduct such investigation as it may deem necessary to ascertain whether:

(1) The articles of merger or consolidation and supporting items satisfy the requirements of this chapter;

(2) The merger or consolidation plan and any modification thereof adequately protect the interests of creditors and shareholders;

(3) The requirements for a merger or consolidation under all applicable laws have been satisfied and the resulting merchant acquirer limited purpose bank would satisfy the applicable requirements of this chapter; and

(4) The merger or consolidation would not adversely impact the merchant acquirer limited purpose bank, entities engaged in merchant acquiring activities or settlement activities, or the payment card network. In making such a determination, the department will take into consideration competitive, financial, managerial, safety and soundness, compliance, and other concerns with respect to the merger or consolidation plan and all parties.

(b) Within 90 days after receipt of the articles of merger or consolidation and the filings required by Code Section 7-9-11.4 or within an additional period of not more than 30 days after an amendment to the application is received within the initial 90 day period, the department shall, in its discretion, approve or disapprove such articles on the basis of its investigation and the criteria set forth in subsection (a) of this Code section. Except as provided in Code Section 7-9-11.6, the department shall provide written notice of its approval along with a copy of the articles of merger or consolidation to the Secretary of State. The department shall provide parties to the merger or consolidation plan written notice of its decision and, in the event of disapproval, a general statement of explanation for its decision. The decision of the department shall be conclusive; provided, however, that such decision may be subject to judicial review as provided for in Code Section 7-1-90.

History.
Code 1981, § 7-9-11.5, enacted by Ga. L. 2016, p. 390, § 4-1/HB 811.

7-9-11.6. Certificate of merger or consolidation.

Upon payment of all required taxes, fees, and charges, the Secretary of State shall issue to any resulting merchant acquirer limited purpose bank a certificate of merger or consolidation with the approved articles of merger or consolidation attached thereto, provided that the name of the resulting merchant acquirer limited purpose bank in a merger or consolidation has been reserved by a merging or consolidating party or is available on the records of the Secretary of State. The resulting merchant acquirer limited purpose bank shall retain a copy of such certificate, articles, and approval by the department.

History.
Code 1981, § 7-9-11.6, enacted by Ga. L. 2016, p. 390, § 4-1/HB 811.

7-9-11.7. Certificate effective upon issuance; evidence of satisfactory performance; effect of merger.

(a) A merger or consolidation of a merchant acquirer limited purpose bank shall become effective upon the issuance of a certificate of merger or consolidation by the Secretary of State.

(b) A certificate of merger or consolidation shall be conclusive evidence of satisfactory performance of all conditions precedent to a merger or consolidation and of the existence or creation of a merchant acquirer limited purpose bank, except as against the state.

(c) When a merger or consolidation becomes effective, each party to the merger or consolidation plan, except the resulting merchant acquirer limited purpose bank, shall cease to exist as a separate entity. Upon merger or consolidation, any parties to a merger or consolidation plan shall become a single corporation which shall be the merchant acquirer limited purpose bank and which shall have, without further act or deed, all property, rights, powers, duties, and obligations of each party to a merger or consolidation plan.

(d) The articles of a resulting merchant acquirer limited purpose bank established from a merger shall be the same as its articles prior to the merger with any change stated in the articles of merger. The articles of a resulting merchant acquirer limited purpose bank established from a consolidation shall be the same as its articles prior to the consolidation with any change stated in the articles of consolidation.

(e) A resulting merchant acquirer limited purpose bank shall be authorized to engage only in such business and exercise only such

powers as are then permissible upon original incorporation under this chapter and shall be subject to the same prohibitions and limitations as it would then be subject to upon original incorporation.

(f) No liability of any party to a merger or consolidation plan or of its shareholders, directors, or officers shall be affected nor shall any lien on any property of a party to the plan be impaired by a merger or consolidation. Any claim existing or action pending by or against any party to a merger or consolidation plan may be prosecuted to judgment as if a merger or consolidation had not taken place or a resulting merchant acquirer limited purpose bank may be substituted in place of such appropriate party of a plan of proposed merger or consolidation.

History.
Code 1981, § 7-9-11.7, enacted by Ga. L. 2016, p. 390, § 4-1/HB 811.

7-9-11.8. Rights and remedies of shareholders.

(a) A shareholder of a merchant acquirer limited purpose bank which is a party to a plan of proposed merger or consolidation under this chapter who objects to such plan shall be entitled to the rights and remedies of a dissenting shareholder as determined under Chapter 2 of Title 14, known as the "Georgia Business Corporation Code" or under Article 10 of Chapter 11 of Title 14, as applicable.

(b) A resulting merchant acquirer limited purpose bank into which other or others have been merged or consolidated may require the return of original certificates representing shares held by each shareholder in each or either of the merged or consolidated institutions, or in lieu thereof may:

(1) Issue to each shareholder new certificates for such number of shares of the resulting acquirer limited purpose bank; or

(2) Cause to be paid or delivered to each shareholder the amount of cash or securities of any other corporation or combination of cash and such securities as, under the plan of merger or consolidation, such shareholder is entitled to receive.

History.
Code 1981, § 7-9-11.8, enacted by Ga. L. 2016, p. 390, § 4-1/HB 811; Ga. L. 2024, p. 354, § 1-42/HB 876, effective July 1, 2024.
Amendments.
The 2024 amendment, effective July 1, 2024, added "or under Article 10 of Chapter 11 of Title 14, as applicable" at the end of subsection (a); and substituted "representing shares" for "of stock" in the beginning of subsection (b).

7-9-12. Limitations on activities; deposit insurance.

(a) A merchant acquirer limited purpose bank shall only accept deposits from a corporation that owns a majority of the shares of the merchant acquirer limited purpose bank. A merchant acquirer limited purpose bank shall not operate in any manner that attracts depositors from the general public, and no deposit shall be withdrawn by the depositor by check or similar means for payment to third parties or others. A merchant acquirer limited purpose bank shall not accept "brokered deposits" as that term is defined in the Federal Deposit Insurance Act as such existed on January 1, 2012, or the regulations adopted by the Federal Deposit Insurance Corporation in force and effect on January 1, 2012.

(b) A merchant acquirer limited purpose bank shall conduct its deposit-taking activities only from a single location within this state.

(c) A merchant acquirer limited purpose bank may apply to receive deposit insurance from the Federal Deposit Insurance Corporation or its successor agency.

(d) Notwithstanding subsection (a) of this Code section, the business conducted by a merchant acquirer limited purpose bank shall be merchant acquiring activities.

(e) A merchant acquirer limited purpose bank shall not engage in self-acquiring activities.

History.
Code 1981, § 7-9-12, enacted by Ga. L. 2012, p. 43, § 1/HB 898.
U.S. Code.
The Federal Deposit Insurance Act, referred to in this Code section, is codified at 12 U.S.C. § 1811 et seq.

7-9-12.1. Treatment of merchant funds.

(a) All merchant funds shall constitute a trust fund until paid to the individual merchant. A merchant acquirer limited purpose bank shall have a fiduciary duty to preserve and account for merchant funds, and merchant acquirer limited purpose banks shall be liable for merchant funds.

(b) All merchant funds shall be deposited immediately by the merchant acquirer limited purpose bank and shall remain in an account at a financial institution that is federally insured and authorized to do business in this state until paid over to the individual merchant; provided, however, that nothing in this Code section shall preclude a merchant acquirer limited purpose bank from making appropriate deductions for chargebacks, fees, reserves, and other costs related to providing authorized merchant acquiring services owed by the indi-

vidual merchant prior to remitting the net amount to the individual merchant. At the time of deposit into the account, the funds of the individual merchant in the account shall be deemed to be the property of the individual merchant. The merchant acquirer limited purpose bank shall maintain account records that identify individual merchants and the total amount held for each individual merchant. Such records shall be maintained in good faith and in the ordinary course of business and in a manner that can be readily ascertained.

History.
Code 1981, § 7-9-12.1, enacted by Ga. L. 2015, p. 344, § 39/HB 184.

7-9-13. Regulation and enforcement by department; rules and regulations.

(a) All merchant acquirer limited purpose banks chartered by the department shall be subject to supervision, regulation, and examination by the department, including, but not limited to, the examination powers as provided in Code Sections 7-1-64 through 7-1-73, and the department shall have all enforcement powers provided in this title.

(b) In the event any chartered merchant acquirer limited purpose bank does not conduct its activities within the limitations provided in Code Section 7-9-12, the department may require such merchant acquirer limited purpose bank to cease all unauthorized activities. In the event such chartered merchant acquirer limited purpose bank fails to abide by such order, the department may:

(1) Impose upon the chartered merchant acquirer limited purpose bank or its parent holding company a penalty of up to $10,000.00 per day for each day such order is violated; and

(2) Require divestiture of such chartered merchant acquirer limited purpose bank by any holding company not qualified to acquire such chartered merchant acquirer limited purpose bank on the date it ceased to operate within the limitations imposed by Code Section 7-9-12 and became a bank for purposes of this title.

(c) The department shall have the power to promulgate rules and regulations implementing the provisions of this chapter.

History.
Code 1981, § 7-9-13, enacted by Ga. L. 2012, p. 43, § 1/HB 898; Ga. L. 2014, p. 226, § 2/HB 883.

TITLE 8

BUILDINGS AND HOUSING

Chap.

1. General Provisions, Reserved.
2. Standards and Requirements for Construction and Alteration of Buildings and Other Structures, 8-2-1 through 8-2-222.
3. Housing Generally, 8-3-1 through 8-3-332.
4. Clearance and Rehabilitation of Blighted Areas, 8-4-1 through 8-4-12.
5. Art in State Buildings, 8-5-1 through 8-5-9.
6. Construction Activity Prohibition on Abandoned Landfills, 8-6-1 through 8-6-4.
7. Pesticides in Public Buildings, 8-7-1.

Cross references.

Georgia Building Authority (Markets), § 2-10-1 et seq.

Georgia Education Authority (Schools), § 20-2-550 et seq.

Georgia Education Authority (University), § 20-3-150 et seq.

Private Colleges and Universities Facilities Authority, § 20-3-200 et seq.

Georgia Building Authority (Hospital), § 31-7-20 et seq.

Georgia Building Authority (Penal), § 42-3-1 et seq.

Georgia Building Authority, § 50-9-1 et seq.

CHAPTER 1

GENERAL PROVISIONS

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STANDARDS AND REQUIREMENTS FOR CONSTRUCTION AND ALTERATION OF BUILDINGS AND OTHER STRUCTURES

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8-2-70 through 8-2-75. [Reserved].

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8-2-187. Certificate of Destruction required.
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8-2-211. Compliance alternatives for lack of required protection of openings in exterior walls.
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8-2-216. Continuation of legal use and occupancy.
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8-2-220. Rules and regulations.
8-2-221. Appeals of rulings or decisions.
8-2-222. Immunity of state and local entities; liability of property owner or user.

Cross references.

Standards and requirements for construction of public school buildings, § 20-2-16.

Promulgation of rules and regulations by Safety Fire Commissioner regarding fire hazards in hotels, apartment houses, places of public assembly, and other places, § 25-2-19.

Fire inspections of buildings, § 25-2-22 et seq.

Access to and use of public buildings and accommodations by physically handicapped persons, §§ 30-3-1 et seq., and 30-4-1 et seq.

Standards and requirements governing installation of sewage management systems, § 31-3-5.1.

General duty of owner of public building or place of public assembly to construct, repair, and maintain such facility so as to render facility reasonably safe, § 34-2-10.

Prohibition against use of construction plans and specifications not prepared by or under supervision of registered professional engineer or architect, § 43-15-24.

Sanitary regulations for hotels and inns, § 43-21-30 et seq.

Law reviews.

For survey article on contracts — legislation, see 34 Mercer L. Rev. 71 (1982).

RESEARCH REFERENCES

Am. Jur. 2d.
13 Am. Jur. 2d, Buildings, § 1 et seq. 13B Am. Jur. Pleading and Practice Forms, Housing Laws and Urban Redevelopment, § 2. 26 Am. Jur. 2d, Elevators and Escalators, § 1 et seq. 35A Am. Jur. 2d, Fires, §§ 1 et seq., 41 et seq. 40 Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 1 et seq. 49 Am. Jur. 2d, Landlord and Tenant, § 1 et seq. 53A Am. Jur. 2d Mobile Homes and Trailer Parks, §§ 1 et seq., 5 et seq.
Am. Jur. Trials.
Alternative Dispute Resolution: Construction Industry, 52 Am. Jur. Trials 209.
Construction Dispute Resolution — Arbitration and Beyond, 100 Am. Jur. Trials 45.
C.J.S.
39A C.J.S. (Rev.), Health and Environment, §§ 47 et seq., 51 et seq., 58 et seq., 66. 64A C.J.S. (Rev), Municipal Corporations, § 1699. 84 C.J.S. (Rev), Taxation, § 261 et seq. 87 C.J.S., Towns, § 179 et seq.
ALR.
Liability of builder or real estate developer who sells new dwelling for failure to provide potable water, 16 A.L.R.4th 1246.
Validity, construction, and application of the Uniform Fire Code, 46 A.L.R.5th 479.

ARTICLE 1

BUILDINGS GENERALLY

RESEARCH REFERENCES

ALR.
Liability of governmental entity to builder or developer for negligent issuance of building permit subsequently suspended or revoked, 41 A.L.R.4th 99.

PART 1

GENERAL PROVISIONS

8-2-1. Legislative findings.

The General Assembly finds that an adequate supply of clean drinking water is a precious and essential resource upon which life depends. The General Assembly further finds that the average annual per capita consumption of potable water due to indoor water-using activities in the United States exceeds 18,000 gallons and that the demand for clean water supplies continues to increase despite the limitations of availability and affordability of such supplies. The General Assembly further finds that technology is available to improve the efficiency of plumbing products.

History.
Code 1981, § 8-2-1, enacted by Ga. L. 1990, p. 1212, § 1.
Editor's notes.
Ga. L. 1990, p. 1212, § 1, designated the former provisions of this Code section as Code Section 8-2-3.

8-2-2. Purpose of part.

The purposes of this part are as follows:

(1) To promote greater efficiency in residential and commercial water use and preserve the natural resources of this state;

(2) To reduce consumer water and energy costs by reducing indoor water use, reducing the need for new water supplies and treatment facilities, lowering operation and maintenance costs for water and sewer utilities, and reducing the amount of energy used to heat, treat, and transport water; and

(3) To generate consumer awareness of the need to save water and of the savings that can result from the use of efficient plumbing products.

History.
Code 1981, § 8-2-2, enacted by Ga. L. 1990, p. 1212, § 1.

8-2-3. Requirements for high-efficiency plumbing fixtures.

(a) On or before July 1, 2012, the department, with the approval of the board, shall amend applicable state minimum standard codes to require the installation of high-efficiency plumbing fixtures in all new construction permitted on or after July 1, 2012.

(b) As used in this Code section, the term:

(1) "Construction" means the erection of a new building or the alteration of an existing building in connection with its repair or renovation or in connection with making an addition to an existing building and shall include the replacement of a malfunctioning, unserviceable, or obsolete faucet, showerhead, toilet, or urinal in an existing building.

(2) "Department" means the Department of Community Affairs.

(3) "Lavatory faucet" means a faucet that discharges into a lavatory basin in a domestic or commercial installation.

(4) "Plumbing fixture" means a device that receives water, waste, or both and discharges the water, waste, or both into a drainage system. The term includes a kitchen sink, utility sink, lavatory, bidet, bathtub, shower, urinal, toilet, water closet, or drinking water fountain.

(5) "Plumbing fixture fitting" means a device that controls and directs the flow of water. The term includes a sink faucet, lavatory faucet, showerhead, or bath filler.

(6) "Pressurized flushing device" means a device that contains a valve that:

(A) Is attached to a pressurized water supply pipe that is of sufficient size to deliver water at the necessary rate of flow to ensure flushing when the valve is open; and

(B) Opens on actuation to allow water to flow into the fixture at a rate and in a quantity necessary for the operation of the fixture and gradually closes to avoid water hammer.

(7) "Toilet" means a water closet.

(8) "Water closet" means a fixture with a water-containing receptor that receives liquid and solid body waste and on actuation conveys the waste through an exposed integral trap into a drainage system and which is also referred to as a toilet.

(9) "WaterSense™" means a voluntary program of the United States Environmental Protection Agency designed to identify and promote water efficient products and practices.

(c) The standards related to high-efficiency plumbing fixtures shall include without limitation, the following:

(1) A water closet or toilet that:

(A) Is a dual flush water closet that meets the following standards:

(i) The average flush volume of two reduced flushes and one full flush may not exceed 1.28 gallons;

(ii) The toilet meets the performance, testing, and labeling requirements prescribed by the following standards, as applicable:

(I) American Society of Mechanical Engineers Standard A112.19.2-2008; and

(II) American Society of Mechanical Engineers Standard A112.19.14-2006 "Six-Liter Water Closets Equipped with a Dual Flushing Device"; and

(iii) Is listed to the WaterSense™ Tank-Type High Efficiency Toilet Specification; or

(B) Is a single flush water closet, including gravity, pressure assisted, and electro-hydraulic tank types, that meets the following standards:

(i) The average flush volume may not exceed 1.28 gallons;

(ii) The toilet must meet the performance, testing, and labeling requirements prescribed by the American Society of

Mechanical Engineers Standard A112.192/CSA B45.1 or A112.19.14; and

(iii) The toilet must be listed to the WaterSense™ Tank-Type High Efficiency Toilet Specification;

(2) A shower head that allows a flow of no more than an average of 2.5 gallons of water per minute at 60 pounds per square inch of pressure;

(3) A urinal and associated flush valve that:

(A) Uses no more than 0.5 gallons of water per flush;

(B) Meets the performance, testing, and labeling requirements prescribed by the American Society of Mechanical Engineers Standard A112.19.2/CSA B45.1;

(C) For flushing urinals, meets all WaterSense™ specifications for flushing urinals; and

(D) Where nonwater urinals are employed, complies with American Society of Mechanical Engineers Standard A112.19.3/CSA B45.4 or American Society of Mechanical Engineers Standard A112.19.19/CSA B45.4. Nonwater urinals shall be cleaned and maintained in accordance with the manufacturer's instructions after installation. Where nonwater urinals are installed they shall have a water distribution line roughed-in to the urinal location at a minimum height of 56 inches (1,422 mm) to allow for the installation of an approved backflow prevention device in the event of a retrofit. Such water distribution lines shall be installed with shut-off valves located as close as possible to the distributing main to prevent the creation of dead ends. Where nonwater urinals are installed, a minimum of one water supplied fixture rated at a minimum of one water supply fixture unit shall be installed upstream on the same drain line to facilitate drain line flow and rinsing;

(4) A lavatory faucet or lavatory replacement aerator that allows a flow of no more than 1.5 gallons of water per minute at a pressure of 60 pounds per square inch in accordance with American Society of Mechanical Engineers Standard A112.18.1/CSA B.125.1 and listed to the WaterSense™ High-Efficiency Lavatory Faucet Specification; and

(5) A kitchen faucet or kitchen replacement aerator that allows a flow of no more than 2.0 gallons of water per minute.

(d) To the extent that the standards set forth in this Code section exceed the National Energy Conservation Policy Act, as amended, and 10 C.F.R. 430.32, the department is directed to petition the Department of Energy for a waiver of federal preemption pursuant to 42 U.S.C. Section 6297(d).

(e) The department is directed to amend the applicable state minimum codes so as to permit counties and municipalities to provide by ordinance for an exemption to the requirements of subsection (c) of this Code section, relative to new construction and to the repair or renovation of an existing building, under the following conditions:

(1) When the repair or renovation of the existing building does not include the replacement of the plumbing or sewage system servicing toilets, faucets, or shower heads within such existing building;

(2) When such plumbing or sewage system within such existing building, because of its capacity, design, or installation, would not function properly if the toilets, faucets, or shower heads required by this part were installed;

(3) When such system is a well or gravity flow from a spring and is owned privately by an individual for use in such individual's personal residence; or

(4) When units to be installed are:

(A) Specifically designed for use by persons with disabilities;

(B) Specifically designed to withstand unusual abuse or installation in a penal institution; or

(C) Toilets for juveniles.

(f) The ordinances adopted by counties and municipalities pursuant to subsection (e) of this Code section shall provide procedures and requirements to apply for the exemption authorized by said subsection.

(g) Any person who installs any toilet, faucet, urinal, or shower head in violation of this Code section shall be guilty of a misdemeanor.

(h) Before July 1, 2012, a city, county, or authority shall adopt and enforce the provisions of this Code section in order to be eligible to receive any of the following grants, loans, or permits:

(1) A water or waste-water facilities grant administered by the Department of Natural Resources or the Department of Community Affairs; or

(2) A water or waste-water facilities loan administered by the Georgia Environmental Finance Authority.

(i) After July 1, 2012, the sale of a gravity tank-type, flushometer-valve, or flushometer-tank toilet that uses more than an average of 1.28 gallons of water per flush is prohibited in this state.

(j) The provisions of this Code section shall not be construed to prohibit counties or municipalities from adopting and enforcing local ordinances which provide requirements which are more stringent than the requirements of this Code section.

History.

Ga. L. 1978, p. 914, §§ 1, 2; Ga. L. 1979, p. 776, § 1; Ga. L. 1990, p. 1212, § 1; Ga. L. 1991, p. 987, §§ 1, 2; Ga. L. 1995, p. 1302, § 15; Ga. L. 2010, p. 732, § 8/SB 370; Ga. L. 2010, p. 949, § 1/HB 244.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2010, the subsection (d) designation was added.

Editor's notes.

Ga. L. 2010, p. 732, § 1/SB 370, not codified by the General Assembly, provides: "The General Assembly recognizes the imminent need to create a culture of water conservation in the State of Georgia. The General Assembly also recognizes the imminent need to plan for water supply enhancement during future extreme drought conditions and other water emergencies. In order to achieve these goals, the General Assembly directs the Georgia Department of Natural Resources to coordinate with its Environmental Protection Division, the Georgia Environmental Facilities Authority [now known as the Georgia Environmental Finance Authority], the Georgia Department of Community Affairs, the Georgia Forestry Commission, the Georgia Department of Community Health, including its Division of Public Health, the Georgia Department of Agriculture, and the Georgia Soil and Water Conservation Commission to work together as appropriate to develop programs for water conservation and water supply."

OPINIONS OF THE ATTORNEY GENERAL

Standards applicable to public buildings. — Both the shower head water flow standard found in Ga. L. 1978, p. 914 and the standard found in the Georgia State Energy Code for Buildings are applicable to public buildings. 1980 Op. Att'y Gen. No. 80-132.

RESEARCH REFERENCES

Am. Jur. 2d.

13 Am. Jur. 2d, Buildings, § 31.

ALR.

Validity of statutes, ordinances, and regulations requiring the installation or maintenance of various bathroom facilities in dwelling units, 79 A.L.R.3d 716.

8-2-4. Certain residential fire sprinkler requirements prohibited.

Neither the state residential and fire building code nor any residential and fire building code adopted by a political subdivision of the state adopted after May 24, 2010, shall include a requirement that fire sprinklers be installed in a single-family dwelling or a residential building that contains no more than two dwelling units.

History.

Code 1981, § 8-2-4, enacted by Ga. L. 2010, p. 450, § 1/HB 1196.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2010, "adopted after May 24, 2010," was substituted for "adopted after the effective date of this Code section" near the middle of this Code section.

PART 2

STATE BUILDING, PLUMBING, AND ELECTRICAL CODES

Cross references.

Authority of counties to adopt or amend electrical, plumbing codes, § 36-13-1 et seq. Local Government Code Enforcement Boards, § 36-74-1 et seq.

Administrative rules and regulations.

Georgia State Minimum Standards Code, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Community Affairs, Georgia State Minimum Standard Codes, Rule 110-11-1-.01 et seq.

Georgia State Energy Code for Buildings, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia State Building Administrative Board, Rule 90-3-1-.01 et seq.

Qualifications for Licensure, Official Compilation of the Rules and Regulations of the State of Georgia, State Construction Industry Licensing Board, Rule 121-2-.01 et seq.

Application for Licensure, Official Compilation of the Rules and Regulations of the State of Georgia, State Construction Industry Licensing Board, Rule 121-3-.01 et seq.

Issuance, Renewal, and Expiration, Official Compilation of the Rules and Regulations of the State of Georgia, State Construction Industry Licensing Board, Rule 121-4-.01 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Applicability of state code to jurisdictions without local code. — O.C.G.A. § 8-2-1 et seq. does not mandate that the State Construction Code be applicable to those jurisdictions which have not adopted a local code. 1982 Op. Att'y Gen. No. 82-17. (But see 1984 Op. Att'y Gen. No. 84-14).

Plumbing Codes protect property owners by setting the minimum acceptable standard for what is considered to be safe plumbing work. 1990 Op. Att'y Gen. No. 90-9.

Testing of applicants for plumbing license. — Since O.C.G.A. § 43-14-6(a)(1) specifically requires the State Construction Industry Licensing Board, Division of Master Plumbers and Journeyman Plumbers, to examine applicants based on the "applicable state minimum standards codes" and, as of October 1, 1991, both the Georgia State Plumbing Code and the Standard Plumbing Code will be the applicable state standard codes, it would appear to be the legislative intent for prospective licensees to be tested on both codes by the division. 1990 Op. Att'y Gen. No. 90-9.

RESEARCH REFERENCES

ALR.

Failure to procure occupational or business license or permit as affecting validity or enforceability of contract, 30 A.L.R. 834; 42 A.L.R. 1226; 118 A.L.R. 646.

Validity, construction, and application of regulations of business of building or construction contractors, 118 A.L.R. 676.

8-2-20. Definitions.

As used in this part, the term:

(1) "Board" means the Board of Community Affairs.

(2) "Commissioner" means the commissioner of community affairs.

(3) "Department" means the Department of Community Affairs.

(4) "Exempted building" means any of the following:

(A) Any building whose peak design rate of energy usage for heating, cooling, ventilation, and lighting is less than one watt or 3.4 British thermal units (BTUs) per hour per square foot of floor area for all purposes;

(B) Any building which is neither mechanically heated nor mechanically cooled;

(C) Any mobile home; and

(D) Any building owned or leased in whole or in part by the United States.

(5) "Exterior envelope" means those elements of a building which enclose conditioned spaces through which thermal energy may be transferred to or from the exterior.

(6) "New building" means any building on which final design is commenced after the adoption of the International Energy Conservation Code under this part.

(7) "Public building" means any building which is open to the public during normal business hours and is not an exempted building, including the following:

(A) Any building which provides facilities or shelter for public assembly or which is used for educational, office, or institutional purposes;

(B) Any inn, hotel, motel, sports arena, supermarket, transportation terminal, retail store, restaurant, or other commercial establishment which provides services or retails merchandise;

(C) Any portion of an industrial plant building used primarily as office space; and

(D) Any building owned by the state or a political subdivision or instrumentality thereof, including libraries, museums, schools, hospitals, auditoriums, sports arenas, and university buildings.

(8) "Renovated building" means either of the following:

(A) A building undergoing alteration of the exterior envelope; heating, ventilation, and air-conditioning systems; water-heating systems; or lighting systems, for which the aggregate cost of alteration exceeds 10 percent of the assessed value of the building immediately prior to such alteration; or

(B) A building undergoing alteration in the physical configuration or interior space, for which the aggregate cost of alteration exceeds one-fourth of the assessed value of the building immediately prior to such alteration.

(9)(A)(i) On and after October 1, 1991, "state minimum standard codes" means the following codes:

(I) Standard Building Code (SBCCI);

(II) National Electrical Code as published by the National Fire Protection Association;

(III) Standard Gas Code (SBCCI);

(IV) Standard Mechanical Code (SBCCI);

(V) Georgia State Plumbing Code or the Standard Plumbing Code (SBCCI);

(VI) Council of American Building Officials One- and Two-Family Dwelling Code, with the exception of Part V — Plumbing (Chapters 20-25) of said code;

(VII) Georgia State Energy Code for Buildings as adopted by the State Building Administrative Board pursuant to an Act approved April 10, 1978 (Ga. L. 1978, p. 2212), as such code exists on September 30, 1991;

(VIII) Standard Fire Prevention Code (SBCCI);

(IX) Standard Housing Code (SBCCI);

(X) Standard Amusement Device Code (SBCCI);

(XI) Excavation and Grading Code (SBCCI);

(XII) Standard Existing Buildings Code (SBCCI);

(XIII) Standard Swimming Pool Code (SBCCI); and

(XIV) Standard Unsafe Building Abatement Code (SBCCI).

(ii) The codes provided in division (i) of this subparagraph shall mean such codes as they exist on October 1, 1991, provided that the department, with the approval of the board, may adopt a subsequently published edition of any such code as provided in subsection (b) of Code Section 8-2-23; and provided, further, that any such code may hereafter be amended or revised as provided in subsection (a) of Code Section 8-2-23.

(B)(i) On or after July 1, 2004, "state minimum standard codes" means the following codes:

(I) International Building Code (ICC);

(II) National Electrical Code (NFPA);

(III) International Fuel Gas Code (ICC);

(IV) International Mechanical Code (ICC);

(V) International Plumbing Code (ICC);

(VI) International Residential Code for One- and Two-Family Dwellings (ICC);

(VII) International Energy Conservation Code (ICC);

(VIII) International Fire Code (ICC);

(IX) International Existing Building Code (ICC);

(X) International Property Maintenance Code (ICC); and

(XI) Any other codes deemed appropriate by the board for the safety and welfare of Georgia's citizens.

(ii) The codes provided in division (i) of this subparagraph shall mean such codes as they exist on July 1, 2004, provided that the department, with the approval of the board, may adopt a subsequently published edition of any such code as provided in subsection (b) of Code Section 8-2-23; and provided, further, that any such code may hereafter be amended or revised as provided in subsection (a) of Code Section 8-2-23.

(C) References to any standard code in this part shall mean one of the standard codes listed in division (i) of subparagraph (A) or division (i) of subparagraph (B) of this paragraph.

(D) The term "state minimum standard codes" shall specifically not include the Georgia State Fire Code as adopted by the Safety Fire Commissioner pursuant to Code Section 25-2-13 nor shall any state minimum standard code be less restrictive than the Georgia State Fire Code.

History.

Ga. L. 1978, p. 2212, § 3; Ga. L. 1980, p. 1316, § 2; Ga. L. 1989, p. 1659, § 1; Ga. L. 1990, p. 1364, § 1; Ga. L. 2004, p. 551, § 1.

Law reviews.

For article, "Administrative Law," see 63 Mercer L. Rev. 47 (2011).

JUDICIAL DECISIONS

International Residential Code for one and two family dwellings. — Trial court did not err in denying the buyers' motion asking the court to take judicial notice of Rule 110-11-1-.11 of the Georgia Department of Community Affairs (DCA), which related to the applicable building code for one- and two-family dwellings,

because the trial court correctly found that the DCA exceeded its authority in adopting the International Residential Code for One and Two Family Dwellings (IRC) as a later edition of the Council of American Building Officials One- and Two-Family Dwelling Code (CABO); by its own terms, the IRC was not a subsequent or new edition of the CABO but an entirely new code based upon a study of a number of existing building codes. Lumsden v. Williams, 307 Ga. App. 163, 704 S.E.2d 458, 2010 Ga. App. LEXIS 1117 (2010).

No negligence per se claim for failing to follow building code. — Trial court did not err in granting summary judgment to a condominium association on a visitor's negligence per se claim arising from the visitor being injured in the revolving door because the absence of a separate door within 10 feet of the revolving door as required by the building code, and adopted by Georgia under O.C.G.A. § 8-2-20(9)(B)(i)(I), as the consequences to be guarded against by the installation of a side-swinging door within ten feet of a revolving door were not obvious and the visitor failed to show that the door malfunctioned in any manner. Siegel v. Park Ave. Condo. Ass'n, 322 Ga. App. 337, 744 S.E.2d 876, 2013 Ga. App. LEXIS 513 (2013).

8-2-21. Enforcement of code appendices.

Enforcement of the state minimum standard codes provided for in divisions (9)(A)(i) and (9)(B)(i) of Code Section 8-2-20 shall not include enforcement of appendices to such codes except when:

(1) Any provision of an appendix is specifically referenced in the code text;

(2) An appendix to a code is specifically included in an administrative ordinance adopted by a municipality or county; or

(3) An appendix to a code is specifically adopted by the department with the approval of the board.

History.
Ga. L. 1980, p. 1316, § 3; Ga. L. 1982, p. 3, § 8; Ga. L. 1989, p. 1659, § 2; Ga. L. 2004, p. 551, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
13 Am. Jur. 2d, Buildings, § 19 et seq.
ALR.
Delegation of matter of building regulations to private individuals or associations, 2 A.L.R. 882.
Liability of builder-vendor or other vendor of new dwelling for loss, injury, or damage occasioned by defective condition thereof, 25 A.L.R.3d 383.
Existence of, and relief from, nuisance created by operation of air conditioning or ventilating equipment, 79 A.L.R.3d 320.

8-2-22. Rules governing licensing of trades, professions, and businesses.

Provisions for licensing trades, professions, and businesses covered by the provisions of this article shall be as determined by Chapter 14 of Title 43 and the rules and regulations of the State Construction Industry Licensing Board created in such chapter.

History.
Ga. L. 1980, p. 1316, § 3; Ga. L. 1982, p. 3, § 8; Ga. L. 1989, p. 1659, § 3.

OPINIONS OF THE ATTORNEY GENERAL

Standards applicable to public buildings. — Both the shower head water flow standard found in O.C.G.A. § 8-2-1 and the standard found in the Georgia State Energy Code for Buildings (formerly referred to in this section) are applicable to public buildings. 1980 Op. Att'y Gen. No. 80-132.

8-2-23. Revisions, amendments, and new editions generally; certain amendments and review required.

(a)(1) The department, with the approval of the board, may from time to time revise and amend the state minimum standard codes either on its own motion or upon recommendation from any citizen, profession, state agency, or political subdivision of the state. Upon approval by a majority of the board, each such amendment, modification, or new provision shall be held to be in full force and effect as if it were included in the original adopted code. Prior to the adoption of any proposed amendment, modification, or new provision, the department shall conduct such public hearings as are required by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," for the adoption of rules. Such public hearings shall be conducted at such places, on such dates, and at such times as may be determined by the department.

(2) Revisions of or amendments to the International Energy Conservation Code shall not become effective without the approval of the Division of Energy Resources of the Georgia Environmental Finance Authority. The department shall consult with the division during the revision or amendment of such code and shall submit such revisions or amendments to the division for approval at least ten days prior to the adoption thereof.

(3) The department shall make copies of amendments to codes available to members of the general public at such price as it deems reasonable to defray the costs of publication and handling. Notice of amendments to or adoption of a new edition of any state minimum standard code which is applicable state wide shall be provided by the department to the chief elected official and the chief building enforcement official of a municipality or county and to the chief fire official of each fire department certified pursuant to Article 2 of Chapter 3 of Title 25 at least ten days prior to the effective date of such amendments.

(4) The revision or amendment of any of the state minimum standard codes shall have reasonable and substantial connection with the public health, safety, and general welfare.

(b)(1) The department, with the approval of the board, may adopt a new edition of any state minimum standard code either on its own motion or upon recommendation from any profession, state agency, or political subdivision of this state. Upon approval by a majority of the board, each new code edition shall be held to be in full force and effect as if it was the original adopted code. Prior to the adoption of any new edition of a state minimum standard code, the department shall conduct such public hearings as are required by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," for the adoption of rules. Such public hearings shall be conducted at such places, on such dates, and at such times as may be determined by the department.

(2) Notwithstanding the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," or any other provision of law, the department shall not be required to make available or to distribute any copies of a new edition of a state minimum standard code adopted by the department.

(c)(1) On or before July 1, 2012, the department, with the approval of the board, shall amend applicable state minimum standard codes to require the installation of high-efficiency cooling towers in new construction permitted on or after July 1, 2012.

(2) As used in this subsection, the term "cooling tower" means a building heat removal device used to transfer process waste heat to the atmosphere.

(3) The standards related to high-efficiency cooling towers shall include without limitation the minimum standards prescribed by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers Standard 90.1 as adopted and amended by the department.

(d)(1) On or after July 1, 2020, the department shall undertake a review of the tall mass timber provisions of the 2021 International Building Code, approved by the International Code Council, for the purpose of considering whether the department, with the approval of the board, shall amend the state minimum standard codes to include provisions for tall mass timber as contained in the 2021 International Building Code for construction types IV-A, IV-B, and IV-C.

(2) The department shall complete the review provided for in paragraph (1) of this subsection before July 1, 2021.

(e) On or after July 1, 2024, the department shall amend the state minimum standard codes to include provisions authorizing the use of ungraded lumber in the construction or repair of any accessory structure not containing habitable space on property zoned or primarily used for residential or agricultural purposes.

History.

Ga. L. 1969, p. 546, § 5; Ga. L. 1978, p. 2212, §§ 4, 5; Ga. L. 1980, p. 1316, § 4; Ga. L. 1989, p. 1659, § 4; Ga. L. 1994, p. 1108, § 1; Ga. L. 2004, p. 551, § 3; Ga. L. 2010, p. 732, § 9/SB 370; Ga. L. 2010, p. 949, § 1/HB 244; Ga. L. 2020, p. 54, § 1/HB 777; Ga. L. 2023, p. 534, § 1/HB 132, effective July 1, 2023; Ga. L. 2024, p. 1052, § 1(b)(1)/SB 448, effective July 1, 2024.

Amendments.

The 2023 amendment, effective July 1, 2023, added subsection (e).

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, deleted "Georgia" preceding "state minimum" in paragraph (d)(1) and in subsection (e).

Cross references.

Powers and duties of Division of Energy Resources generally, § 50-23-32.

Timber products, § 2-14-120 et seq.

Editor's notes.

Ga. L. 2010, p. 732, § 1/SB 370, not codified by the General Assembly, provides: "The General Assembly recognizes the imminent need to create a culture of water conservation in the State of Georgia. The General Assembly also recognizes the imminent need to plan for water supply enhancement during future extreme drought conditions and other water emergencies. In order to achieve these goals, the General Assembly directs the Georgia Department of Natural Resources to coordinate with its Environmental Protection Division, the Georgia Environmental Facilities Authority [now known as the Georgia Environmental Finance Authority], the Georgia Department of Community Affairs, the Georgia Forestry Commission, the Georgia Department of Community Health, including its Division of Public Health, the Georgia Department of Agriculture, and the Georgia Soil and Water Conservation Commission to work together as appropriate to develop programs for water conservation and water supply."

Administrative rules and regulations.

Georgia State Minimum Standards Code, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Community Affairs, Georgia State Minimum Standard Codes, Rule 110-11-1-.01 et seq.

Law reviews.

For article, "Conservation and Natural Resources," see 27 Ga. St. U.L. Rev. 185 (2011).

JUDICIAL DECISIONS

Georgia Department of Community Affairs exceeded authority. — Trial court did not err in denying the buyers' motion asking the court to take judicial notice of Rule 110-11-1-.11 of the Georgia Department of Community Affairs (DCA), which related to the applicable building code for one- and two-family dwellings, because the trial court correctly found that the DCA exceeded its authority in adopting the International Residential Code for One and Two Family Dwellings (IRC) as a later edition of the Council of American Building Officials One- and Two-Family Dwelling Code (CABO); by its own terms, the IRC was not a subsequent or new edition of the CABO but an entirely new code based upon a study of a number of existing building codes. Lumsden v. Williams, 307 Ga. App. 163, 704 S.E.2d 458, 2010 Ga. App. LEXIS 1117 (2010).

OPINIONS OF THE ATTORNEY GENERAL

Inclusion of manufacturer-developed standard in Plumbing Code. — Under O.C.G.A. § 8-2-23, the Department of Community Affairs would be authorized, within the department's discretion, to include in the Georgia State Plumbing Code an industry or manufacturer-developed standard if that standard is determined by the department to have a reasonable and

substantial connection with public health, safety, and general welfare. 1984 Op. Att'y Gen. No. 84-14.

8-2-24. Advisory committee; review of proposed amendments, modifications, and new provisions.

(a) For the purpose of assisting the department in carrying out the provisions of Code Section 8-2-23, the commissioner shall appoint an advisory committee to be composed of 21 members as follows:

(1) The Safety Fire Commissioner or his or her designee as an ex officio member with full voting privileges;

(2) The commissioner of public health or his or her designee as an ex officio member with full voting privileges;

(3) The commissioner of community affairs or his or her designee as an ex officio member with full voting privileges;

(4) One representative of the home-building industry;

(5) One representative of the industrialized building industry;

(6) One representative of the general contracting industry;

(7) One representative of the profession of mechanical engineering;

(8) One licensed architect;

(9) One licensed electrical engineer;

(10) One representative of the manufactured homes industry;

(11) One licensed electrical contractor;

(12) One building material dealer;

(13) One licensed plumbing contractor;

(14) One licensed conditioned-air contractor;

(15) One licensed structural engineer;

(16) Four municipal or county code enforcement officials; and

(17) Two local fire officials.

(b) All appointments to the committee shall be for a term of four years; provided, however, that the initial members appointed pursuant to paragraphs (4), (5), (6), (7), (9), (15), (16), and (17) of subsection (a) of this Code section shall be appointed for a term to expire on the same date as the terms of other members. A member shall serve until his or her successor has been duly appointed. The commissioner shall make

appointments to fill the unexpired portion of any term vacated for any reason. In making such appointments, the commissioner shall preserve the composition of the committee as required by this Code section. Any appointed member who, during his or her term, ceases to meet the qualifications for original appointment shall thereby forfeit his or her membership on the committee. Membership on the committee shall not constitute public office, and no member shall be disqualified from holding public office by virtue of his or her membership. Each member of the committee shall serve without compensation, but each member of the committee shall be reimbursed for travel and other reasonable and necessary expenses incurred by him or her while attending called meetings of the committee.

(c) The advisory committee shall be empowered to use subcommittees as it deems necessary to carry out its duties and responsibilities. Members of such subcommittees shall be knowledgeable of the subject matter with which the subcommittee is concerned and shall be appointed by the commissioner upon the recommendation of the advisory committee. Such subcommittee members shall be reimbursed for travel and other necessary expenses while attending subcommittee meetings in the same manner as that of advisory committee members.

(d) Any amendments, modifications, or new provisions to the state minimum standard codes, when such are prepared, proposed, or recommended by the department, shall, prior to their submission to the board for approval, be submitted to the advisory committee for review and consideration. The department shall not forward any such amendment, modification, or new provision to the board without a favorable recommendation of a majority of the advisory committee.

(e) The advisory committee shall have at least two regular meetings annually and shall meet at other times as determined by the commissioner.

History.

Ga. L. 1969, p. 546, §§ 2, 3; Ga. L. 1970, p. 734, § 1; Ga. L. 1971, p. 242, § 1; Ga. L. 1976, p. 651, § 5; Ga. L. 1976, p. 654, §§ 1, 2; Ga. L. 1980, p. 1316, § 4; Ga. L. 1982, p. 698, §§ 1-3; Ga. L. 1989, p. 14, § 8; Ga. L. 1989, p. 1659, § 5; Ga. L. 1997, p. 143, § 8; Ga. L. 2004, p. 551, § 4; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2011, p. 705, § 6-5/HB 214; Ga. L. 2015, p. 5, § 8/HB 90; Ga. L. 2020, p. 493, § 8/SB 429.

Editor's notes.

The amendment of this Code section by Ga. L. 1989, p. 14, § 8, was superseded by the amendment by Ga. L. 1989, p. 1659, § 5, which was enacted later.

Law reviews.

For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

RESEARCH REFERENCES

C.J.S.
81A C.J.S., States, § 86.

8-2-24.1. Review of denial of proposed amendment, modification, or new provision to code.

Notwithstanding the provisions of subsection (d) of Code Section 8-2-24, when any party has proposed an amendment, modification, or new provision to a state minimum standard code and the same has not received a favorable recommendation by the advisory committee, the aggrieved party may within 30 days after notification by the department of the advisory committee's action file an appeal with the board. Not more than 60 days after receiving such appeal, the board shall make a determination whether to deny the appeal or to review the proposed amendment, modification, or new provision and make a determination on the same pursuant to Code Section 8-2-23.

History.
Code 1981, § 8-2-24.1, enacted by Ga. L. 1989, p. 1659, § 6.

8-2-25. Application of minimum standard codes; local adoption and requirements; exemptions.

(a) On and after July 1, 2004, the state minimum standard codes enumerated in subdivisions (9)(A)(i)(I) through (9)(A)(i)(VIII) and (9)(B)(i)(I) through (9)(B)(i)(VIII) of Code Section 8-2-20 shall have state-wide application and shall not require adoption by a municipality or county. The governing authority of any municipality or county in this state is authorized to enforce the state minimum standard codes enumerated in this subsection.

(b) The state minimum standard codes enumerated in subdivisions (9)(A)(i)(IX) through (9)(A)(i)(XIV) and (9)(B)(i)(IX) through (9)(B)(i)(XI) of Code Section 8-2-20 shall not be applicable in a jurisdiction until adopted by a municipality or county. The governing authority of any municipality or county in this state is authorized to adopt and enforce the state minimum standard codes enumerated in this subsection in that subject area which is being regulated by the municipality or county, and a copy of the local ordinance or resolution adopting any such code shall be forwarded to the department in order that such municipality or county may be apprised of subsequent amendments in the state minimum standard code so adopted.

(c)(1) In the event that the governing authority of any municipality or county finds that the state minimum standard codes do not meet its needs, the local government may provide requirements not less

stringent than those specified in the state minimum standard codes when such requirements are based on local climatic, geologic, topographic, or public safety factors; provided, however, that there is a determination by the local governing body of a need to amend the requirements of the state minimum standard code based upon a demonstration by the local governing body that local conditions justify such requirements not less stringent than those specified in the state minimum standard codes for the protection of life and property. All such proposed amendments shall be submitted by the local governing body to the department 60 days prior to the adoption of such amendment. Concurrent with the submission of the proposed amendment to the department, the local governing body shall submit in writing the legislative findings of the governing body and such other documentation as the local governing body deems helpful in justifying the proposed amendment. The department shall review and comment on a proposed amendment. Such comment shall be in writing and shall be sent to the submitting local government with a recommendation:

(A) That the proposed local amendment should not be adopted, due to the lack of sufficient evidence to show that such proposed local amendment would be as stringent as the state minimum standard codes and the lack of sufficient evidence to show that local climatic, geologic, topographic, or public safety factors require such an amendment;

(B) That the proposed local amendment should be adopted, due to a preponderance of evidence that such proposed local amendment would be as stringent as the state minimum standard codes and a preponderance of evidence that the local climatic, geologic, topographic, or public safety factors require such an amendment; or

(C) That the department has no recommendation regarding the adoption or disapproval of the proposed local amendments, due to the lack of sufficient evidence to show that such proposed local amendment would or would not be as stringent as the state minimum standard codes and the lack of sufficient evidence to show that local climatic, geologic, topographic, or public safety factors require or do not require such an amendment.

(2) The department shall have 60 days after receipt of a proposed local amendment to review the proposed amendment and make a recommendation as set forth in paragraph (1) of this subsection. In the event that the department fails to respond within the time allotted, the local governing body may adopt the proposed local amendment.

(3) In the event that the department recommends against the

adoption of the proposed local amendment, a local governing body shall specifically vote to reject the department's recommendations before any local amendment may be adopted.

(4) No local amendment shall become effective until the local governing body has caused a copy of the adopted amendment to be filed with the department. A copy of an amendment shall be deemed to have been filed with the department when it has been placed in the United States mail, return receipt requested.

(5) Nothing in this subsection shall be construed so as to require approval by the department before a local amendment shall become effective.

(6) The department shall maintain a file of all amendments to the state minimum standard codes adopted by the various municipalities and counties in the state, which information shall be made available to the public upon request. The department may charge reasonable fees for copies of such information. An index of such amendments shall be included in each new edition of a state minimum standard code.

(7) At the time of issuing a building permit, the issuing county or municipality shall notify the holder of the permit of any local amendments to the state minimum standard codes which are in effect for that county or municipality and that any such amendments are on file with the department. A county or municipality may satisfy this notice requirement by posting or providing a summary of the topic of such local amendment or amendments and the address and telephone number of the department.

(c.1) Notwithstanding subsection (c) of this Code section, no county or municipality shall prohibit the use of wood as a construction material so long as such use conforms to all applicable state minimum standard codes and the Georgia State Fire Code.

(d) Except as otherwise provided in subsection (c) of this Code section, building related codes or ordinances dealing with the subjects of historic preservation, high-rise construction, or architectural design standards for which a state minimum standard code does not exist may be adopted by a local jurisdiction following review by the department. The department's review shall be limited to a determination that the proposed code or ordinance is consistent with the approved state minimum standard codes when common elements exist and is not less restrictive than the requirement of said codes. Changes to all other state minimum standard codes shall be approved only pursuant to the provisions of this Code section regarding local amendments.

(e)(1) As used in this subsection, the term:

(A) "Agriculture," "agricultural operations," or "agricultural or farm products" has the meaning provided by Code Section 1-3-3.

(B) "Farm" means real property or a portion thereof used for agricultural operations.

(C) "Farm building or structure" means a building or structure that is located on a farm and designed by the USDA Natural Resources Conservation Service (NRCS), not used for residential purposes, not intended primarily for public use, and used primarily for or in connection with agricultural operations for the sole purposes of manure storage and animal mortality composting or winter feeding and following the standards and specifications of NRCS practice codes 313 — Waste Storage Facility and 317 — Composting Facility as detailed in the USDA NRCS Field Office Technical Guide as such existed on January 1, 2011.

(2) Farm buildings or structures shall be exempt from the state minimum standard building codes provided for in subdivisions (9)(B)(i)(I) and (9)(B)(i)(IX) of Code Section 8-2-20 and any amendment thereto adopted by the department pursuant to Code Section 8-2-23 or by a municipality or county pursuant to this Code section.

History.
Ga. L. 1969, p. 546, § 5; Ga. L. 1980, p. 1316, § 5; Ga. L. 1982, p. 3, § 8; Ga. L. 1989, p. 1659, § 7; Ga. L. 1990, p. 1364, § 2; Ga. L. 2000, p. 452, § 1; Ga. L. 2004, p. 551, § 5; Ga. L. 2011, p. 352, § 1/HB 223; Ga. L. 2012, p. 775, § 8/HB 942; Ga. L. 2018, p. 919, § 1/HB 876.

OPINIONS OF THE ATTORNEY GENERAL

Effect of state code on localities. — Provisions of state standard minimum codes are effective only in those municipalities and counties whose governing authorities have adopted those codes. Further, municipal and county governing authorities are not required to use the provisions of the standard codes when adopting or amending their local construction codes. 1980 Op. Att'y Gen. No. 80-146.

8-2-26. Local enforcement, inspectors, and building permits.

(a) The governing body of any municipality or county adopting any state minimum standard code shall have the power:

(1) To adopt by ordinance or resolution any reasonable provisions for the enforcement of the state minimum standard codes, including procedural requirements, provisions for hearings, provisions for appeals from decisions of local inspectors, and any other provisions or procedures necessary to the proper administration and enforcement of the requirements of the state minimum standard codes;

(2) To provide for inspection of buildings or similar structures to ensure compliance with the state minimum standard codes;

(3) To employ inspectors, including chief and deputy inspectors, and any other personnel necessary for the proper enforcement of such codes and to provide for the authority, functions, and duties of such inspectors;

(4) To require permits and to fix charges therefor;

(5) To contract with other municipalities or counties adopting any state minimum standard code to administer such codes and to provide inspection and enforcement personnel and services necessary to ensure compliance with the codes; and

(6) To contract with any other county or municipality whereby the parties agree that the inspectors of each contracting party may have jurisdiction to enforce the state minimum standard codes within the boundaries of the other contracting party.

(b) The commissioner shall be authorized to establish a training program for local inspectors whereby a representative of the department, upon the request of the governing authority of a county or municipality, may visit such county or municipality for the purpose of training the inspectors of such county or municipality in the effective enforcement of any state minimum standard code adopted by such county or municipality. The commissioner may from time to time establish regional training programs whereby the inspectors of several different counties and municipalities may take advantage of the training made available by such regional training programs.

(c) No local inspector shall require any person performing work in compliance with a state minimum standard code or variations thereto which are in conformity with the provisions of this part to comply with the standards of any other building code not covered by this part.

(d)(1) In lieu of inspection by an inspector or other person employed by the governing authority of any county or municipality, a licensed master plumber or utility contractor shall have the option of installing a water or sewer line according to the alternative inspection procedure described in this subsection where the installation is on private property outside the building underground.

(2) If the master plumber or utility contractor elects to utilize this inspection procedure, he or she shall file with the local inspector:

(A) Notice that the water and sewer line will be installed in accordance with the International Plumbing Code and will be inspected pursuant to the alternative inspection procedure described in this subsection;

(B) A copy of his or her master plumber or utility contractor certificate issued by the State Construction Industry Licensing Board;

(C) A copy of his or her trenching competent person certificate;

(D) A certificate showing that a bond has been filed in accordance with paragraph (2) of subsection (b) of Code Section 43-14-12, except that such bond shall be in the amount of $50,000.00 and issued by a surety rated "A," "Class VI," or better by the A. M. Best Company; and

(E) Within five business days after completion of the installation, a sworn certification that the water or sewer line has been installed in accordance with the International Plumbing Code.

(3) The department shall promulgate a standard form notice and a standard form certificate that shall be used to administer this subsection. Local inspectors shall make copies of the standard forms available to contractors.

(4) The master plumber or utility contractor shall be required to pay to the governing authority the applicable permit fee.

(5) Upon submission of the certification required by this subsection, the local governing authority shall be required to accept the inspection without the necessity of further inspection or approval, except that the local governing authority may perform an inspection at any time and may issue a stop-work order if the work is found to be in violation of code requirements.

(6) Any other provision of this subsection notwithstanding, the alternative inspection procedure described in this subsection shall be applicable only to installations on private individual single-family residential property.

(e)(1) Any county or municipal building permit issued in this state to a general contractor or homebuilder for residential or commercial construction shall have prominently printed thereon at least one inch apart from any other text on such permit and in type size and boldness equal to or greater than any other type size and boldness in the body of the permit the following:

"The issuance of this permit authorizes improvements of the real property designated herein which improvements may subject such property to mechanics' and materialmen's liens pursuant to Part 3 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated. In order to protect any interest in such property and to avoid encumbrances thereon, the owner or any person with an interest in such property should consider con-

tacting an attorney or purchasing a consumer's guide to the lien laws which may be available at building supply home centers."

(2) Any county or municipal construction permit, including but not limited to mechanical, plumbing, or electrical permits, issued in this state on existing residential or commercial property shall have prominently printed thereon at least one inch apart from any other text on such permit and in type size and boldness equal to or greater than any other type size and boldness in the body of the permit the following:

"The issuance of this permit authorizes improvements of the real property designated herein which improvements may subject such property to mechanics' and materialmen's liens pursuant to Part 3 of Article 8 of Chapter 14 of Title 44 of the Official Code of Georgia Annotated. In order to protect any interest in such property and to avoid encumbrances thereon, the owner or any person with an interest in such property should consider contacting an attorney or purchasing a consumer's guide to the lien laws which may be available at building supply home centers."

(3) Any person or entity which is issued a permit which authorizes improvements to new or existing residential or commercial real property shall be required to:

(A) Post a copy of such permit in a conspicuous place in the vicinity of such property where such improvements are being undertaken; or

(B) Deliver a copy of the permit to the property owner within ten days after the permit is received.

(f) A local inspector, including a fire service employee enforcing a state or local fire safety standard, who specifies a code violation noted during an inspection shall, upon the written request of the permit holder, cite in writing the particular code book, section, and edition of the code which is the basis of the violation.

(g)(1) As used in this subsection, the term:

(A) "Complete application" means a submitted plan, application, or request for inspection that contains all of the information and supporting documentation required by the county or municipality for it to make the determination as to whether the plan, application, or request is in compliance with regulatory requirements.

(B) "Private professional provider" means a:

(i) Professional engineer who holds a certificate of registration issued under Chapter 15 of Title 43;

(ii) Professional architect who holds a certificate of registration issued under Chapter 4 of Title 43; or

(iii) Qualified inspector as such term is defined in Code Section 8-2-26.1

who is not an employee of or otherwise affiliated with or financially interested in the person, firm, or corporation engaged in the construction project to be reviewed or inspected.

(C) "Regulatory fee" means payments, whether designated as permit fees, application fees, or by another name, that are required by a local government as an exercise of its police power, its regulation of business, and as a part of or as an aid to regulation of construction related activities under this chapter.

(D) "Regulatory requirements" means the requirements determined by a county or municipality to be necessary for approval of plans, permits, or applications under this chapter; provided, however, that, with respect to any application, such requirements shall include the state minimum standard codes most recently adopted by the Department of Community Affairs and any locally adopted ordinances and amendments to such codes; applicable zoning ordinances and conditions; design standards; and other state and local laws, regulations, and ordinances applicable to the application in question.

(2) Each county or municipality which imposes regulatory fees or regulatory requirements within its jurisdiction shall establish and make available a schedule of such regulatory fees and regulatory requirements which shall include a list of all documentation related to compliance with such regulatory requirements, including the requirements necessary for submittal of a complete application. The amount of any regulatory fee shall approximate the reasonable cost of the actual regulatory activity performed by the local government and shall be subject to the provisions of paragraph (6) of Code Section 48-13-5.

(3) No later than five business days after receipt of any application related to regulatory requirements, a local building official of a county or municipality shall notify each applicant as to whether the submitted documents meet the requirements of a complete application. Except as otherwise provided in this paragraph, time spent by a county or municipality determining whether an application is complete shall count toward the total 30 days for plan review or inspection. If a local building official determines that the application is not complete, the applicant shall be provided written notice identifying the items that are not complete. The 30 day time period is tolled when the application is rejected as incomplete. If within 30

days after the county or municipality has provided notice that the application is incomplete the permit applicant submits revisions to address the identified deficiencies, the local building official shall have an additional five business days to review the application for completeness.

(4) At the time a county or municipality notifies the applicant that a complete application has been accepted, it shall also notify such applicant as to whether the personnel employed or contracted by such county or municipality will be able to provide regulatory action within 30 days for plan review or provide inspection services within two business days of receiving a valid written request for inspection.

(5) The applicant shall have the option of retaining, at its own expense, a private professional provider to provide the required plan review or inspection in accordance with the provisions of this Code section irrespective of whether the county or municipality determines that the personnel employed or contracted by such county or municipality can provide regulatory action or inspection services within the time frames required under paragraph (4) of this subsection. If the applicant elects to utilize the services of a private professional provider, the regulatory fees associated with such regulatory action shall be reduced by 50 percent and such reduced amount shall be paid to the county or municipality in accordance with such jurisdiction's policies.

(6) If the county or municipality determines that the personnel employed or contracted by such county or municipality can provide regulatory action or inspection services within the time frames required under paragraph (4) of this subsection, a convenience fee not to exceed the full amount of the regulatory fees associated with such regulatory action shall be paid to the county or municipality in accordance with such jurisdiction's policies.

(7) If the local governing authority states its intent to complete the required plan review within the time prescribed by paragraph (4) of this subsection, or any extension thereof mutually agreed to by the applicant and the governing authority, and the local governing authority fails to complete such plan review in the time prescribed by paragraph (4) of this subsection, or any extension thereof mutually agreed to by the applicant and the governing authority, the local governing authority shall issue the applicant a project initiation permit. The local governing authority shall be allowed to limit the scope of a project initiation permit and limit the areas of the site to which the project initiation permit may apply but shall permit the applicant to begin work on the project, provided that portion of the initial phase of work is compliant with applicable codes, laws, and rules. If the plans submitted for permitting are denied for any

deficiency, the time frames and process for resubmittal shall be governed by subparagraphs (C) through (E) of paragraph (13) of this subsection. Any delay in the processing of an application that is attributable to a cause outside the control of the county or municipality that is processing the application or through fault of the applicant shall not count toward days for the purposes of this subsection. This paragraph shall not be applicable if the applicant elects to retain a private professional provider to provide the required plan review.

(8) Any plan review or inspection conducted by a private professional provider shall be no less extensive than plan reviews or inspections conducted by county or municipal personnel.

(9) The person, firm, or corporation retaining a private professional provider to conduct a plan review or an inspection shall be required to pay to the county or municipality which requires the plan review or inspection the regulatory fees and charges which are required by paragraph (5) or (6) of this subsection or both, as applicable.

(10) A private professional provider performing plan reviews under this subsection shall review plans to determine compliance with all applicable regulatory requirements. Upon determining that the plans reviewed comply with the applicable regulatory requirements, such private professional provider shall prepare an affidavit or affidavits on a form adopted by the Department of Community Affairs certifying under oath that the following is true and correct to the best of such private professional provider's knowledge and belief and in accordance with the applicable professional standard of care:

(A) The plans were reviewed by the affiant who is duly authorized to perform plan review pursuant to this subsection and who holds the appropriate license or certifications and insurance coverage stipulated in this subsection;

(B) The plans comply with all applicable regulatory requirements; and

(C) The plans submitted for plan review are in conformity with plans previously submitted to obtain governmental approvals required in the plan submittal process and do not make a change to the project reviewed for such approvals.

(11) All private professional providers providing plan review or inspection services pursuant to this subsection shall secure and maintain insurance coverage for professional liability (errors and omissions) insurance. The limits of such insurance shall be not less than $1 million per claim and $1 million in aggregate coverage for

any project with a construction cost of $5 million or less and $2 million per claim and $2 million in aggregate coverage for any project with a construction cost of more than $5 million. Such insurance may be a practice policy or project-specific coverage. If the insurance is a practice policy, it shall contain prior acts coverage for the private professional provider. If the insurance is project-specific, it shall continue in effect for two years following the issuance of the certificate of final completion for the project. A local enforcement agency, local building official, or local government may establish, for private professional providers working within that jurisdiction, a system of registration listing the private professional providers within their stated areas of competency. The permit applicant shall verify compliance with the insurance requirements of this paragraph.

(12) The private professional provider shall be empowered to perform any plan review or inspection required by the governing authority of any county or municipality, including, but not limited to, inspections for footings, foundations, concrete slabs, framing, electrical, plumbing, heating ventilation and air conditioning (HVAC), or any and all other inspections necessary or required to determine compliance with all regulatory requirements and for the issuance of a building permit or certificate of occupancy by the governing authority of any county or municipality, provided that the plan review or inspection is within the scope of such private professional provider's area of competency; and provided, further, that a qualified inspector acting as a private professional provider shall only be empowered to perform a plan review or inspection within an area for which such qualified inspector has been issued a certification, license, or completion of training provided for in paragraph (2) of subsection (a) of Code Section 8-2-26.1. Nothing in this Code section shall authorize any private professional provider to issue a certificate of occupancy. Only a local governing authority shall be authorized to issue a certificate of occupancy.

(13)(A) The permit applicant shall submit a copy of the private professional provider's plan review report to the county or municipality within five days of its completion. Such plan review report shall include at a minimum all of the following:

(i) The affidavit of the private professional provider required pursuant to this subsection;

(ii) The applicable fees; and

(iii) Any documents required by the local official and any other documents necessary to determine that the permit applicant has secured all other governmental approvals required by law.

(B) No more than 30 days after receipt of both a permit application and the affidavit from the private professional provider required pursuant to this subsection, the local building official shall issue the requested permit or provide written notice to the permit applicant identifying the specific plan features that do not comply with the applicable regulatory requirements, as well as the specific code chapters and sections of such regulatory requirements. If the local building official does not provide a written notice of the plan deficiencies within the prescribed 30 day period, the permit application shall be deemed approved as a matter of law and the permit shall be issued by the local building official on the next business day.

(C) If the local building official provides a written notice of plan deficiencies to the permit applicant within the prescribed 30 day period, the 30 day period shall be tolled pending resolution of the matter. To resolve the plan deficiencies, the permit applicant may elect to dispute the deficiencies pursuant to this subsection or to submit revisions to correct the deficiencies.

(D) If the permit applicant submits revisions to address the plan deficiencies previously identified, the local building official shall have the remainder of the tolled 30 day period plus an additional five business days to issue the requested permit or to provide a second written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable regulatory requirements, with specific reference to the relevant code chapters and sections of such regulatory requirements. If the local building official does not provide the second written notice within the prescribed time period, the permit shall be issued by the local building official on the next business day. In the event that the revisions required to address the plan deficiencies or any additional revisions submitted by the applicant require that new governmental approvals be obtained, the applicant shall be required to obtain such approvals before a new plan report can be submitted.

(E) If the local building official provides a second written notice of plan deficiencies to the permit applicant within the prescribed time period, the permit applicant may elect to dispute the deficiencies pursuant to this subsection or to submit additional revisions to correct the deficiencies. For all revisions submitted after the first revision, the local building official shall have an additional five business days to issue the requested permit or to provide a written notice to the permit applicant stating which of the previously identified plan features remain in noncompliance with the applicable regulatory requirements, with specific reference to the relevant code chapters and sections.

(14) Upon submission by the private professional provider of a copy of his or her inspection report to the local governing authority, said local governing authority shall be required to accept the inspection of the private professional provider without the necessity of further inspection or approval by the inspectors or other personnel employed by the local governing authority unless said governing authority has notified the private professional provider, within two business days after the submission of the inspection report, that it finds the report incomplete or the inspection inadequate and has provided the private professional provider with a written description of the deficiencies and specific regulatory requirements that have not been adequately addressed.

(15) A local governing authority may provide for the prequalification of private professional providers who may perform plan reviews or inspections pursuant to this subsection. No ordinance implementing prequalification shall become effective until notice of the governing authority's intent to require prequalification and the specific requirements for prequalification have been advertised in the newspaper in which the sheriff's advertisements for that locality are published, and by any other methods such local authority ordinarily utilizes for notification of engineering, architecture, or construction related solicitations. The ordinance implementing prequalification shall provide for evaluation of the qualifications of a private professional provider only on the basis of the private professional provider's expertise with respect to the objectives of this subsection, as demonstrated by the private professional provider's experience, education, and training. Such ordinance may require a private professional provider to hold additional certifications, provided that such certifications are required by ordinance for plan review personnel currently directly employed by such local governing authority.

(16) Nothing in this subsection shall be construed to limit any public or private right of action designed to provide protection, rights, or remedies for consumers.

(17) Reserved.

(18) If the local building official determines that the building construction or plans do not comply with the applicable regulatory requirements, the official may deny the permit or request for a certificate of occupancy or certificate of completion, as appropriate, or may issue a stop-work order for the project or any portion thereof as provided by law, after giving notice to the owner, the architect of record, the engineer of record, or the contractor of record and by posting a copy of the order on the site of the project and opportunity to remedy the violation within the time limits set forth in the notice, if the official determines noncompliance with regulatory requirements, provided that:

(A) A local building official shall be available to meet with the private professional provider within two business days to resolve any dispute after issuing a stop-work order or providing notice to the applicant denying a permit or request for a certificate of occupancy or certificate of completion; and

(B) If the local building official and the private professional provider are unable to resolve the dispute or meet within the time required by this Code section, the matter shall be referred to the local enforcement agency's board of appeals, if one exists, which shall consider the matter not later than its next scheduled meeting. Any decisions by the local official, if there is no board of appeals, may be appealed to the Department of Community Affairs as provided in this chapter. The Department of Community Affairs shall develop rules and regulations which shall establish reasonable time frames and fees to carry out the provisions of this paragraph.

(19) The local government, a local building official, and local building code enforcement personnel and agents of the local government shall be immune from liability to any person or party for any action or inaction by an owner of a building or by a private professional provider or its duly authorized representative in connection with plan review and inspection services by private professional providers as provided in this subsection.

(20) No local enforcement agency, local code official, or local government shall adopt or enforce any rules, procedures, policies, qualifications, or standards more stringent than those prescribed in this subsection. This subsection shall not preempt any local laws, rules, or procedures relating to the plan submittal process of local governing authorities.

(21) Nothing in this subsection shall limit the authority of a local code official to issue a stop-work order for a building project or any portion of such project, which may go into effect immediately as provided by law, after giving notice and opportunity to remedy the violation, if the official determines that a condition on the building site constitutes an immediate threat to public safety and welfare. A stop-work order issued for reasons of immediate threat to public safety and welfare shall be appealable to the local enforcement agency's board of appeals, if one exists, in the manner provided by applicable law. Any decisions by the local official, if there is no board of appeals, may be appealed to the Department of Community Affairs as provided in this chapter.

(22) When performing plan reviews or inspection services, a private professional provider is subject to the disciplinary guidelines

of the applicable professional licensing board with jurisdiction over such private professional provider's license or certification under Chapters 4 and 15 of Title 43, as applicable. Any complaint processing, investigation, and discipline that arise out of a private professional provider's performance of plan reviews or inspection services shall be conducted by the applicable professional licensing board. Notwithstanding any disciplinary rules of the applicable professional licensing board with jurisdiction over such private professional provider's license or certification under Chapters 4 and 15 of Title 43, any local building official may decline to accept plan reviews or inspection services submitted by any private professional provider who has submitted multiple reports which required revisions due to negligence, noncompliance, or deficiencies.

(23) Nothing in this subsection shall apply to inspections exempted in Code Section 8-2-26.1.

(24) To the extent that a provision of this Code section conflicts with requirements of federal laws or regulations or impairs a county's or municipality's receipt of federal funds, such provision shall not apply.

History.

Ga. L. 1969, p. 546, § 6; Ga. L. 1970, p. 734, § 2; Ga. L. 1971, p. 242, § 5; Ga. L. 1980, p. 1316, § 6; Ga. L. 1989, p. 1659, § 8; Ga. L. 1996, p. 1632, § 1; Ga. L. 1997, p. 550, § 1; Ga. L. 1998, p. 1033, § 1; Ga. L. 2000, p. 452, § 2; Ga. L. 2000, p. 456, § 1; Ga. L. 2004, p. 551, § 6; Ga. L. 2006, p. 506, § 1/HB 1385; Ga. L. 2019, p. 606, § 2/HB 493; Ga. L. 2020, p. 138, § 1/SB 377; Ga. L. 2021, p. 282, § 1/SB 49; Ga. L. 2024, p. 1052, § 1(b)(2)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, in subparagraph (g)(1)(D), revised punctuation and substituted "state minimum standard codes" for "Georgia State Minimum Standard Codes".

Cross references.

Enforcement of laws requiring services of registered architects for certain buildings, § 43-4-15.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1996, "single-family" was substituted for "single family" in paragraph (d)(6).

Ga. L. 2000, p. 452, § 2 and Ga. L. 2000, p. 456, § 1 both added a subsection (f). Pursuant to Code Section 28-9-5, in 2000, the subsection (f) added by Ga. L. 2000, p. 456, § 1 was redesignated as subsection (g).

Pursuant to Code Section 28-9-5, in 2019, "requirements" was substituted for "requiremments" at the end of the first sentence of subparagraph (g)(13)(B).

Editor's notes.

Ga. L. 1996, p. 1632, § 3, not codified by the General Assembly, provides: "Any political subdivision may exempt itself from Section 1 of this Act by resolution or ordinance."

Ga. L. 1997, p. 550, § 3, not codified by the General Assembly, provides that no county or municipality shall be required to implement the requirements of that Act until such time as the county or municipality has consumed all building permit forms on hand as of January 1, 1998.

Ga. L. 1998, p. 1033, § 2, not codified by the General Assembly, provides: "This Act shall become effective on January 1, 1999, except that no county or municipality shall be required to implement the requirements of this Act until such time as the county or municipality has consumed all building permit forms on hand as of January 1, 1999."

Ga. L. 2019, p. 606, § 1/HB 493, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Private Permitting Review and Inspection Act.'"

For application of this statute in 2020 and 2021, see Executive Orders 03.20.20.02 and 03.30.20.02.

RESEARCH REFERENCES

Am. Jur. 2d.

13 Am. Jur. 2d, Buildings, § 7 et seq.

ALR.

Construction and application of statutes imposing upon employer or owner general duty regarding safety of building, 101 A.L.R. 408.

Liability of owner or occupant of premises to building or construction inspector coming upon premises in discharge of duty, 28 A.L.R.3d 891.

Validity and construction of statute or ordinance providing for repair or destruction of residential building by public authorities at owner's expense, 43 A.L.R.3d 916.

What interest qualifies one as an "owner" for purposes of making application for a building permit, 61 A.L.R.3d 1128.

Liability of municipal corporation for negligent performance of building inspector's duties, 24 A.L.R.5th 200.

8-2-26.1. Qualified inspectors; inspection reports.

(a) As used in this Code section, the term:

(1) "ICC" means the International Code Council.

(2) "Qualified inspector" means:

(A) A person inspecting for compliance with the International Building Code or the building portion of the International Residential Code for One- and Two-Family Dwellings who holds a certification from the ICC as a building inspector;

(B) A person inspecting for the compliance of residential buildings with the National Electrical Code or the electrical portion of the International Residential Code for One- and Two-Family Dwellings who holds a certification from the ICC as a residential electrical inspector or an electrical contractor license from the State Construction Industry Licensing Board;

(C) A person inspecting for the compliance of nonresidential buildings with the National Electrical Code who holds a certification from the ICC as a commercial electrical inspector or an electrical contractor license from the State Construction Industry Licensing Board;

(D) A person inspecting for compliance with the International Fuel Gas Code who holds a certification from the ICC as a mechanical inspector or plumbing inspector or a conditioned air contractor, journeyman plumber, or master plumber license from the State Construction Industry Licensing Board;

(E) A person inspecting for compliance with the International Mechanical Code or the mechanical portion of the International Residential Code for One- and Two-Family Dwellings who holds a certification from the ICC as a mechanical inspector or a conditioned air contractor license from the State Construction Industry Licensing Board;

(F) A person inspecting for compliance with the International Plumbing Code or the plumbing portion of the International Residential Code for One- and Two-Family Dwellings who holds a certification from the ICC as a plumbing inspector or a journeyman plumber or master plumber license from the State Construction Industry Licensing Board;

(G) A person inspecting for compliance with any portion of the International Residential Code for One- and Two-Family Dwellings who holds a certification from the ICC as a one- and two-family dwelling inspector;

(H) A person inspecting for compliance with the International Energy Conservation Code for Buildings who has completed eight hours of training that is conducted or approved by the department; or

(I) A person inspecting for compliance with any of the codes listed in subparagraphs (A) through (H) of this paragraph who holds:

(i) A certificate of registration as a professional engineer issued under Chapter 15 of Title 43 and is practicing within the scope of his or her branch of engineering expertise while conducting such inspection;

(ii) A level II, III, IV, or V certification from the Building Officials Association of Georgia, provided that such levels of certification require work experience and an examination by the ICC or a testing agency approved by the Building Officials Association of Georgia; or

(iii) A level II, III, IV, or V certification from the Building Officials Association of Georgia on July 1, 2015.

(3) "State Construction Industry Licensing Board" means that board created pursuant to Code Section 43-14-3.

(b) The governing authority of any municipality or county which has adopted provisions for the enforcement of the state minimum standard codes shall post a notice stating whether the personnel employed by that governing authority to conduct inspections for compliance with such codes are qualified inspectors. Such notice shall separately ad-

dress each minimum standard code enumerated in subdivisions (9)(A)(i)(I) through (9)(A)(i)(VIII) or (9)(B)(i)(I) through (9)(B)(i)(VIII) of Code Section 8-2-20 and the building, electrical, mechanical, and plumbing portions of the International Residential Code for One- and Two-Family Dwellings, and state whether all personnel assigned to conduct inspections for the particular code or portion of the code are qualified inspectors for that code or portion of the code.

(c) If such notice states that not all personnel assigned to conduct inspections for a particular state minimum standard code or portion of such code are qualified inspectors for that code or portion of the code, then the governing authority may retain qualified inspectors not employed by the governing authority to conduct inspections. If the governing authority does not so retain qualified inspectors, then any person, firm, or corporation engaged in a construction project which requires inspection shall have the option of retaining, at its own expense, a person who is a qualified inspector for that code or portion of the code and who is not an employee of or otherwise affiliated with or financially interested in such person, firm, or corporation to provide the required inspection.

(d) The person, firm, or corporation retaining a qualified inspector to conduct an inspection pursuant to this Code section shall be required to pay to the county or municipality which requires the inspection the same permit fees and charges which would have been required had the inspection been conducted by a county or municipal inspector.

(e) A qualified inspector retained pursuant to this Code section shall be empowered to perform any inspection required by the governing authority of any county or municipality, including but not limited to inspections for footings, foundations, concrete slabs, framing, electrical, plumbing, heating ventilation and air conditioning (HVAC), or any and all other inspections necessary or required for the issuance of a certificate of occupancy by the governing authority of any county or municipality; provided, however, that the qualified inspector must possess the qualifications described in paragraph (2) of subsection (a) of this Code section for the particular type of inspection. Any inspection conducted pursuant to this Code section shall be no less extensive than an inspection conducted by a county or municipal inspector.

(f) Upon submission by the qualified inspector of a copy of his or her inspection report to the local governing authority, said local governing authority shall be required to accept the inspection of the qualified inspector without the necessity of further inspection or approval by the inspectors or other personnel employed by the local governing authority unless said governing authority has notified the qualified inspector, within two business days after the submission of the inspection report, that it finds the report incomplete or the inspection inadequate and has

provided the qualified inspector with a written description of the deficiencies and specific code requirements that have not been adequately addressed.

(g) Nothing in this Code section shall be construed to apply to inspections for compliance with a state or local fire safety standard or erosion control standard.

(h) Nothing in this Code section shall be construed to limit any public or private right of action designed to provide protection, rights, or remedies for consumers.

History.

Code 1981, § 8-2-26.1, enacted by Ga. L. 2000, p. 452, § 3; Ga. L. 2004, p. 551, § 7; Ga. L. 2015, p. 941, § 1/HB 341; Ga. L. 2020, p. 493, § 8/SB 429.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2004, "means the International Code Council" was substituted for "means International Code Council" in paragraph (a)(1); "compliance with any portion" was substituted for "compliance any portion" in subparagraph (a)(2)(G); and "(9)(A)(i)(VIII) or (9)(B)(i)(I)" was substituted for "(9)(A)(i)(VIII) (9)(B)(i)(I)" in subsection (b).

Pursuant to Code Section 28-9-5, in 2015, "July 1, 2015" was substituted for "the effective date of this Code section" in division (a)(2)(I)(iii).

8-2-27. Energy conservation code; applicability; enforcement; appeals.

(a) The design, erection, construction, and alteration of any building to which the International Energy Conservation Code shall apply shall be accomplished so that the building or applicable portions thereof shall meet or conform to such code.

(b) Enforcement of compliance with this Code section shall be solely the province of local governing authorities, except in regard to buildings owned by the state. In state owned buildings, the state agency which owns the building shall provide for the compliance with the code adopted under this part. Local governing authorities are authorized to adopt rules and regulations for the administration and enforcement of the code and to adopt such penalties for violation of the code as they deem appropriate. Local governing authorities are authorized to exercise all the powers enumerated in subsection (a) of Code Section 8-2-26 in enforcement of the International Energy Conservation Code.

(c) The International Energy Conservation Code shall not apply to exempted buildings; and, with respect to renovated buildings, such code shall apply only to portions or systems of the building which are directly involved in the renovation.

(d) The commissioner or his or her designated representative shall have authority to hear appeals relating to the interpretation, enforcement, and administration by local governing authorities of the International Energy Conservation Code and exceptions to such code. The

commissioner may, at his or her option, hear de novo cases but shall not hear any appeal until it is determined that the appeal procedures available through the affected local government have been exhausted. If, on appeal, the commissioner determines that the local governing authority erred in its interpretation of the code, he or she shall remand the case to the local government with instructions to take such action as he or she directs. Further appeals may be made as provided by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.
Ga. L. 1978, p. 2212, §§ 4, 6, 7; Ga. L. 1980, p. 1316, § 7; Ga. L. 1989, p. 14, § 8; Ga. L. 2004, p. 551, § 8.

Cross references.
Solar easements, § 44-9-20 et seq.

8-2-28. Construction code; local adoption and enforcement.

Any municipality or county either enforcing or adopting and enforcing a construction code shall utilize one or more of the state minimum standard codes established pursuant to this part.

History.
Ga. L. 1969, p. 546, § 7; Ga. L. 1980, p. 1316, § 9; Ga. L. 1989, p. 1659, § 9; Ga. L. 2004, p. 551, § 8.

RESEARCH REFERENCES

Am. Jur. 2d.
13 Am. Jur. 2d, Buildings, § 6 et seq.
ALR.
Change in law pending application for permit or license, 169 A.L.R. 584.

8-2-29. Powers of department generally.

In addition to any other powers granted by this part, the department shall have the power to:

(1) Administer all funds available under this part;

(2) Accept any grant of funds made by the United States government or any agency thereof for the purpose of carrying out this part;

(3) Request from the various departments, agencies, and authorities of the state and its political subdivisions such available information as it may require in its work; and all such departments, agencies, and authorities shall furnish, within a reasonable time, such requested available information to the department;

(4) Contract with the United States government or agencies thereof, with political subdivisions of the state, and with private persons and corporations; and

(5) Do all other things necessary and proper to exercise its powers and perform its duties in accordance with this part.

History.
Ga. L. 1969, p. 546, § 8; Ga. L. 1970, p. 734, § 2; Ga. L. 1980, p. 1316, § 8.

8-2-30. Applicability of part.

(a) Except as otherwise provided in this Code section, this part shall apply to all installations, alterations, and repairs of plumbing, air-conditioning and heating, or electrical systems within or on public or private buildings, structures, or premises.

(b) This part shall not apply to the installation, alteration, or repair of plumbing, air-conditioning and heating, or electrical systems up to and including the meters, where such work is performed by or is an integral part of the system owned or operated by a public service corporation or by the water or gas department of any city in this state in rendering its duly authorized service as such.

(c) This part shall not apply to the installation, alteration, or repair of plumbing, air-conditioning and heating, or electrical systems where such work is an integral part of the system owned or operated, in rendering its duly authorized service as such, by a railroad company, a pipeline company, a mining company, or a public utility in the exercise of its normal functions as a public utility, or where such work is an integral part of any irrigation system on farms, ranches, or other open, unpopulated areas where such work will not be located within 30 feet of any dwelling or any building devoted to animal husbandry.

(d) This part shall not prohibit an individual from installing, altering, or repairing plumbing systems and fixtures, air-conditioning and heating systems and fixtures, or electrical systems in a single-family dwelling owned and occupied by him or her, provided that all such work must be done in conformity with all other provisions of this part and the orders, rules, and regulations of the department.

(e) This part shall not prohibit an individual from installing, altering, or repairing plumbing systems and fixtures, air-conditioning and heating systems and fixtures, or electrical systems in a farm or ranch building owned or occupied by him or her, provided that all such work must be done in conformity with all other provisions of this part and the orders, rules, and regulations of the department.

(f) This Code section shall not affect or abrogate the requirements of the International Energy Conservation Code.

History.
Ga. L. 1969, p. 546, § 10; Ga. L. 1980, p. 1316, § 11; Ga. L. 2004, p. 551, § 9.

8-2-31. Effect of part.

(a) Nothing in this part shall repeal or be construed as abrogating or otherwise affecting the power of any state department or agency to promulgate regulations, make inspections, or approve plans in accordance with any other applicable provisions of law.

(b) Nothing in this part shall be construed as repealing or otherwise affecting authorization for historic preservation districts established pursuant to Article 2 of Chapter 10 of Title 44, the "Georgia Historic Preservation Act."

(c) Nothing in this part shall be construed as repealing or otherwise affecting:

(1) Part 6 of this article, relating to elevators, dumbwaiters, escalators, manlifts, and moving walks;

(2) Article 2 of Chapter 15 of Title 25, the "Boiler Vessel Safety Act";

(3) Chapter 3 of Title 30, relating to access to and use of public facilities by physically disabled persons; or

(4) The Georgia State Fire Code as adopted by the Safety Fire Commissioner pursuant to Code Section 25-2-13.

(d) Standards for the construction of manufactured homes covered under Part 2 of Article 2 of this chapter shall be governed by the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. Section 5401, et seq., and nothing in this part is intended to permit the adoption of any other standards for or local regulation of the construction of manufactured homes.

(e) Standards relative to liquefied petroleum gas shall be governed by Article 10 of Chapter 1 of Title 10 and no provision of this part shall be construed to permit the adoption of standards, rules, or regulations relative to liquefied petroleum gas by the Department of Community Affairs or the adoption by local governments of regulations or ordinances relative to liquefied petroleum gas in conflict with Article 10 of Chapter 1 of Title 10.

History.

Ga. L. 1969, p. 546, § 5; Ga. L. 1980, p. 1316, § 10; Ga. L. 1981, p. 717, § 1; Ga. L. 1989, p. 1659, § 10; Ga. L. 1992, p. 2134, § 1; Ga. L. 1994, p. 97, § 8; Ga. L. 1995, p. 1302, § 14; Ga. L. 2012, p. 1144, § 9/SB 446.

PART 2A

RESOLUTION OF CONSTRUCTION DEFECTS

Editor's notes.

Ga. L. 2004, p. 500, § 2, not codified by the General Assembly, provides that this Act shall apply to all actions commenced after May 13, 2004, regardless of the date of sale or substantial completion, improvement, or repair of the dwelling at issue in the action.

8-2-35. Legislative findings.

The legislature finds, declares, and determines that Georgia needs an alternative method to resolve legitimate construction disputes that would reduce the need for litigation while adequately protecting the rights of homeowners. The legislature declares that an effective alternative dispute resolution mechanism in certain construction defect matters should involve the claimant filing a notice of claim with the contractor that the claimant asserts is responsible for the defect and providing the contractor with the opportunity to resolve the claim without litigation.

History.

Code 1981, § 8-2-35, enacted by Ga. L. 2004, p. 500, § 1; Ga. L. 2006, p. 548, § 1/SB 573.

Law reviews.

For article, "Georgia Condominium Law: Beyond the Condominium Act," see 13 Ga. St. B.J. 24 (2007).

For survey article on construction law, see 59 Mercer L. Rev. 55 (2007).

For article, "Construction Law," see 63 Mercer L. Rev. 107 (2011).

RESEARCH REFERENCES

ALR.

Equitable Tolling Under Repair Doctrine, 90 A.L.R.7th 5.

8-2-36. Definitions.

As used in this part, the term:

(1) "Action" means any civil lawsuit, judicial action, or arbitration proceeding asserting a claim in whole or in part for damages or other relief in connection with a dwelling or common area caused by an alleged construction defect.

(2) "Association" means a corporation formed for the purpose of exercising the powers of the members of any common interest community.

(3) "Claimant" means anyone who asserts a claim concerning a construction defect.

(4) "Common area" means the common areas, improvements, and facilities that are owned or maintained by the association in a common interest community.

(5) "Construction defect" has the meaning assigned by a written, express warranty either provided by the contractor or required by applicable statutory law; if no written, express warranty or applicable statutory warranty provides a definition, then "construction defect" means a matter concerning the design, construction, repair, or alteration of a dwelling or common area, of an alteration of or repair or addition to an existing dwelling, or of an appurtenance to a dwelling or common area on which a person has a complaint against a contractor. The term may include any physical damage to the dwelling or common area, any appurtenance, or the real property on which the dwelling or appurtenance is affixed proximately caused by a construction defect.

(6) "Contractor" means any person, firm, partnership, corporation, association, or other organization that is engaged in the business of designing, developing, constructing, or selling dwellings or common areas, alterations of or additions to existing dwellings or common areas, or the repair of such improvements. The term includes:

(A) An owner, officer, director, shareholder, partner, or employee of the contractor;

(B) Subcontractors and suppliers of labor and materials used by a contractor in a dwelling or common area; and

(C) A risk retention group registered under applicable law, if any, that insures all or any part of a contractor's liability for the cost to repair a construction defect.

(7) "Dwelling" means a single-family house, duplex, or multifamily unit designed for residential use in which title to each individual residential unit is transferred to the owner under a condominium or cooperative system. A dwelling includes the systems, other components, improvements, other structures, or recreational facilities that are appurtenant to the house, duplex, or multifamily unit at the time of its initial sale but not necessarily a part of the house, duplex, or multifamily unit.

(8) "Serve" or "service" means deposit in the United States mail, postage prepaid for delivery by certified mail, return receipt requested or statutory overnight delivery to the last known address of the addressee. For a corporation, limited partnership, limited liability company, or other registered business organization, it means service on the registered agent or other agent for service of process authorized by law.

History. Code 1981, § 8-2-36, enacted by Ga. L. 2004, p. 500, § 1; Ga. L. 2006, p. 548, § 1/SB 573.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2004, substituted "anyone" for "any one" in paragraph (3); and inserted quotes around "construction defect" in paragraph (4) (now paragraph 5).

Editor's notes.

Ga. L. 2006, p. 548, § 3(c)/SB 573, not codified by the General Assembly, provides that the amendment to this Code section shall only apply with respect to causes of action or claims arising on or after April 28, 2006, and any prior causes of action or claims shall continue to be governed by prior law.

8-2-37. Stays of action for failure to comply.

If a claimant files an action without first complying with the requirements of this part, on application by a party to the action, the court or arbitrator shall stay the action until the claimant has complied with the requirements of this part. To the extent that the action includes a cause of action for damages due to personal injury or death, such cause of action shall not be subject to stay pursuant to this Code section.

History.

Code 1981, § 8-2-37, enacted by Ga. L. 2004, p. 500, § 1; Ga. L. 2006, p. 548, § 1/SB 573.

JUDICIAL DECISIONS

Buyers' remedial repair efforts did not entitle sellers to summary judgment. — Trial court erred in determining that the buyers' remedial repair efforts entitled the sellers to summary judgment under the Repair Act, O.C.G.A. § 8-2-36 et seq., in the buyers' action to recover for alleged construction defects in their home because the trial court followed the statutory procedure by staying the action to allow the parties an opportunity to resolve their differences outside of litigation. and when that process proved unsuccessful, the litigation proceeded; thus, the purpose of the Repair Act was served, and while the buyers' repairs to their home before the sellers were afforded an opportunity to resolve the dispute could create a jury issue as to any potential damages, that action did not authorize the grant of summary judgment in the sellers' favor. Lumsden v. Williams, 307 Ga. App. 163, 704 S.E.2d 458, 2010 Ga. App. LEXIS 1117 (2010).

Stay of proceedings. — Trial court did not err in denying a contractor's motion to set aside a default judgment on the ground that a homeowner failed to give written notice of the homeowner's claims before filing a lawsuit, which the contractor argued was required under O.C.G.A. § 8-2-38(a), because the contractor did not ask for a stay, so the contractor was not entitled to one; the statutory remedy for a failure of the plaintiff to give notice of his or her claims pursuant to § 8-2-38(a) is a stay of the proceedings, but a defendant is entitled to such a stay only if the defendant asks for the stay. Merry v. Robinson, 313 Ga. App. 321, 721 S.E.2d 567, 2011 Ga. App. LEXIS 1063 (2011), cert. denied, No. S12C0720, 2012 Ga. LEXIS 403 (Ga. Apr. 24, 2012).

8-2-38. Procedure for actions subject to part.

(a) In every action subject to this part, the claimant shall, no later than 90 days before initiating an action against a contractor, provide service of written notice of claim on that contractor. The notice of claim shall state that the claimant asserts a construction defect claim or claims and is providing notice of the claim or claims pursuant to the

requirements of this part. The notice of claim shall describe the claim or claims in detail sufficient to explain the nature of the alleged construction defects and the results of the defects. In addition, the claimant shall provide to the contractor any evidence that depicts the nature and cause of the construction defect, including expert reports, photographs, and videotapes, if that evidence would be discoverable under evidentiary rules.

(b) Within 30 days after service of the notice of claim by a claimant required in subsection (a) of this Code section, each contractor that has received the notice of claim shall serve on the claimant, and on any other contractor that has received the notice of claim, a written response to the claim or claims, which either:

(1) Offers to settle the claim by monetary payment, the making of repairs, or a combination of both, without inspection; or

(2) Proposes to inspect the dwelling or common area that is the subject of the claim.

(c) If the contractor wholly rejects the claim and will neither remedy the alleged construction defect nor settle the claim or does not respond to the claimant's notice of claim within the time stated in subsection (b) of this Code section, the claimant may bring an action against the contractor for the claims described in the notice of claim without further notice except as otherwise provided under applicable law. A contractor that does not respond to a notice of claim within the time prescribed by subsection (b) of this Code section may not claim or assert that the absence of documents required to be provided with the notice of claim under subsection (a) of this Code section relieved the contractor from the contractor's obligation to respond to the notice of claim.

(d) If the claimant rejects the settlement offer made by the contractor, the claimant shall provide written notice of the claimant's rejection to the contractor and, if represented by legal counsel, his or her attorney. The notice shall include the reasons for the claimant's rejection of the contractor's proposal or offer. If the claimant believes that the settlement offer:

(1) Omits reference to any portion of the claim; or

(2) Was unreasonable in any manner,

the claimant shall in his or her written notice include those items that claimant believes were omitted and set forth in detail all known reasons why the claimant believes the settlement offer is unreasonable.

(e) If a proposal for inspection is made pursuant to paragraph (2) of subsection (b) of this Code section, the claimant shall, within 30 days of receiving the contractor's proposal, provide the contractor and its

subcontractors, agents, experts, and consultants prompt and reasonable access to the dwelling or common area to inspect the dwelling or common area, document any alleged construction defects, and perform any destructive or nondestructive testing required to fully and completely evaluate the nature, extent, and cause of the claimed defects and the nature and extent of any repairs or replacements that may be necessary to remedy the alleged defects. If destructive testing is required, the contractor shall give claimant advance notice of such tests and shall, after completion of the testing, return the dwelling or common area to its pretesting condition. If any inspection or testing reveals a condition that requires additional testing to allow the contractor to fully and completely evaluate the nature, cause, and extent of the construction defect, the contractor shall provide notice to the claimant of the need for such additional testing and the claimant shall provide prompt and reasonable access as set forth in this Code section. If a claim is asserted on behalf of owners of multiple dwellings or multiple owners of units within a multifamily complex, the contractor shall be entitled to inspect each of the dwellings or common areas which may be or appear to be affected by the alleged defect. The contractor shall commence and diligently pursue completion of all the desired inspections within the 30 day period after delivery of the contractor's written proposal. Inspection shall be completed within the same 30 day period if reasonable or within a reasonable period thereafter if completion is not reasonable within 30 days.

(f) Within 14 days following completion of the inspection and testing set forth in this Code section, the contractor shall serve on the claimant:

(1) A written offer to fully or partially remedy the construction defect at no cost to the claimant. Such offer shall include a description of any additional construction necessary to remedy the defect described in the claim and an anticipated timetable for the completion of such construction;

(2) A written offer to settle the claim by monetary payment;

(3) A written offer including a combination of repairs and monetary payment; or

(4) A written statement that the contractor will not proceed further to remedy the defect, along with the reasons for such rejection.

(g) If a claimant accepts a contractor's offer made pursuant to paragraph (1), (2), or (3) of subsection (f) of this Code section and the contractor does not proceed to make the monetary payment or remedy the construction defect or both within the agreed timetable, the claimant may bring an action against the contractor for the claim described in the notice of claim without further notice except as

otherwise provided by applicable law. In such a situation, the claimant may also file the contractor's offer and claimant's acceptance, and such offer and acceptance will create a rebuttable presumption that a binding and valid settlement agreement has been created and should be enforced by the court or arbitrator.

(h) If a claimant receives a written statement that the contractor will not proceed further to remedy the defect or if the contractor fails to serve the claimant with the required written offer or written statement within the time prescribed by subsection (f) of this Code section, the claimant may bring an action against the contractor for the claim described in the notice of claim without further notice except as otherwise provided by applicable law. The contractor's written statement shall include all known reasons for the rejection of the claim.

(i) If the claimant rejects the offer made by the contractor to remedy the construction defect or to settle the claim by monetary payment or a combination of each, the claimant shall serve written notice of the claimant's rejection on the contractor. The notice shall include all known reasons for the claimant's rejection of the contractor's offer.

(j) Upon receipt of a claimant's rejection and the reasons for such rejection, the contractor may, within 15 days of receiving the rejection, make a supplemental offer of repair or monetary payment or both to the claimant.

(k) If the claimant rejects the supplemental offer made by the contractor to repair the construction defect or to settle the claim by monetary payment or a combination of each, the claimant shall serve written notice of the claimant's rejection on the contractor. The notice shall include all known reasons for the claimant's rejection of the contractor's supplemental settlement offer.

(l) If a claimant rejects a reasonable offer, including any reasonable supplemental offer, made as provided by this part or does not permit the contractor to repair the construction defect pursuant to an accepted offer of settlement, the claimant may not recover an amount in excess of:

(1) The fair market value of the offer of settlement or the actual cost of the repairs made; or

(2) The amount of a monetary offer of settlement.

For purposes of this subsection, the trier of fact shall determine the reasonableness of an offer of settlement made pursuant to this part. If the claimant has rejected a reasonable offer, including any reasonable supplemental offer, and any other law allows the claimant to recover costs and attorneys' fees, then the claimant may recover no costs or attorneys' fees incurred after the date of his or her rejection.

(m) Any claimant accepting the offer of the contractor to remedy a construction defect shall do so by serving the contractor with a written notice of acceptance within 30 days after receipt of the offer. If no response is served upon the contractor within the 30 day period, then the offer shall be deemed accepted.

(n) If a claimant accepts a contractor's offer to repair a construction defect described in a notice of claim, the claimant shall provide the contractor and its subcontractors, agents, experts, and consultants prompt and unfettered access to the dwelling or common area to perform and complete the construction by the timetable stated in the settlement offer.

(o) If, during the pendency of the notice, inspection, offer, acceptance, or repair process, an applicable limitations period would otherwise expire, the claimant may file an action against the contractor, but such action shall be immediately stayed until completion of the notice of claim process described in this part. This subsection shall not be construed to:

(1) Revive a statute of limitations period that has expired prior to the date on which a claimant's written notice of claim is served; or

(2) Extend any applicable statute of repose.

(p) After the sending of the initial notice of claim, a claimant and a contractor may, by written mutual agreement, alter the procedure for the notice of claim process described in this part.

History.

Code 1981, § 8-2-38, enacted by Ga. L. 2004, p. 500, § 1; Ga. L. 2006, p. 548, § 1/SB 573.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2004, "the contractor" was substituted for "then contractor" in the last sentence (now the fourth sentence) of subsection (e); "to the claimant" was substituted for "to claimant" at the end of subsection (j); "then the claimant" was substituted for "then claimant" in the last paragraph of subsection (l)(2); and "experts, and" was substituted for "experts and" in subsection (n).

Editor's notes.

Ga. L. 2006, p. 548, § 3(c)/SB 573, not codified by the General Assembly, provides that the amendment to this Code section shall only apply with respect to causes of action or claims arising on or after April 28, 2006, and any prior causes of action or claims shall continue to be governed by prior law.

Law reviews.

For annual survey of trial practice and procedure, see 56 Mercer L. Rev. 433 (2004).

For article, "Construction Law," see 63 Mercer L. Rev. 107 (2011).

JUDICIAL DECISIONS

Pre-litigation notice. — Nothing in the Repair Act, O.C.G.A. § 8-2-36 et seq., contemplates that a claimant's action be dismissed for failing to provide the pre-litigation notice under the Act, O.C.G.A. § 8-2-38, because any pre-notice action is stayed to afford the parties time to try to resolve the parties' disputes;

nothing in the Act prevents a potential claimant from taking action to mitigate his or her losses. Lumsden v. Williams, 307 Ga. App. 163, 704 S.E.2d 458, 2010 Ga. App. LEXIS 1117 (2010).

Buyers' remedial repair efforts did not entitle sellers to summary judgment. — Trial court erred in determining that the buyers' remedial repair efforts entitled sellers to summary judgment under the Repair Act, O.C.G.A. § 8-2-36 et seq., in the buyers' action to recover for alleged construction defects in their home because the trial court followed the statutory procedure by staying the action to allow the parties an opportunity to resolve their differences outside of litigation and when that process proved unsuccessful, the litigation proceeded; thus, the purpose of the Repair Act was served, and while the buyers' repairs to their home before the sellers were afforded an opportunity to resolve the dispute could create a jury issue as to any potential damages, that act did not authorize the grant of summary judgment in the sellers' favor. Lumsden v. Williams, 307 Ga. App. 163, 704 S.E.2d 458, 2010 Ga. App. LEXIS 1117 (2010).

Stay of proceedings. — Trial court did not err in denying a contractor's motion to set aside a default judgment on the ground that a homeowner failed to give written notice of the homeowner's claims before filing a lawsuit, which the contractor argued was required under O.C.G.A. § 8-2-38(a), because the contractor did not ask for a stay so the contractor was not entitled to one; the statutory remedy for a failure of the plaintiff to give notice of his or her claims pursuant to § 8-2-38(a) is a stay of the proceedings, but a defendant is entitled to such a stay only if the defendant asks for the stay. Merry v. Robinson, 313 Ga. App. 321, 721 S.E.2d 567, 2011 Ga. App. LEXIS 1063 (2011), cert. denied, No. S12C0720, 2012 Ga. LEXIS 403 (Ga. Apr. 24, 2012).

8-2-39. Discovery of additional defects after original notice given.

(a) A construction defect that is discovered after a claimant has provided a contractor with the initial claim notice may not be alleged in an action until the claimant has given the contractor who performed the original construction:

(1) Written notice of claim regarding the alleged defect as required by Code Section 8-2-38; and

(2) An opportunity to resolve the notice of claim in the manner provided in Code Section 8-2-38.

(b) A construction defect that is discovered during the pendency of an action filed in compliance with this part may be added as a supplemental or additional claim to the pending action if failure to add the claim would prejudice any legal rights of the claimant or the contractor; provided, however, that the claimant shall comply with the requirements of subsection (a) of this Code section, and such action shall be immediately stayed until completion of the notice of claim process, unless otherwise agreed by the parties.

History.

Code 1981, § 8-2-39, enacted by Ga. L. 2004, p. 500, § 1; Ga. L. 2006, p. 548, § 1/SB 573.

Editor's notes.

Ga. L. 2006, p. 548, § 3(c)/SB 573, not codified by the General Assembly, provides that the amendment to this Code

section shall only apply with respect to causes of action or claims arising on or after April 28, 2006, and any prior causes of action or claims shall continue to be governed by prior law.

8-2-40. Effect of claimant's acceptance of settlement; subrogation of insurance.

(a) If a claimant accepts an offer made in compliance with this part and the contractor fulfills the offer in compliance with this part:

(1) The claimant shall thereafter be barred from bringing an action for the claim described in the notice of claim; and

(2) A contractor's performance of repairs or payment of money to a claimant made pursuant to this Code section shall not, by itself, create insurance coverage or otherwise affect the mutual rights and obligations of the parties under a contractor's liability insurance policy or, by itself, be considered a voluntary payment of an otherwise valid insured loss.

(b) An insurer paying a claim under this part shall be subrogated to the rights of the claimant to whom the amounts were paid against the person causing the construction defect, damages, or other reason for payment to the extent that claim payments were made, except that the insurer shall be required to pay any applicable part of costs, expenses, and attorneys' fees incurred in connection therewith.

History.
Code 1981, § 8-2-40, enacted by Ga. L. 2004, p. 500, § 1; Ga. L. 2005, p. 499, § 1/HB 307; Ga. L. 2006, p. 548, § 1/SB 573.

Editor's notes.
Ga. L. 2006, p. 548, § 3(c)/SB 573, not codified by the General Assembly, provides that the amendment to this Code section shall only apply with respect to causes of action or claims arising on or after April 28, 2006, and any prior causes of action or claims shall continue to be governed by prior law.

RESEARCH REFERENCES

ALR.
Implied Coinsured Status in Subrogation Claims, 81 A.L.R.7th 5.

8-2-41. Notice to consumer required.

(a) Upon entering into a contract for sale, construction, or improvement of a dwelling, the contractor shall provide notice to the owner of the dwelling of the contractor's right to resolve alleged construction defects before a claimant may commence litigation against the contractor. Such notice shall be conspicuous and may be included as part of the contract.

(b) The notice required by subsection (a) of this Code section shall be in substantially the following form:

GEORGIA LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO CONSTRUCTED, IMPROVED, OR REPAIRED YOUR HOME. NINETY DAYS BEFORE YOU FILE YOUR LAWSUIT OR OTHER ACTION, YOU MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS OR BOTH. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

History.
Code 1981, § 8-2-41, enacted by Ga. L. 2004, p. 500, § 1; Ga. L. 2006, p. 548, § 1/SB 573.

Law reviews.
For annual survey of construction law, see 57 Mercer L. Rev. 79 (2005).

8-2-42. Associations; bribery prohibited; applicable procedures.

(a) A person shall not provide or offer to provide anything of value, directly or indirectly, to a property manager of an association or to a member or officer of an association to induce the property manager, member, or officer to encourage or discourage the association to file a claim for damages arising from a construction defect. As used in this Code section, the term "anything of value" shall not include payments, services, or other items of value which the recipient would otherwise be entitled to receive under an existing contract.

(b) A property manager retained by an association shall not accept anything of value, directly or indirectly, in exchange for encouraging or discouraging the association that he or she manages to file a claim for damages arising from a construction defect.

(c) A member or officer of an association shall not accept anything of value, directly or indirectly, in exchange for encouraging or discouraging the association of which he or she is a member or officer to file a claim for damages arising from a construction defect.

(d) A person who knowingly violates subsection (a), (b), or (c) of this Code section shall be guilty of a misdemeanor.

(e) An association may bring an action against a contractor to

recover damages resulting from construction defects in the common area of a common interest community, provided that:

(1) The members of the association have voted to approve commencement of an action by two-thirds of the votes cast, by statutory written ballot as provided in Code Section 14-3-707 or have approved commencement of an action by the affirmative vote of at least two-thirds of the total membership at a meeting of the members at which a quorum is present;

(2) The board of directors of the association and the contractor have met in person and conferred in a good faith attempt to resolve the association's claim, or the contractor has definitively declined or ignored the requests to meet with the board of directors of the association; and

(3) The association has otherwise satisfied all of the preaction requirements for a claimant to commence an action as set forth in this part.

(f) At least three business days in advance of the meeting at which the association members vote or at the time a statutory written ballot is circulated to the members to obtain approval of an action to recover damages resulting from construction defects in the common area of a common interest community, the association shall provide each owner a copy of the notice of claim provided to the contractor and an additional written description of claims and the reasons the board of the association is recommending consideration of the litigation.

(g) An association or an attorney for an association shall not employ a person to perform destructive tests to determine any damage or injury to a dwelling or common area caused by a construction defect unless:

(1) The person is licensed as a contractor pursuant to law;

(2) The association has obtained the prior written approval of each owner whose dwelling will be directly affected by such testing;

(3) The association or the person so employed obtains all permits required to conduct such tests and to repair any damage resulting from such tests; and

(4) Reasonable prior notice and opportunity to observe the tests is given to the contractor against whom an action may be brought as a result of the tests.

(h) The board of directors of an association may, without giving notice to the owners, employ a contractor and such other persons as are necessary to make such immediate repairs to a common area within the common interest community as are required to protect the health, safety, and welfare of the owners.

History.
Code 1981, § 8-2-42, enacted by Ga. L. 2004, p. 500, § 1; Ga. L. 2006, p. 548, § 1/SB 573; Ga. L. 2023, p. 419, § 2-1/SB 148, effective July 1, 2023.
Amendments.
The 2023 amendment, effective July 1, 2023, substituted "Code Section 14-3-707" for "Code Section 14-3-708" in paragraph (e)(1).
Editor's notes.
Ga. L. 2006, p. 548, § 3(c)/SB 573, not codified by the General Assembly, provides that the amendment to this Code section shall only apply with respect to causes of action or claims arising on or after April 28, 2006, and any prior causes of action or claims shall continue to be governed by prior law.

8-2-43. Effect and application of part.

(a) Nothing in this part shall create any cause of action on behalf of any claimant or contractor.

(b) This part does not apply to a contractor's right to seek contribution, indemnity, or recovery against a subcontractor, supplier, or design professional for any claim made against a contractor by a claimant.

(c) In the event of any conflict or inconsistency between the provisions of this part and the provisions of any contract between a claimant and a contractor, the provisions of the contract shall govern and control.

(d) This part shall not apply to a contractor who is not required to be licensed under Chapter 41 of Title 43.

History.
Code 1981, § 8-2-43, enacted by Ga. L. 2004, p. 500, § 1; Ga. L. 2006, p. 548, § 1/SB 573.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2004, a comma was inserted between "indemnity" and "or" in subsection (b).
Editor's notes.
Ga. L. 2006, p. 548, § 3(c)/SB 573, not codified by the General Assembly, provides that the amendment to this Code section shall only apply with respect to causes of action or claims arising on or after April 28, 2006, and any prior causes of action or claims shall continue to be governed by prior law.

Part 3

Fire Escapes

Administrative rules and regulations.
Rules and Regulations for the State Minimum Fire Safety Standards, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Safety Fire Commissioner, Rule 120-3-3-.01 et seq.

RESEARCH REFERENCES

ALR.
Power of state to require changes in buildings previously erected in order to comply with new requirements and standards for protection of health and safety, 109 A.L.R. 1117.

What is a "factory" within statutes relating to safety and health of employees, 163 A.L.R. 447.

Liability of innkeeper to guest for injury due to fire, 60 A.L.R.3d 1217.

8-2-50. Fire escapes and exit doors; requirements.

(a) Owners of buildings more than two stories in height, not including the basement, who utilize any level above the second story wholly or partially as a factory or workshop shall provide more than one exit from each story of the building above the second story by stairways on the inside or outside of the building.

(b) Such stairways shall be, as nearly as is practicable, at opposite ends of each story and so constructed that, in case of fire, the ground can readily be reached from the third and higher stories.

(c) All stairways on the outside of buildings covered by this Code section shall have suitable railed landings at each story above the first and shall connect with each of said stories by doors or windows opening outward; and such doors, windows, and landings shall at all times be kept clear of obstructions.

(d) All the main doors of such buildings, both inside and outside, shall open outward, and each story shall be amply supplied with fire-extinguishing devices.

History.

Ga. L. 1889, p. 168, § 1; Civil Code 1895, § 2622; Civil Code 1910, § 3151; Code 1933, § 54-402.

Cross references.

Requirements regarding construction or maintenance of buildings presenting fire hazards to persons or property, § 25-2-13 et seq.

RESEARCH REFERENCES

ALR.

Liability for injury to person on business premises in consequence of passing through wrong doorway, 20 A.L.R. 1147; 27 A.L.R. 585; 42 A.L.R. 1098.

Liability for personal injury by fire escape, 42 A.L.R. 1111.

8-2-51. Inspections; reports; noncompliance.

(a) The governing authority of the city where any building covered by Code Section 8-2-50 is situated, or the judge of the probate court of the county if the building is situated outside of any city, shall require the fire marshal or chief officer of the fire department or, if there is no fire marshal or chief firefighter, some other suitable official to inspect such buildings at least once a year and report in writing to the municipal authorities or the judge of the probate court that the requirements of Code Section 8-2-50 have or have not been complied with.

(b) If the requirements of Code Section 8-2-50 have not been complied with, the municipal authorities or the judge of the probate court, as the case may be, shall convey to the owner of such building written notice requiring him to provide needed alterations or additions.

History.
Ga. L. 1889, p. 168, § 2; Civil Code 1895, § 2623; Civil Code 1910, § 3152; Code 1933, § 54-403; Ga. L. 2002, p. 660, § 4; Ga. L. 2002, p. 1259, § 11.

RESEARCH REFERENCES

Am. Jur. 2d.
35A Am. Jur. 2d, Fires, §§ 28, 42 et seq.

8-2-52. Alterations and additions required; making inspections and reports.

The owners of buildings referred to in this part shall make all alterations or additions necessary to comply with the requirements of this part. Inspections and reports required by Code Section 8-2-51 shall be made during the month of December of each year.

History.
Ga. L. 1889, p. 168, § 4; Civil Code 1895, § 2625; Civil Code 1910, § 3154; Code 1933, § 54-405.

RESEARCH REFERENCES

ALR.
Liability for personal injury by fire escape, 42 A.L.R. 1111.

8-2-53. Power of cities to extend coverage of part.

The governing authority of any city may, by ordinance, provide that this part shall apply to all buildings within the city limits which are not used as private residences and which are three or more stories in height.

History.
Ga. L. 1889, p. 168, § 3; Civil Code 1895, § 2624; Civil Code 1910, § 3153; Code 1933, § 54-404.

RESEARCH REFERENCES

ALR.
Power to forbid or restrict repair of wooden building within fire limits, 56 A.L.R. 878.

8-2-54. Penalty.

Any owner of a building more than two stories in height who fails to comply with the requirements of this part and who, after receiving the notice prescribed in Code Section 8-2-51, refuses or neglects to make the

alterations specified in the written notice shall be guilty of a misdemeanor.

History.
Ga. L. 1889, p. 168, § 5; Penal Code 1895, § 510; Penal Code 1910, § 511; Code 1933, § 54-9908.

RESEARCH REFERENCES

ALR.
Liability for injury to person on business premises in consequence of passing through wrong doorway, 20 A.L.R. 1147; 27 A.L.R. 585; 42 A.L.R. 1098.
Liability for personal injury by fire escape, 42 A.L.R. 1111.
What is a "factory" within statutes relating to safety and health of employees, 163 A.L.R. 447.

Part 4

Boilers, Pressure Vessels, and Water Heaters

8-2-70 through 8-2-75. [Reserved]

History.
Ga. L. 1969, p. 546, §§ 1-3; Ga. L. 1973, p. 503, §§ 1-4; Ga. L. 1974, p. 561, § 1; repealed by Ga. L. 1984, p. 1227, § 2, effective July 1, 1984.
Editor's notes.
Ga. L. 1984, p. 1227, § 2 repealed and reserved this part, effective July 1, 1984.
For current provisions relating to safety standards for boilers and pressure vessels, see § 25-15-10 et seq.

Part 5

Glass Installations

8-2-90 through 8-2-95. [Reserved]

History.
Ga. L. 1970, p. 151, §§ 1-5; Ga. L. 1971, p. 901, § 1; Ga. L. 1986, p. 1231, § 1; repealed by Ga. L. 2015, p. 946, § 1/HB 368, effective May 6, 2015.
Editor's notes.
Ga. L. 2015, p. 946, § 1/HB 368 repealed and reserved this part, effective May 6, 2015.

Part 6

Elevators, Dumbwaiters, Escalators, Manlifts, and Moving Walks

Administrative rules and regulations.
Rules and Regulations for Escalators and Elevators, Compilation of the Rules and Regulations of the State of Georgia, Rules of Safety Commissioner, Rule 120-3-25-.01 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Department of Labor is required to inspect "material lifts" under the ANSI Standard governing vertical reciprocating conveyors. 1991 Op. Att'y Gen. U91-14.

RESEARCH REFERENCES

Am. Jur. Proof of Facts.
Proof of Negligent or Defective Design, Manufacture, or Maintenance of Elevator, 50 POF3d 83.
Am. Jur. Trials.
Elevator Accident Cases, 7 Am. Jur. Trials 377.
Elevator Shaft Accidents — Plaintiff's Remedies, 17 Am. Jur. Trials 755.

8-2-100. Definitions.

As used in this part, the term:

(1) "Alteration" means any change or addition to the equipment other than ordinary repairs or replacements.

(2) "Commissioner" means the Safety Fire Commissioner.

(3) "Dumbwaiter" means a hoisting and lowering mechanism which is equipped with a car which moves in guides in a substantially vertical direction, the floor area of which does not exceed nine square feet, the total inside height of which, whether or not provided with fixed or removable shelves, does not exceed four feet, the capacity of which does not exceed 500 pounds, and the use of which is exclusively for carrying materials. Such term includes a power dumbwaiter and a hand dumbwaiter.

(4)(A) "Elevator" means a hoisting and lowering mechanism designed to carry passengers or authorized personnel and equipped with a car which moves in fixed guides and serves two or more fixed landings.

(B) Except as specifically provided in subsection (a) of Code Section 8-2-102, "elevator" also means a freight elevator, gravity elevator, hand elevator, inclined elevator, multideck elevator, observation elevator, passenger elevator, power elevator, electric elevator, hydraulic elevator, direct-plunger hydraulic elevator, electrohydraulic elevator, maintained pressure hydraulic elevator, roped-hydraulic elevator, private residence elevator, and sidewalk elevator.

(5) "Enforcement authority" means the Commissioner, officers, and inspectors of the office authorized to enforce the provisions of this part and local inspectors authorized to enforce the provisions of this part.

(6) "Escalator" means a power driven, inclined, continuous stairway used for raising or lowering passengers.

(7) "Hand dumbwaiter" means a dumbwaiter driven by manual power, serving more than two consecutive stories, whose capacity

exceeds 20 pounds and whose car platform area exceeds two square feet.

(8) "Hand elevator" means an elevator utilizing manual power to move the car.

(9) "Hoistway" means a shaftway or an opening through a building or structure for the travel of elevators, dumbwaiters, or material lifts, extending from the pit floor to the roof or floor above.

(10) "Manlift" means a device consisting of a power driven endless belt moving in one direction only which is provided with steps or platforms and handholds attached to it for the transportation of personnel from floor to floor.

(11) "Moving walk" means a type of passenger-carrying device on which passengers stand or walk and in which the passenger-carrying surface remains parallel to its direction of motion and is uninterrupted.

(12) "Office" means the office of Safety Fire Commissioner.

(13) "Power dumbwaiter" means a dumbwaiter driven by the application of energy other than hand or gravity.

(14) "Power freight elevator" means an elevator used primarily for carrying freight, utilizing energy other than gravity or hand to move the car and on which only the operator and the persons necessary for unloading and loading the freight are permitted to ride.

(15) "Power passenger elevator" means an elevator used primarily to carry persons other than the operator and persons necessary for loading and unloading and utilizing energy other than gravity or hand to move the car.

History. Code 1981, § 8-2-100, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 2012, p. 1144, § 8/SB 446.

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elevators and Escalators, § 1 et seq.

8-2-101. Inspection and registration requirement; maintenance; alterations.

(a) All elevators, escalators, manlifts, moving walks, and dumbwaiters erected or placed in service after January 1, 1986, shall be inspected before being placed in service and shall be registered within 15 days after they are completed and placed in service.

(b) Every elevator, dumbwaiter, manlift, moving walk, and escalator shall be maintained by the owner or lessee in a safe operating condition and in conformity with the rules and regulations specified by subsection (b) of Code Section 8-2-104.

(c) Before any alteration can be made to any elevator, escalator, manlift, moving walk, or dumbwaiter already placed in service, the owner or lessee shall be required to notify the enforcement authority of any such alteration. The enforcement authority shall be authorized to conduct an inspection after any such alteration.

History. Code 1981, § 8-2-101, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 1985, p. 221, § 1; Ga. L. 2012, p. 1144, § 8/SB 446.

8-2-102. Inspections.

(a)(1) Power passenger elevators, power freight elevators, escalators, manlifts, and moving walks shall be inspected once during each 12 month period; provided, however, that the inspection of such equipment where found within facilities governed by Article 2 of Chapter 9 of Title 32 shall occur once during each six-month period.

(2) Hand elevators and power and hand dumbwaiters shall be inspected once during each 12 month period.

(b) Inspections and installations shall be made in accordance with the standards set forth in Part "X" of ANSI A17.1-1984, the American National Standard Practice for Inspection of Elevators, Escalators and Moving Walks Inspector's Manual ANSI A17.2, the Safety Standards for Manlifts ANSI A90.1-1976, the Safety Standard for Construction Hoists ANSI A10.4-1981 and ANSI A10.5-1981, the Safety Standard for Conveyors and Related Equipment ANSI B20.1-1984, or the latest revised rules and regulations adopted by the Commissioner. Any inspections performed under these codes shall cover the hoistway, associated equipment rooms, and access thereto, and shall include lobby smoke detectors.

(c) A report of any inspection required by this Code section shall be filed with the office if the inspection is made by a state enforcement authority or with the local governing authority if the inspection is made by a local enforcement authority. Copies of the reports for new installations shall also be filed with the state fire marshal for his or her information. Such reports shall be made within ten days after the inspection has been completed, on forms prescribed by the Commissioner or the local enforcement authority, and shall indicate whether the elevator, escalator, manlift, moving walk, or dumbwaiter is safe and whether it meets the applicable rules and regulations prescribed pursuant to subsection (b) of Code Section 8-2-104. After any such report is filed, the enforcement authority may require additional

inspections to assure that any such elevator, escalator, manlift, moving walk, or dumbwaiter meets such rules and regulations.

(d) If any inspection report indicates that an elevator, escalator, manlift, moving walk, or dumbwaiter is in an unsafe condition which if continually operated may endanger lives or property, then the enforcement authority may, at its discretion, require the owner or lessee to discontinue the use thereof until it has been made safe and in conformity with the rules and regulations specified in subsection (b) of Code Section 8-2-104.

(e) Elevator contractors who perform installations, alterations, repairs, or modifications on elevators, escalators, power freight elevators, moving walks, manlifts, or dumbwaiters, including the hoistways and machine rooms, shall be exempt from the requirements of Code Sections 43-14-8 and 43-14-8.1.

(f) Private residence elevators shall be exempt from mandatory periodic inspections but shall be required to have an initial construction inspection as provided in the rules and regulations of the Commissioner. At the request of the owner or user of a private residence elevator, an inspection may be performed by the office and an inspection report issued. The office shall charge the person requesting the report a fee as set by the Commissioner to cover actual expenses of the inspection.

History.
Code 1981, § 8-2-102, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 1987, p. 1470, § 1; Ga. L. 2001, p. 4, § 8; Ga. L. 2012, p. 1144, § 8/SB 446; Ga. L. 2020, p. 138, § 2/SB 377.

8-2-103. Operating permits.

(a) An operating report shall be issued by the enforcement authority if the inspection report indicates that the elevator, escalator, manlift, moving walk, or dumbwaiter complies with the applicable rules and regulations prescribed pursuant to subsection (b) of Code Section 8-2-104 and upon payment of a permit fee. Such permits shall be valid for a period of 12 months.

(b) No elevator, escalator, manlift, moving walk, or dumbwaiter shall be operated by the owner or lessee thereof unless a valid operating permit, or a limited operating permit when permitted by the rules and regulations of the Commissioner, has been issued.

(c) The operating permit shall indicate whether it is issued for an elevator, escalator, manlift, moving walk, or dumbwaiter, state the rated load and speed and, in the case of an elevator, state whether the usage is for passengers or freight. The operating permit shall be posted either conspicuously in the car of an elevator or on the premises. The

operating permit for an escalator, manlift, moving walk, or a dumbwaiter shall be posted on the premises.

(d) If the enforcement authority has reason to believe that any owner or lessee to whom an operating permit has been issued is not complying with the applicable rules and regulations specified in subsection (b) of Code Section 8-2-104, it shall so notify such owner or lessee and shall give notice of a date for a hearing thereon to such owner or lessee. If, after such hearing, it shall find that such owner or lessee is not complying with such rules and regulations, it shall revoke such permit and require the owner or lessee to discontinue the use of such elevator, escalator, manlift, moving walk, or power dumbwaiter.

History. Code 1981, § 8-2-103, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 1987, p. 1470, § 2; Ga. L. 2012, p. 1144, § 8/SB 446.

8-2-104. Employment of inspectors; fees and penalties; rules and regulations.

(a) The Commissioner shall be authorized to employ inspectors to carry out the provisions of this part. The Commissioner shall also be authorized to certify other qualified persons to carry out the provisions of this part, including technically competent individuals of any company licensed to insure and insuring elevators in this state and technically competent individuals of a regularly established elevator inspection service. The Commissioner shall prescribe the qualifications, authority, functions, and duties of such inspectors.

(b)(1)(A) The Commissioner shall by rules and regulations prescribe various inspection fees and operating permit fees necessary to enable the state and local enforcement authorities to carry out the provisions of this part.

(B) The owners and users of elevators, dumbwaiters, escalators, manlifts, and moving walks which are inspected by certified inspectors in private business or with private corporations shall be exempt from the payment to the state or local enforcement authorities of the inspection fees provided in subparagraph (A) of this paragraph.

(2) Elevators, dumbwaiters, escalators, manlifts, and moving walks subject to operating permit inspections by private inspectors shall be inspected within 60 calendar days following the required reinspection date. Inspections not performed within this 60 calendar day period shall result in a civil penalty of $500.00 for each elevator, dumbwaiter, escalator, manlift, or moving walk not inspected.

(3) Inspection fees due on elevators, dumbwaiters, escalators, manlifts, and moving walks subject to inspection by the chief or

deputy inspectors or operating permit fees due from inspections performed by private inspectors shall be paid within 60 calendar days of completion of such inspections. Inspection fees or operating fees unpaid within 60 calendar days shall bear interest at the rate of 1.5 percent per month or any fraction of a month. Interest shall continue to accrue until all amounts due, including interest, are received by the Commissioner.

(4) The Commissioner may waive the collection of the penalties and interest assessed in paragraphs (2) and (3) of this subsection when it is reasonably determined that the delays in inspection or payment were unavoidable or due to the action or inaction of the office.

(c) The American National Standard Safety Code for elevators, dumbwaiters, escalators, and moving walks ANSI A17.1-1984 and the Safety Standards for Manlifts ANSI A90.1-1976 are adopted as rules and regulations of the office for the purposes of this part until otherwise amended by rules and regulations of the Commissioner.

(d) In addition to the rules and regulations adopted pursuant to subsections (b) and (c) of this Code section, the Commissioner shall be authorized to adopt such rules and regulations as may be reasonably necessary to carry out the provisions of this part.

(e) The Commissioner shall also have the power in any particular case to grant exceptions and variations from the literal requirements of the rules and regulations adopted pursuant to subsection (c) of this Code section. Such exceptions and variations shall be granted only in any particular case where it is clearly evident that they are necessary to prevent undue hardship or where the existing conditions prevent compliance with the literal requirements of the rules and regulations. In no case shall any exception or variation be granted unless, in the opinion of the Commissioner, reasonable safety will be secured thereby.

History.

Code 1981, § 8-2-104, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 1985, p. 221, § 2; Ga. L. 1987, p. 1470, § 3; Ga. L. 1991, p. 258, § 1; Ga. L. 1992, p. 6, § 8; Ga. L. 2004, p. 631, § 8; Ga. L. 2012, p. 1144, § 8/SB 446.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1991, "subparagraph (A) of this paragraph" was substituted for "subparagraph (A) of paragraph (1)" near the end of subparagraph (b)(1)(B), and "Commissioner" was substituted for "Commission" at the beginning of paragraph (b)(4).

8-2-105. Local government regulation and enforcement.

(a) The governing body of any municipality or county which adopts at least the minimum rules and regulations relative to inspections and safety standards for elevators, escalators, manlifts, moving walks, and

dumbwaiters as provided in subsection (b) of Code Section 8-2-102 and subsection (c) of Code Section 8-2-104 shall have the power:

(1) To adopt by ordinance or resolution any reasonable provisions for the enforcement of such local standards adopted applicable to elevators, escalators, manlifts, moving walks, and dumbwaiters, including procedural requirements, provisions for hearings, provisions for appeals from decisions of local inspectors, and any other provisions or procedures necessary to the proper administration and enforcement of the requirements of such local standards;

(2) To provide for inspection of buildings or similar structures to ensure compliance with the local standards;

(3) To employ inspectors, including chief and deputy inspectors, and any other personnel necessary for the proper enforcement of such standards, provided that such inspectors meet the minimum qualifications of state inspectors and are certified by the Commissioner pursuant to subsection (a) of Code Section 8-2-104;

(4) To contract with other municipalities or counties adopting at least state minimum standards, or with the state, to administer such standards and to provide inspection and enforcement personnel and services necessary to ensure compliance with the standards; and

(5) To contract with any other county or municipality whereby the parties agree that the inspectors of each contracting party may have jurisdiction to enforce the local standards within the boundaries of the other contracting party.

(b) When a local enforcement authority conducts an inspection or issues an operating permit as provided in this part, any inspection fee or operating permit fee due shall be paid to the municipality or county employing the enforcement authority.

History. Code 1981, § 8-2-105, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 2012, p. 1144, § 8/SB 446.

8-2-106. Reporting of accidents; removal from service of equipment involved in accident.

(a) The owner or lessee shall report, by telephone, to the enforcement authority on the same day or by noon on the next work day, excluding state holidays and weekends, all elevator, escalator, manlift, moving walk, or power dumbwaiter related accidents involving personal injury or death. The owner or lessee shall also file a report with all documentation of this accident by the end of the next business day.

(b) The owner or lessee shall report to the enforcement authority by the end of the next business day, excluding state holidays and week-

ends, all elevator, escalator, manlift, moving walk, or power dumbwaiter related accidents involving structural damage to the elevator, escalator, manlift, moving walk, or power dumbwaiter.

(c) Any elevator, escalator, manlift, moving walk, or power dumbwaiter involved in an accident described in subsection (a) or (b) of this Code section shall be removed from service at the time of the accident. The equipment shall not be repaired, altered, or placed back in service until inspected by a certified inspector for the enforcement authority.

History.

Code 1981, § 8-2-106, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 1987, p. 1470, § 4; Ga. L. 2012, p. 1144, § 8/SB 446; Ga. L. 2024, p. 945, § 1/SB 417, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, substituted "file a report with all documentation of this accident by the end of the next business day" for "provide a written report of this accident within seven days" at the end of the last sentence of subsection (a) and, at the beginning of subsection (b), deleted ", in writing," following "report" and substituted "by the end of the next business day" for "within seven days".

Law reviews.

For note, "Now You See It, Now You Don't: A Georgia Perspective on Spoliation of Evidence," see 17 Ga. St. U.L. Rev. 1163 (2001).

For annual survey of tort laws, see 67 Mercer L. Rev. 237 (2015).

JUDICIAL DECISIONS

Summary judgment in favor of elevator company not warranted. — In an action arising from an elevator accident, summary judgment in favor of the defendant elevator company was not warranted since there was inconsistent evidence as to the identity of the elevator at issue and as to whether the elevator may have been subjected to maintenance procedures after the accident and before the required state inspection. Lane v. Montgomery Elevator Co., 225 Ga. App. 523, 484 S.E.2d 249, 1997 Ga. App. LEXIS 246 (1997), cert. denied, No. S97C1104, 1997 Ga. LEXIS 799 (Ga. Sept. 4, 1997).

In an elevator accident, there was a question of fact as to whether the correct elevator was taken out of service and inspected immediately following the incident, as required by O.C.G.A. § 8-2-106, giving rise to a rebuttable presumption that the inspection evidence would have been unfavorable to the repair company; thus, summary judgment for the company was reversed. Hill v. Kone, Inc., 329 Ga. App. 716, 766 S.E.2d 120, 2014 Ga. App. LEXIS 765 (2014).

Evidence of store's failure to submit post-accident report admissible. — In an action to recover for injuries received while attempting to board a store's elevator, evidence of the store's failure to submit a post-accident report to the Department of Labor was admissible. Ruben's Richmond Dep't Store v. Walker, 227 Ga. App. 867, 490 S.E.2d 536, 1997 Ga. App. LEXIS 995 (1997).

Spoliation from failure to report was factual issue. — Trial court erred in granting summary judgment to appellees, a transit authority and a corporation, in a suit by an escalator rider. Based on testimony from the rider's expert that the appellees' failure to properly maintain the escalator caused the incident and from an on-call mechanic who deposed that there clearly was a problem with the unit after the incident but that the mechanic did not contact an inspector despite knowing that

the rider had been injured, there was a factual issue as to whether the appellees spoliated evidence by violating O.C.G.A. § 8-2-106. Thomas v. Metro. Atlanta RTA, 300 Ga. App. 98, 684 S.E.2d 83, 2009 Ga. App. LEXIS 1019 (2009).

Trial court erred in granting a directed verdict to a landlord in the tenants' claims that the tenants were injured in a malfunctioning elevator. The landlord failed to report the incident and inspect the elevator as required by O.C.G.A. § 8-2-106, giving rise to the spoliation presumption under former O.C.G.A. § 24-4-22 (see now O.C.G.A. § 24-14-22) that the evidence would have favored the tenants. Beach v. B.F. Saul Prop. Co., 303 Ga. App. 689, 694 S.E.2d 147, 2010 Ga. App. LEXIS 347 (2010).

Spoliation of evidence. — *Unpublished decision:* When an escalator causes an injury, Georgia law requires that the escalator be placed out of service until a state authority can inspect the escalator. The Georgia Court of Appeals has concluded that a violation of O.C.G.A. § 8-2-106 is a form of spoliation, which warrants a rebuttable presumption that the spoiled evidence would have been harmful to the spoliator. Piechota v. Marriott Int'l, Inc., 144 Fed. Appx. 45, 2005 U.S. App. LEXIS 16506 (11th Cir. 2005).

No violation shown. — Worker in a premises liability case involving an elevator did not show that the premises owner violated O.C.G.A. § 8-2-106(c); the record was silent as to whether a state inspector ever inspected the freight elevator at issue after the accident. Henson v. Georgia-Pacific Corp., 289 Ga. App. 777, 658 S.E.2d 391, 2008 Ga. App. LEXIS 197 (2008).

RESEARCH REFERENCES

ALR.

Liability of building owner, lessee, or manager for injury or death resulting from use of automatic passenger elevator, 99 A.L.R.5th 141.

Liability of maintainer, repairer, or installer of automatic passenger elevator for injury resulting from use of elevator, 115 A.L.R.5th 1.

8-2-107. Penalties.

(a) The installation, alteration, maintenance, and operation of the facilities and equipment regulated by or pursuant to the provisions of this part affect the public interest, and such regulation is necessary for the protection of the public health, safety, and welfare. Therefore, violations of this part or of rules and regulations adopted by or pursuant to this part are a public nuisance, harmful to the public health, safety, and welfare; and, in addition to other remedies provided by law, the actions of the Commissioner, the office, or any local enforcement authority under this part shall be enforceable by injunction properly applied for by the Commissioner or any other enforcement authority in any court of Georgia having jurisdiction over the defendant.

(b)(1) Any person, firm, partnership, or corporation which violates this part shall be guilty of a misdemeanor. Each day on which a violation occurs shall constitute a separate offense.

(2) In addition to the penalty provisions in subsection (a) of this Code section and paragraph (1) of this subsection, the Commissioner

shall have the power, after notice and hearing, to levy civil penalties as prescribed in the rules and regulations of the office in an amount not to exceed $5,000.00 upon any person, firm, partnership, or corporation failing to adhere to the requirements of this part and the rules and regulations promulgated under this part. The imposition of a penalty for a violation of this part or the rules and regulations promulgated under this part shall not excuse the violation or permit it to continue.

History. Code 1981, § 8-2-107, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 1995, p. 370, § 1; Ga. L. 2012, p. 1144, § 8/SB 446.

JUDICIAL DECISIONS

Pleadings in civil action. — Even though it appeared that a homeowner's operation of an elevator in violation of departmental rules and regulations gave rise to a public nuisance under O.C.G.A. § 8-2-107(a), because the plaintiffs did not inform the homeowner that the plaintiffs were relying on a nuisance theory until the plaintiffs moved for a directed verdict at the close of the evidence, the court did not err in denying the plaintiffs' motion for directed verdict on a ground that the motion was not timely asserted. Childers v. Monson, 241 Ga. App. 70, 524 S.E.2d 326, 1999 Ga. App. LEXIS 1430 (1999), cert. denied, No. S00C0529, 2000 Ga. LEXIS 298 (Ga. Mar. 24, 2000).

8-2-108. Appeals from orders or acts of inspectors.

(a) Any person aggrieved by an order or an act of an inspector under this chapter may, within 15 days of notice thereof, appeal from such order or act to the Commissioner who shall, within 30 days thereafter, issue an appropriate order either approving or disapproving said order or act. A copy of such order by the Commissioner shall be given to all interested parties.

(b) This part, as it applies to the Commissioner and the office, shall be governed by Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. Code 1981, § 8-2-108, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 2012, p. 1144, § 8/SB 446.

8-2-109. Consultations; creation of committees of consultants.

The Commissioner shall be authorized to consult with persons knowledgeable in the areas of construction, use, or safety of conveyances or facilities covered by this part and to create committees composed of such consultants to assist the Commissioner in carrying out his or her duties under this part.

History.
Code 1981, § 8-2-109, enacted by Ga. L. 1984, p. 1244, § 1; Ga. L. 1985, p. 221, § 3; Ga. L. 1989, p. 443, § 1; Ga. L. 2012, p. 1144, § 8/SB 446.

8-2-109.1. Exceptions from part; audit of compliance of local governmental units.

(a) This part shall not apply to elevators located on vehicles operating under the rules of other state or federal authorities and used for carrying passengers or freight.

(b) This part shall not apply to any single-seat, single-passenger chairlift located in a building owned and operated by an incorporated or unincorporated nonprofit organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes.

(c) Any county, municipality, or other political subdivision which adopts the minimum rules and regulations as provided in Code Section 8-2-105 shall be audited on a semiannual basis for compliance by the office; and any laws, ordinances, or resolutions in conflict with this part shall be void and of no effect.

History.
Code 1981, § 8-2-110, enacted by Ga. L. 1984, p. 1244, § 1; Code 1981, § 8-2-109.1, as redesignated by Ga. L. 1985, p. 149, § 8; Ga. L. 1987, p. 1470, § 5; Ga. L. 1995, p. 1046, § 1; Ga. L. 2012, p. 1144, § 8/SB 446.

ARTICLE 2

FACTORY BUILT BUILDINGS AND DWELLING UNITS

RESEARCH REFERENCES

Am. Jur. 2d.
26 Am. Jur. 2d, Elevators and Escalators, § 1 et seq. 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, §§ 6, 7.

ALR.
What is "temporary" building or structure within meaning of restrictive covenant, 49 A.L.R.4th 1018.

PART 1

UNITS DESIGNED TO BE AFFIXED TO FOUNDATIONS OR EXISTING BUILDINGS

8-2-110. Legislative findings.

The General Assembly finds that, in an effort to meet the building needs within the state, the private construction industry has developed mass production techniques which can substantially reduce construction costs and that the mass production of buildings presents unique problems with respect to the establishment of uniform health and

safety standards and inspection procedures. The General Assembly further finds that, by minimizing the problems of standards and inspection procedures, it is demonstrating its intention to encourage the reduction of building construction costs and to make building and home ownership more feasible for all residents of this state.

History. Ga. L. 1971, p. 364, § 1; Code 1981, § 8-2-110; Ga. L. 1982, p. 1637, § 1; Ga. L. 2020, p. 493, § 8/SB 429.

OPINIONS OF THE ATTORNEY GENERAL

Scope of part. — O.C.G.A. §§ 8-2-110 through 8-2-119 do not implicitly repeal the authority or responsibilities of other state agencies which may also relate to industrialized buildings. 1983 Op. Att'y Gen. No. 83-15.

8-2-111. Definitions.

As used in this part, the term:

(1) "Commissioner" means the commissioner of community affairs.

(2) "Component" means any assembly, subassembly, or combination of parts for use as a part of a building, which may include structural, electrical, plumbing, mechanical, and fire protection systems and other systems affecting health and safety.

(3) "Industrialized building" means any structure or component thereof which is designed and constructed in compliance with the state minimum standards codes and is wholly or in substantial part made, fabricated, formed, or assembled in manufacturing facilities for installation or assembly and installation on a building site and has been manufactured in such a manner that all parts or processes cannot be inspected at the installation site without disassembly, damage to, or destruction thereof.

(4) "Installation" means the assembly of an industrialized building on site and the process of affixing the industrialized building, component, or system to land, a foundation, footings, or an existing building.

(5) "Local government" means a county or municipality of this state.

(6) "Manufacture" means the process of making, fabricating, constructing, forming, or assembling a product from raw, unfinished, or semifinished materials.

(6.1) "Residential industrialized building" means any dwelling unit designed and constructed in compliance with the Georgia State Minimum Standard One and Two Family Dwelling Code which is

wholly or in substantial part made, fabricated, formed, or assembled in a manufacturing facility and cannot be inspected at the installation site without disassembly, damage to, or destruction thereof. Any such structure may or may not contain a permanent metal chassis but shall be affixed to a permanent load-bearing foundation. The term shall not include manufactured homes as defined by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

(7) "Site" means the entire tract, subdivision, or parcel of land on which the industrialized building is installed.

(8) "System" means structural, plumbing, mechanical, electrical, or fire safety elements, materials, or components used separately or combined for use in a building.

History.
Ga. L. 1971, p. 364, § 2; Ga. L. 1980, p. 1316, § 13; Code 1981, § 8-2-111; Ga. L. 1982, p. 1637, § 1; Ga. L. 1992, p. 1158, § 1; Ga. L. 2010, p. 319, §§ 1, 2/HB 516; Ga. L. 2011, p. 752, § 8/HB 142; Ga. L. 2020, p. 602, § 1/HB 1008.

JUDICIAL DECISIONS

Manufactured home. — Trial court did not err in enjoining the owner from building a manufactured home on a permanent foundation at a site for residential development as the home unquestionably met the description of a modular home and, therefore, the owner violated the restrictive covenant that prohibited the construction of modular homes in that residential area. Vester v. Banks, 257 Ga. App. 26, 570 S.E.2d 586, 2002 Ga. App. LEXIS 1532 (2002).

8-2-112. Inspection and approval of industrialized buildings by commissioner or local government; modifications prohibited; costs; adoption of rules.

(a)(1) An industrialized building manufactured after the effective date of the rules adopted pursuant to Code Section 8-2-113 which is sold, offered for sale, or installed within this state must bear the insignia of approval issued by the commissioner.

(2) This Code section shall not apply to industrialized buildings which are inspected and approved by a local government which has jurisdiction at the site of installation and which are inspected at the place of and during the time of manufacture in accordance with standards established by the commissioner. The cost of the inspection shall be borne by the manufacturer. The commissioner shall be notified of the installation of all such buildings in a manner as the commissioner shall prescribe by rule.

(b)(1) All industrialized buildings and residential industrialized buildings bearing an insignia of approval issued by the commissioner

pursuant to this part shall be deemed to comply with the state minimum standards codes and all ordinances and regulations enacted by any local government which are applicable to the manufacture or installation of such buildings. The determination by the commissioner of the scope of such approval is final. No ordinance or regulation enacted by a county or municipality shall exclude residential industrialized buildings from being sited in such county or municipality in a residential district solely because the building is a residential industrialized building.

(2) Areas of county and municipal authority including, but not limited to, local land use and zoning, building setback, side and rear yard requirements, utility connections, and subdivision regulation, as well as the regulation of architectural and esthetic requirements, are specifically and entirely reserved to the county, if in the unincorporated area, or the municipality where the industrialized building or residential industrialized building is sited.

(3) No industrialized building or component bearing an insignia of approval issued by the commissioner pursuant to this part shall be in any way modified prior to or during installation unless approval is first obtained from the commissioner.

(4) Industrialized buildings which have been inspected and approved by a local government agency shall not be modified prior to or during installation unless approval for the modification is first obtained from the local government agency.

(c) The commissioner by rule shall establish a schedule of fees to pay the costs incurred for the work related to administration and enforcement of this Code section.

(d) All rules and regulations promulgated by the commissioner under this part shall be adopted pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.

Ga. L. 1971, p. 364, § 3; Ga. L. 1980, p. 1316, § 13; Code 1981, § 8-2-112; Ga. L. 1982, p. 1637, § 1; Ga. L. 1983, p. 3, § 6; Ga. L. 1984, p. 22, § 8; Ga. L. 2010, p. 319, § 3/HB 516.

JUDICIAL DECISIONS

State approval precludes local government inspection. — Approval of a factory-built housing unit by the state precludes the right of a local government to condition its approval of a unit upon its own inspection pursuant to O.C.G.A. § 8-2-112(a)(3) (now paragraph (a)(2)). Clayton County v. Otis Pruitt Homes, Inc., 250 Ga. 505, 299 S.E.2d 721, 1983 Ga. LEXIS 578 (1983).

Once state approval is obtained the right of a local government to inspect and approve that particular housing is preempted. Clayton County v. Otis Pruitt Homes, Inc., 250 Ga. 505, 299 S.E.2d 721, 1983 Ga. LEXIS 578 (1983).

OPINIONS OF THE ATTORNEY GENERAL

Disposition of fees. — Provisions of O.C.G.A. § 8-2-112 do not authorize the department to utilize all moneys collected in fees for the administration and enforcement of that section. 1983 Op. Att'y Gen. No. 83-15.

8-2-113. Rules and regulations; delegation of inspection authority; advisory committee; employees and training.

(a) The commissioner shall promulgate rules and regulations to interpret and make specific the provisions of this part. These rules and regulations shall include provisions imposing requirements reasonably consistent with recognized, nationally accepted standards. The commissioner shall adopt other rules and regulations necessary to carry out the provisions of this part.

(b) The commissioner shall enforce the provisions of this part and the rules and regulations adopted pursuant hereto, except that inspection authority may be delegated to a local government agency, an approved inspection agency, or an agency of another state in such manner as the commissioner shall determine.

(c) The rules promulgated by the State Building Administrative Board pursuant to an Act providing for certification of factory built housing and for the establishment of uniform health and safety standards and inspection procedures for factory built housing, approved April 1, 1971 (Ga. L. 1971, p. 364), as amended, shall continue in full force and effect until the effective date of rules adopted pursuant to this part. Units approved under the provisions of the State Building Administrative Board's rules shall be deemed to comply with the requirements of rules promulgated pursuant to this part.

(d) The commissioner shall consult with and obtain the advice of an advisory committee on industrialized buildings in the drafting, promulgation, and revision of rules and regulations to be adopted for the purpose of this part. The committee shall consist of 11 members appointed by the commissioner and approved by the Governor to serve at the commissioner's pleasure. Members shall be appointed for four-year terms, and no member of the committee shall be appointed to serve more than two full terms. Vacancies occurring during a term shall be filled by appointment by the commissioner for the remainder of the unexpired term, and such successor shall meet the requirements and criteria of selection of the person previously holding the vacant position. To be eligible to serve on the committee, each individual member shall be and remain actively involved in the profession or industry of his or her appointed committee position. The position of any member of the committee who, during his or her term of appointment, shall cease to meet the qualifications for original appointment shall be deemed to be

vacated. Members of said committee shall consist of technically qualified, interested, and affected persons appointed by the commissioner from the following professional, technical, and occupational fields:

(1) Two members shall be licensed design professionals representing two of the following: structural engineering, electrical engineering, architecture, or mechanical engineering;

(2) One member shall be a building code enforcement officer;

(3) One member shall be from the residential industrialized building industry;

(4) One member shall be from the commercial industrialized building industry;

(5) One member shall be from the industrialized building installation industry;

(6) One member shall be an elected member of the governing body of a municipality;

(7) One member shall be an elected member of the governing body of a county;

(8) One member shall be from the industrialized building evaluation-inspection service;

(9) One member shall be from a regional commission; and

(10) One member shall be the Commissioner of the Department of Community Affairs or his or her designee.

(e) The advisory committee shall meet on call by the commissioner, and the members of the advisory committee shall be reimbursed for any reasonable and necessary travel and other expenses actually incurred by them while attending meetings of said committee.

(f) Recommendations from this committee shall be subject to approval by an advisory committee appointed by the commissioner pursuant to Code Section 8-2-24.

(g) The commissioner may set qualifications and employ and fix the compensation of any state inspectors or other employees necessary to carry out the provisions of this part. The commissioner may authorize such state inspectors to travel inside or outside the state for the purpose of inspecting industrialized buildings and manufacturing facilities to determine compliance of such structures with standards promulgated pursuant to this part. Upon the request of a local government, the commissioner may authorize a state inspector to visit any site of installation of industrialized buildings for the purpose of inspecting such installation on behalf of the local government requesting such

service. The cost of any inspections made pursuant to this subsection shall be borne by the manufacturer in such manner as the commissioner may prescribe by rule.

(h) The commissioner may establish necessary training programs for a local government enforcement agency and inspection agency personnel.

History.

Ga. L. 1971, p. 364, § 4; Ga. L. 1980, p. 1316, § 13; Code 1981, § 8-2-113; Ga. L. 1982, p. 1637, § 1; Ga. L. 1989, p. 1317, § 6.2; Ga. L. 2004, p. 631, § 8; Ga. L. 2007, p. 275, § 1/SB 246; Ga. L. 2008, p. 181, § 12/HB 1216; Ga. L. 2008, p. 324, § 8/SB 455.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1986, a hyphen was deleted twice between "factory" and "built" in the first sentence of subsection (c).

Editor's notes.

The State Building Administrative Board, referred to in subsection (c), was created by Ga. L. 1969, p. 546, § 2. That Act was repealed by Ga. L. 1980, p. 1316, § 14. All functions previously exercised by the State Building Administrative Board with regard to factory built housing were transferred to the commissioner of community affairs by Ga. L. 1980, p. 1316, § 13.

Administrative rules and regulations.

Administration, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Community Affairs, Industrialized Buildings, Rule 110-2-1-.01 et seq.

Definitions, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Community Affairs, Industrialized Buildings, Rule 110-2-2-.01 et seq.

Adoption of Codes, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Community Affairs, Industrialized Buildings, Rule 110-2-3-.01 et seq.

Local Authority, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Community Affairs, Industrialized Buildings, Rule 110-2-4-.02 et seq.

Agency Requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Community Affairs, Industrialized Buildings, Rule 110-2-5-.01 et seq.

Agency Responsibility, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Community Affairs, Industrialized Buildings, Rule 110-2-6-.01 et seq.

Manufacturer Requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Community Affairs, Industrialized Buildings, Rule 110-2-7-.01 et seq.

Building System, Model Plan, and Installation Requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Community Affairs, Industrialized Buildings, Rule 110-2-8-.01 et seq.

Quality Control Requirements for Manufacturing Facilities, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Community Affairs, Industrialized Buildings, Rule 110-2-9-.01 et seq.

State Insignia and Data Plate Requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Community Affairs, Industrialized Buildings, Rule 110-2-10-.01 et seq.

Certification of Existing Industrialized Buildings-Requirements, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Community Affairs, Industrialized Buildings, Rule 110-2-11-.01 et seq.

Schedule of Fees, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of Community Affairs, Industrialized Buildings, Rule 110-2-13-.01 et seq.

Appeals, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Department of

Community Affairs, Industrialized Buildings, Rule 110-2-14-.01 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Advisory committee may be composed of building industry representatives. — There is no conflict of interest when advisory committees to the Commissioner of Community Affairs are composed of building industry representatives who assist the commissioner in developing rules and regulations for the building industry. 1983 Op. Att'y Gen. No. 83-50.

8-2-114. Industrialized building meeting standards prescribed by other states; delegation of inspection authority.

(a) If the commissioner determines that the standards for construction and inspection of industrialized buildings prescribed by statute or rule of another state are reasonably consistent with the standards developed by the commissioner under this part and that such standards are actually enforced by such other state, the commissioner may provide by rule that industrialized buildings approved by such other state are approved by the commissioner.

(b) The commissioner may assign inspection authority contained in this part by contract with political subdivisions of the State of Georgia, private persons, corporations, and associations.

History.
Ga. L. 1971, p. 364, § 5; Code 1981, § 8-2-114; Ga. L. 1982, p. 1637, § 1.

8-2-115. Appeals from applications of rules and regulations.

(a) Any person aggrieved by the application of any rule or regulation to such person, which rule or regulation is promulgated pursuant to this part, may appeal such application of such rule or regulation. Any such appeal shall be made to an appeals committee appointed by the commissioner which shall consist of not less than three nor more than five members.

(b) The commissioner may promulgate rules and regulations pertaining to the hearing of appeals consistent with the provisions of this Code section.

(c) A final decision of an appeals committee of the commissioner may be appealed in the same manner specified in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," to the same courts with the same rights and limitations specified in such chapter.

History.
Ga. L. 1971, p. 364, § 6; Code 1981, § 8-2-115; Ga. L. 1982, p. 1637, § 1; Ga. L. 1983, p. 3, § 6.

8-2-116. Injunctive relief.

The commissioner may obtain injunctive relief from the superior court to enjoin the sale, delivery, or installation or to require the inspection, repair, or removal of an industrialized building upon an affidavit specifying the manner in which the industrial building does not conform to the requirements of this part or to rules and regulations promulgated pursuant to this part. In order to avail himself of the remedies provided for in this Code section, it shall not be necessary for the commissioner to allege or to prove the absence of an adequate remedy at law.

History.
Ga. L. 1971, p. 364, § 7; Code 1981, § 8-2-116; Ga. L. 1982, p. 1637, § 1; Ga. L. 1983, p. 3, § 6; Ga. L. 1992, p. 1158, § 2.

8-2-117. Civil cause of action; damages, costs, and attorney's fees.

Notwithstanding any other remedy at law, a person who suffers an injury to his person or property or to his person and property as a result of a violation of this part or rules and regulations adopted pursuant hereto shall have a cause of action against the manufacturer, installer, or dealer, or any combination thereof, of the industrialized building causing such injury. Any award may include damages and the cost of litigation, including reasonable attorney's fees.

History.
Ga. L. 1971, p. 364, § 8; Code 1981, § 8-2-117; Ga. L. 1982, p. 1637, § 1; Ga. L. 1992, p. 1158, § 3.

8-2-117.1. Cease and desist orders; civil penalties; appeals.

Whenever the commissioner has reason to believe that any person is or has been violating provisions of this part, the commissioner may issue and deliver to such person an order to cease and desist such violation. In addition, the commissioner may impose a penalty not to exceed $1,000.00 for each day the violation exists. A separate violation shall be deemed to have occurred with respect to each industrialized building or component involved. Decisions made pursuant to this Code section may be appealed as provided for in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History.
Code 1981, § 8-2-117.1, enacted by Ga. L. 1992, p. 1158, § 4.

8-2-118. Criminal penalties.

A person who violates any of the provisions of this part or any rule or regulation adopted pursuant to this part shall be guilty of a misde-

meanor. A separate violation shall be deemed to have occurred with respect to each industrialized building or component involved.

History.
Ga. L. 1971, p. 364, § 9; Code 1981, § 8-2-118, enacted by Ga. L. 1982, p. 1637, § 1; Ga. L. 1997, p. 143, § 8.

OPINIONS OF THE ATTORNEY GENERAL

Scope of part. — O.C.G.A. § 8-2-110 et seq. does not implicitly repeal the authority or responsibilities of other state agencies which may also relate to industrialized buildings. 1983 Op. Att'y Gen. No. 83-15.

Mobile home as industrialized building. — O.C.G.A. § 8-2-118 constitutes a total bar to considering a mobile home as an industrialized building. 1983 Op. Att'y Gen. No. 83-15.

8-2-119. Applicability of part.

The provisions of this part shall not apply to Part 2 of this article relating to manufactured homes.

History.
Ga. L. 1971, p. 364, § 10; Code 1981, § 8-2-119, enacted by Ga. L. 1982, p. 1637, § 1; Ga. L. 1983, p. 3, § 6.

OPINIONS OF THE ATTORNEY GENERAL

Federal preemption. — National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., does not preempt O.C.G.A. § 8-2-1 et seq., but may preempt certain other portions of the Georgia statute dealing with factory built buildings and dwelling units, O.C.G.A. § 8-2-130 et seq. 1984 Op. Att'y Gen. No. 84-4.

8-2-120. Authority to enter to determine compliance with part.

The commissioner or the authorized representatives of the commissioner may enter at reasonable times any factory, warehouse, site, or establishment in which industrialized buildings are manufactured, stored, held for sale, or installed for the purpose of ascertaining whether the requirements of this part and the rules and regulations issued pursuant to this part have been and are being met.

History.
Code 1981, § 8-2-120, enacted by Ga. L. 1992, p. 1158, § 5.

8-2-121. Maintenance and inspection of records.

Each manufacturer, dealer, or installer of industrialized buildings shall establish and maintain such records, make such reports, and provide such information as the commissioner may require by rule or regulation in order to determine whether the manufacturer, dealer, or installer has acted or is acting in compliance with this part. The commissioner may inspect the appropriate books, papers, records, and

documents relevant to determining whether the manufacturer, dealer, or installer has acted or is acting in compliance with this part. This authority shall be liberally construed.

History.
Code 1981, § 8-2-121, enacted by Ga. L. 1992, p. 1158, § 5.

PART 2

MANUFACTURED HOMES

Cross references.
Ad valorem taxation of mobile homes, § 48-5-440 et seq.

Administrative rules and regulations.
Rules and Regulations for Manufactured Homes, Official Compilation of the Rules and Regulations of the State of Georgia, Office of Commissioner of Insurance, Safety Fire Commissioner and Industrial Loan Commissioner, Rules of Safety Fire Commissioner, Rule 120-3-7-.01 et seq.

Uniform Procedures for Mobile Homes, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Revenue, Local Government Services Division, Rule 560-11-9-.01 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Aim of part. — O.C.G.A. § 8-2-20 et seq. is aimed at safety standards for design and construction of new mobile homes. 1981 Op. Att'y Gen. No. U81-15.

Federal preemption. — National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401 et seq., does not preempt O.C.G.A. § 8-2-119, but may preempt certain other portions of the Georgia statute dealing with factory-built buildings and dwelling units, O.C.G.A. § 8-2-130 et seq. 1984 Op. Att'y Gen. No. 84-4.

RESEARCH REFERENCES

Am. Jur. 2d.
53A Am. Jur. 2d, Mobile Homes and Trailer Parks, § 1 et seq.

8-2-130. Short title.

This part shall be known and may be cited as "The Uniform Standards Code for Manufactured Homes Act."

History.
Ga. L. 1973, p. 4, § 1; Code 1981, § 8-2-130; Ga. L. 1982, p. 1376, §§ 1, 7; Ga. L. 2004, p. 607, § 1.

Cross references.
Zoning regulations when replacing pre-existing manufactured homes, § 36-66-7.

8-2-131. Definitions.

As used in this part, the term:

(1) "Commissioner" means the Safety Fire Commissioner.

(2) "Installer" means a person responsible for performing an installation and who is required to obtain a license pursuant to the provisions of Code Section 8-2-160.

(3) "Lending institutions" means lenders that acquire manufactured or mobile homes incident to their regular business, including national and state chartered banks, federal and state chartered credit unions, lenders that are licensed under Article 13 of Chapter 1 of Title 7, and lenders that are involved in manufactured or mobile home chattel lending.

(4) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length or, when erected on site, is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

(5) "Manufacturer" means any person who constructs or assembles manufactured homes.

(6) "Mobile home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length or, when erected on site, is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein and manufactured prior to June 15, 1976.

(7) "Person" means an individual, corporation, partnership, association, or any other legal entity but shall not include a trust or the state or any political subdivision thereof.

(8) "Retail broker" means any person engaged in the business of selling or offering for sale to consumers three or more new or used manufactured or mobile homes in a 12 month period and who does not maintain a display of manufactured or mobile homes. As used in this paragraph, the terms "selling" and "sale" include lease-purchase transactions, and the term "retail broker" does not include lending institutions.

(9) "Retailer" means any person engaged in the business of selling or offering for sale to consumers three or more new or used manufactured or mobile homes in a 12 month period and who maintains a display of manufactured or mobile homes. As used in this paragraph, the terms "selling" and "sale" include lease-purchase transactions, and the term "retailer" does not include lending institutions.

History.
Ga. L. 1968, p. 415, § 2; Ga. L. 1973, p. 4, § 2; Code 1981, § 8-2-131; Ga. L. 1982, p. 1376, §§ 3, 7; Ga. L. 1989, p. 14, § 8; Ga. L. 1992, p. 2750, § 1; Ga. L. 2004, p. 607, § 1; Ga. L. 2015, p. 5, § 8/HB 90.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2004, a comma was deleted following "entity" in paragraph (7).

OPINIONS OF THE ATTORNEY GENERAL

Permanent chassis. — "Permanent chassis" is one which is a part of the mobile home, provides the support for the floor and foundation, and cannot be removed at any time. 1983 Op. Att'y Gen. No. 83-15.

RESEARCH REFERENCES

ALR.
Use of trailer or similar structure for residence purposes as within limitation of restrictive covenant, zoning provision, or building regulation, 96 A.L.R.2d 232; 17 A.L.R.4th 106.

What is "mobile home," "house trailer," "trailer house," or "trailer" within meaning of restrictive covenant, 83 A.L.R.5th 651.

8-2-132. Authority of Commissioner; policy and purpose.

(a) The Commissioner is authorized and empowered to contract or enter into cooperative agreements with any agency, department, or instrumentality of the United States; any agency, board, department, or commission of the state; any county, municipality, or local government of the state, or any combination of same; any public or private corporation or firm, or any persons whatsoever; or any public authority, agency, commission, or institution to participate in the enforcement of manufactured home construction and safety standards which may be promulgated pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.; provided, however, that the Commissioner shall notify the United States Department of Housing and Urban Development by July 1 of his or her intention to terminate any such contract or agreement, which termination shall become effective on July 1 of the following year.

(b) It is the policy of this state and purpose of this part to forbid the manufacture and sale of new manufactured homes which are not constructed in accordance with the National Manufactured Housing

Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

(c) The Commissioner is authorized and empowered to issue and promulgate all rules and procedures which in his or her judgment are necessary and desirable to make effective the construction standards established by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

History.
Ga. L. 1968, p. 415, § 3; Ga. L. 1973, p. 4, § 3; Ga. L. 1977, p. 879, § 1; Code 1981, § 8-2-132; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 2004, p. 607, § 1.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2004, in subsection (a), "corporation or" was substituted for "corporation," near the beginning and "agreement, which" was substituted for "agreement which" near the end.

Administrative rules and regulations.
Rules and Regulations for Manufactured Homes, Official Compilation of the Rules and Regulations of the State of Georgia, Office of Commissioner of Insurance, Safety Fire Commissioner and Industrial Loan Commissioner, Rules of Safety Fire Commissioner, Rule 120-3-7-.01 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Part not intended to regulate used manufactured homes. — O.C.G.A. § 8-2-132(a) clearly evinces intent of General Assembly to regulate new mobile (now manufactured) homes and makes no mention of any intent to regulate used mobile homes. 1981 Op. Att'y Gen. No. U81-15.

RESEARCH REFERENCES

ALR.
What is "mobile home," "house trailer," "trailer house," or "trailer" within meaning of restrictive covenant, 83 A.L.R.5th 651.

8-2-133. Rules and regulations; investigations and inspections.

During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-132, the Commissioner may make, amend, alter, and repeal general rules and regulations of procedure to carry into effect this part, to obtain statistical data concerning manufactured homes, and to prescribe means, methods, and practices to make this part effective. The Commissioner may also make such investigations and inspections as in his or her judgment are necessary to enforce and administer this part.

History.
Ga. L. 1968, p. 415, § 7; Ga. L. 1973, p. 4, § 7; Code 1981, § 8-2-133; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 2004, p. 607, § 1.

8-2-134. Compliance with rules and regulations.

During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-132, no person may manufacture, sell, or offer for sale any manufactured home unless such manufactured home and its components, systems, and appliances have been constructed and assembled in accordance with rules issued by the Commissioner with respect to the construction, assembly, and sale of such manufactured homes and unless compliance with such rules is shown in the manner required by the Commissioner's rules.

History.

Ga. L. 1968, p. 415, § 4; Ga. L. 1973, p. 4, § 4; Code 1981, § 8-2-134; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 2004, p. 607, § 1.

Editor's notes.

Pursuant to the authority granted by Code Section 8-2-132, the Safety Fire Commissioner has promulgated rules pertaining to the construction of mobile homes. These rules are designated as Ch. 120-3-7 of the Rules and Regulations of the State of Georgia and are on file in the Office of the Comptroller General.

8-2-135. Licensing.

During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-132:

(1) Every manufacturer who manufactures manufactured homes outside the State of Georgia and who sells or offers for sale a manufactured home in Georgia shall apply for and obtain a license;

(2) Every manufacturer who manufactures manufactured homes in Georgia shall apply for and obtain a license;

(3) Every retailer and retail broker who sells or offers for sale new or used manufactured homes or mobile homes in Georgia shall apply for and obtain a license;

(4) Applications for licenses and renewal licenses shall be obtained from the Commissioner and submitted on or before January 1 of each year. All applicants shall certify in the application that all construction, electrical, heating, and plumbing standards will be complied with as set forth in this part and in the rules and regulations of the Commissioner; and

(5) The license and renewal license fee shall be $440.00 per manufacturing plant which manufactures manufactured homes within the State of Georgia; $440.00 per out-of-state manufacturing plant which manufactures manufactured homes for the purpose of offering for sale, or having such homes sold, within the State of Georgia; and $300.00 per retailer location and retail broker which sells, offers for sale, or transports to sell such homes within the State

of Georgia. The license shall be valid from January 1 through December 31 of the year in which it was issued. The fee for delinquent renewal applications received after January 10 of each year shall be double the regular annual renewal fee.

History.

Ga. L. 1968, p. 415, § 5; Ga. L. 1973, p. 4, § 5; Ga. L. 1979, p. 1286, § 1; Code 1981, § 8-2-135; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 1983, p. 456, § 1; Ga. L. 1984, p. 22, § 8; Ga. L. 1992, p. 2725, § 3; Ga. L. 1992, p. 2750, § 2; Ga. L. 1993, p. 91, § 8; Ga. L. 2004, p. 607, § 1; Ga. L. 2010, p. 9, § 1-19/HB 1055.

OPINIONS OF THE ATTORNEY GENERAL

Application only to dealers and sellers of new manufactured homes. — Inasmuch as O.C.G.A. § 8-2-20 et seq. is aimed at safety in new mobile (now manufactured) homes, it is logical that the General Assembly intended those statutory provisions to apply only to dealers and sellers of new mobile (now manufactured) homes. 1981 Op. Att'y Gen. No. U81-15.

Support for the position that O.C.G.A. § 8-2-135(b) and (c) (now (2) and (3)) should be construed as applying only to dealers or manufacturers of new mobile (now manufactured) homes can be found in O.C.G.A. §§ 8-2-135(f) (see now O.C.G.A. § 8-2-135.1), 8-2-136, and 8-2-143, which make reference to the National Mobile Home Construction and Safety Standards Act of 1974, (codified at 42 U.S.C. § 5401 et seq.), which Act defines the word "dealer" as a seller of new mobile (now manufactured) homes. 1981 Op. Att'y Gen. No. U81-15.

Waiver of fee requirements by reciprocal agreement. — Under Ga. L. 1973, p. 4, § 6 (see now O.C.G.A. § 8-2-141), the Georgia Safety Fire Commissioner cannot enter into a reciprocal agreement with another state waiving the fees imposed by Ga. L. 1973, p. 4, § 5 (see now O.C.G.A. § 8-2-135). 1973 Op. Att'y Gen. No. 73-73.

RESEARCH REFERENCES

ALR.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

Recovery back of money paid to unlicensed person required by law to have occupational or business license or permit to make contract, 74 A.L.R.3d 637.

8-2-135.1. Manufacturing and monitoring inspection fees.

(a) During such time as the Commissioner's office is acting as the primary inspection agency pursuant to Section 623 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq., or the regulations issued thereunder, every manufacturer who manufactures manufactured homes in Georgia shall pay to the Commissioner a manufacturing inspection fee for each manufactured home manufactured in Georgia, irrespective of whether the manufactured home is offered for sale in this state. This manufacturing inspection fee shall be $30.00 for each certification label, as defined in Section 623 of the National Manufactured Housing

Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq. For any reinspection, a $15.00 additional fee shall be charged.

(b) During such time as the Commissioner's office is acting as the state administrative agency pursuant to Section 623 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq., a monitoring inspection fee paid by each manufacturer in Georgia for each manufactured home manufactured in this state shall be paid to the secretary of the United States Department of Housing and Urban Development or to the secretary's agent for distribution in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq., and the regulations promulgated thereunder.

History.
Code 1981, § 8-2-135.1, enacted by Ga. L. 2004, p. 607, § 1; Ga. L. 2010, p. 9, § 1-20/HB 1055.

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Support for the position that subsections (b) and (c) (now paragraphs (2) and (3)) of O.C.G.A. § 8-2-135 should be construed as applying only to dealers or manufacturers of new mobile (now manufactured) homes can be found in O.C.G.A. §§ 8-2-135.1(a), 8-2-136, and 8-2-143, which make reference to the National Mobile Home Construction and Safety Standards Act of 1974, (codified at 42 U.S.C. § 5401 et seq.), which act defines the word "dealer" as a seller of new mobile (now manufactured) homes. 1981 Op. Att'y Gen. No. U81-15.

RESEARCH REFERENCES

Am. Jur. 2d.
53A Am. Jur. 2d., Mobile Homes and Trailer Parks, § 7 et seq.

8-2-136. Maintenance and inspection of records.

Each manufacturer, retailer, retail broker, and installer of manufactured homes shall establish and maintain such records, make such reports, and provide such information as the Commissioner or the secretary of the United States Department of Housing and Urban Development may reasonably require in order to be able to determine whether the manufacturer, retailer, retail broker, or installer has acted or is acting in compliance with this part or with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq. Upon the request of a person duly designated by the Commissioner or the secretary of the United States Department of Housing and Urban Development, each manufacturer, retailer, retail broker, and installer shall permit that person to inspect appropriate books, papers, records, and documents relevant to determining whether the manufacturer, retailer, retail broker, or installer has acted or is acting in compliance with this part or with the

National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

History.
Ga. L. 1979, p. 1286, § 2; Code 1981, § 8-2-136; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 2004, p. 607, § 1.

8-2-137. Hearings; dispute resolution program.

(a) Any hearing conducted under the provisions of this chapter or of the rules and regulations promulgated under this part shall be in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(b) The Commissioner shall be authorized to determine by regulation the manner in which he or she will conduct presentations of views as required during his or her participation as the state administrative agency pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

(c) The Commissioner may, through regulations, establish a dispute resolution program in compliance with 42 U.S.C. Section 5422, the National Manufactured Housing Construction and Safety Standards Act of 1974.

History.
Ga. L. 1973, p. 4, § 8; Code 1981, § 8-2-137; Ga. L. 1982, p. 1376, §§ 5, 7; Ga. L. 1983, p. 3, § 6; Ga. L. 2004, p. 607, § 1.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1989, "Manufactured Housing" was substituted for "Mobile Home" in subsection (b).

RESEARCH REFERENCES

ALR.
Challenges to Rent Increase in Manufactured or Mobile Home Communities, 85 A.L.R.7th 6.

8-2-138. Alterations or modifications by retailers, retail brokers, or installers.

During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-132, retailers, retail brokers, and installers are expressly prohibited from altering or modifying any manufactured home certified under this part and under the rules and regulations of the Commissioner, except that alterations, changes, or modifications may be made by retailers, retail brokers, or installers certified to make such alterations, changes, or modifications in accordance with rules and regulations promulgated by the Commissioner.

History.
Ga. L. 1973, p. 4, § 9; Code 1981, § 8-2-138; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 2004, p. 607, § 1.

RESEARCH REFERENCES

ALR.
Practices forbidden by state deceptive trade practice and consumer protection acts, 89 A.L.R.3d 449.

8-2-139. Interference with representative of Commissioner; entry and inspection authorized.

(a) No person may interfere with, obstruct, or hinder an authorized representative of the Commissioner who displays proper department credentials in the performance of his or her duties as set forth in this part.

(b) The Commissioner or any of his or her authorized representatives, upon showing proper credentials and in the discharge of their duties pursuant to this part, are authorized during regular business hours and without advance notice to enter and inspect all facilities, warehouses, or establishments in the State of Georgia in which manufactured homes are manufactured.

(c) The Commissioner or any of his or her authorized representatives, upon showing proper credentials and in the discharge of their duties pursuant to this part, are authorized during regular business hours and without advance notice to enter upon and inspect all premises in the State of Georgia in which manufactured homes are being sold.

History.
Ga. L. 1968, p. 415, § 8; Ga. L. 1973, p. 4, § 10; Ga. L. 1979, p. 1286, § 3; Code 1981, § 8-2-139; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 2004, p. 607, § 1.

8-2-140. Inspections during transit authorized.

Any authorized representative of the Commissioner may, upon displaying proper department credentials, stop and inspect any new manufactured home in transit in order to ascertain if the manufactured home complies with this part and the rules and regulations promulgated hereunder, provided that the manufactured home has been manufactured in this state or has been transported into this state for the purpose of sale within this state.

History.
Ga. L. 1973, p. 4, § 11; Code 1981, § 8-2-140; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 1984, p. 22, § 8; Ga. L. 2004, p. 607, § 1.

Cross references.
Authority of law enforcement officers to stop vehicles for purposes of determining compliance with vehicle size, weight, and other laws, § 32-6-30.

8-2-141. Monetary penalty; injunctive relief.

(a) During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-132, any retailer, retail broker, or manufacturer who fails to apply for or obtain a license as required by Code Section 8-2-135 or who fails to remit the appropriate license fee as stated in Code Section 8-2-135 shall be subject to a monetary penalty not to exceed $100.00 for each day that such violation persists, except that the maximum monetary penalty shall not exceed $20,000.00 for any one violation.

(b) Any such monetary penalty may be imposed by the Commissioner after notice and opportunity for hearing as provided under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The amount of such penalty may be collected by the Commissioner in the same manner that money judgments are now enforced in the superior courts of this state.

(c) In addition to any such monetary penalty, the Commissioner may bring a civil action to enjoin any violation of Code Section 8-2-135, and it shall not be necessary for the Commissioner to allege or prove the absence of an adequate remedy at law.

History.
Ga. L. 1968, p. 415, § 6; Ga. L. 1973, p. 4, § 6; Ga. L. 1974, p. 491, § 1; Code 1981, § 8-2-141; Ga. L. 1982, p. 1376, §§ 4, 7; Ga. L. 2004, p. 607, § 1.

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Waiver of fee requirements by reciprocal agreement. — Under Ga. L. 1973, p. 4, § 6 (see now O.C.G.A. § 8-2-141), the Georgia Safety Fire Commissioner cannot enter into a reciprocal agreement with another state waiving the fees imposed by Ga. L. 1973, p. 4, § 5 (see now O.C.G.A. § 8-2-135(5)).1973 Op. Att'y Gen. No. 73-73.

8-2-142. Adjustment of taxes and other fees for certain Georgia-domiciled manufacturers.

If any state or foreign country imposes upon Georgia-domiciled manufactured home manufacturers (or upon their agents or representatives) any taxes, licenses, or other fees in the aggregate, or any fines, penalties, or other material obligations, prohibitions, or restrictions, for the privilege of doing business in that state or country, which costs, obligations, prohibitions, or restrictions are in excess of similar costs, obligations, prohibitions, or restrictions imposed by the State of Georgia upon manufactured home manufacturers (or their agents or representatives) which are domiciled in that state or foreign country and which are doing business or are seeking to do business in the State of Georgia, then so long as that state or foreign country continues to

impose such costs, obligations, prohibitions, or restrictions upon Georgia-domiciled manufactured home manufacturers (or their agents or representatives), the State of Georgia shall impose upon manufactured home manufacturers (or their agents or representatives) which are domiciled in that state or foreign country and which are doing business or are seeking to do business in Georgia the same costs, obligations, prohibitions, or restrictions which are imposed by that state or foreign country on Georgia-domiciled manufactured home manufacturers (or their agents or representatives) which are doing business or seeking to do business in that state or foreign country. Any tax, license, or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on manufactured home manufacturers domiciled in Georgia (or their agents or representatives) shall be deemed to be imposed by such state or country within the meaning of this Code section.

History.

Ga. L. 1975, p. 1557, § 1; Code 1981, § 8-2-142; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 2004, p. 607, § 1.

Editor's notes.

Ga. L. 1973, p. 4, which forms the basis for this part, was amended by Ga. L. 1975, p. 1557, § 1, which added a "Section 12A" to the 1973 Act. The 1973 Act was also amended by Ga. L. 1979, p. 1286, § 5, which again added a "Section 12A" to the 1973 Act. It does not appear that the later Section 12A was intended to amend or supersede the earlier Section 12A, and both have been codified, the 1975 amendment as Code Section 8-2-142, the 1979 amendment as Code Section 8-2-143.

8-2-143. Civil and criminal penalties for certain federal violations.

(a) **Civil penalties.** Any person in this state who violates any provision of Section 610 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq., or any regulation or final order issued thereunder, shall be liable to the State of Georgia for a civil penalty not to exceed the maximum civil penalty set forth in 24 C.F.R. Section 3282.10 for each such violation. Each violation of 42 U.S.C. Section 5401, et seq., or of any regulation or order issued thereunder shall constitute a separate violation with respect to each manufactured home or with respect to each failure or refusal to allow or perform an act required thereby, except that the maximum civil penalty may not exceed the maximum civil penalty set forth in 24 C.F.R. Section 3282.10 for any related series of violations occurring within one year from the date of the first violation.

(b) **Criminal penalties.** An individual or a director, officer, or agent of a corporation who knowingly and willfully violates any provision of Section 610 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq., in a manner which threatens the health or safety of any purchaser shall be

guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000.00 or be imprisoned for not more than 12 months, or both.

History.
Ga. L. 1968, p. 415, § 9; Ga. L. 1973, p. 4, § 12; Ga. L. 1979, p. 1286, §§ 4, 5; Code 1981, § 8-2-143; Ga. L. 1982, p. 1376, §§ 2, 7; Ga. L. 2004, p. 607, § 1; Ga. L. 2022, p. 401, § 1/SB 445.

Amendments.
The 2022 amendment, effective July 1, 2022, in subsection (a), substituted "the maximum civil penalty set forth in 24 C.F.R. Section 3282.10" for "$1,000.00" in the first sentence and for "$1 million" in the second sentence, and substituted "42 U.S.C. Section 5401, et seq.," for "Section 610 of the aforementioned act" near the beginning of the second sentence.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1989, "Manufactured Housing" was substituted for "Mobile Home" in subsections (a) and (b).

Editor's notes.
Ga. L. 1973, p. 4, which forms the basis for this part, was amended by Ga. L. 1975, p. 1557, § 1, which added a "Section 12A" to the 1973 Act. The 1973 Act was also amended by Ga. L. 1979, p. 1286, § 5, which again added a "Section 12A" to the 1973 Act. It does not appear that the later Section 12A was intended to amend or supersede the earlier Section 12A, and both have been codified, the 1975 amendment as Code Section 8-2-142, the 1979 amendment as Code Section 8-2-143.

8-2-144. Reporting and accounting for fees.

The Commissioner of Insurance shall file a report on or before December 15 of each year accounting for all fees received by the Commissioner under this part and Part 3 of this article for the preceding 12 month period and for the actual costs of the inspection programs under this part and Part 3 of this article for the preceding 12 month period. Such report shall be provided to the chairpersons of the House Appropriations Committee, the Senate Appropriations Committee, the House Governmental Affairs Committee, and the Senate Regulated Industries and Utilities Committee, the director of the Office of Planning and Budget, the director of the Senate Budget and Evaluation Office, and the director of the House Budget and Research Office.

History.
Code 1981, § 8-2-144, enacted by Ga. L. 2004, p. 607, § 1; Ga. L. 2008, p. VO1, § 1-2/HB 529; Ga. L. 2014, p. 866, § 8/SB 340.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 2004, "for the preceding 12 month period" following "inspection programs" was deleted.

Part 3

Installation of Manufactured Homes and Mobile Homes

8-2-160. Definitions.

As used in this part, the term:

(1) "Commissioner" means the Safety Fire Commissioner.

(2) "Installation" means the construction of a foundation system and the placement or erection of a manufactured home or a mobile home on the foundation system. Such term includes, without limitation, supporting, blocking, leveling, securing, or anchoring such home and connecting multiple or expandable sections of such home.

(3) "Installer" means a person responsible for performing an installation and who is required to obtain a license pursuant to the provisions of Code Section 8-2-164.

(4) "Manufactured home" means a new or used structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length or, when erected on site, is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

(5) "Manufacturer" means any person who constructs or assembles manufactured housing.

(6) "Mobile home" means a new or used structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length or, when erected on site, is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein and built prior to June 15, 1976.

(7) "Person" means an individual, corporation, partnership, association, or any other legal entity, but shall not include a trust or the state or any political subdivision thereof.

History. Code 1981, § 8-2-160, enacted by Ga. L. 1992, p. 2750, § 3; Ga. L. 2004, p. 607, § 2; Ga. L. 2015, p. 5, § 8/HB 90.

8-2-160.1. Cooperative agreements.

The Commissioner is authorized and empowered to contract or enter into cooperative agreements with any agency, department, or instrumentality of the United States as may be necessary to participate in the

enforcement of manufactured home installation standards which may be promulgated pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.; provided, however, that the Commissioner shall notify the United States Department of Housing and Urban Development by July 1 of his or her intention to terminate any such contract or agreement, which termination shall become effective on July 1 of the following year.

History.
Code 1981, § 8-2-160.1, enacted by Ga. L. 2004, p. 607, § 2.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 2004, a comma was inserted between "agreement" and "which".

8-2-161. Rules and procedure for licensure and installation.

During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-160.1, the Commissioner may:

(1) Establish rules and procedures for the licensure of installers as provided by Code Section 8-2-164 and the implementation and collection of an annual license fee, which shall be $300.00; and

(2) Establish and publish in print or electronically rules and regulations governing the installation of manufactured homes and mobile homes to be followed in instances in which no manufacturer's installation instructions are available. Such rules and regulations shall be equivalent to usual and ordinary manufacturer's installation instructions.

History.
Code 1981, § 8-2-161, enacted by Ga. L. 1992, p. 2750, § 3; Ga. L. 2004, p. 607, § 2; Ga. L. 2010, p. 9, § 1-21/HB 1055; Ga. L. 2010, p. 838, § 10/SB 388.

8-2-162. Administration of part by Commissioner; investigation of consumer complaints.

During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-160.1, the Commissioner has full authority to administer this part and may make, amend, alter, and repeal general rules and regulations of procedure to carry into effect this part, to obtain statistical data concerning manufactured homes and mobile homes, and to prescribe means, methods, and practices to make this part effective. The Commissioner may also make such investigations of consumer complaints relating to installations as in his or her judgment are necessary to enforce and administer this part.

History. Code 1981, § 8-2-162, enacted by Ga. L. 1992, p. 2750, § 3; Ga. L. 2004, p. 607, § 2.

8-2-163. Compliance required.

It shall be unlawful for any person to perform an installation of a manufactured home or a mobile home, without regard to whether such person receives compensation for such action, except as provided in this part.

History. Code 1981, § 8-2-163, enacted by Ga. L. 1992, p. 2750, § 3; Ga. L. 2004, p. 607, § 2.

8-2-164. Licensing and permits.

During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under Code Section 8-2-160.1:

(1) Any installer performing any installation of a manufactured home or a mobile home in this state shall first obtain a license from the Commissioner; provided, however, that persons employed by or contracting with a licensed installer to perform installations shall not be required to obtain such license; and

(2) In addition to the requirements of paragraph (1) of this Code section, any installer performing any installation of any new or pre-owned manufactured or mobile home in this state shall first purchase a permit from the Commissioner. The cost of such permit shall be $60.00 for each manufactured or mobile home. Each installer shall provide any information required by the Commissioner to be submitted to obtain a permit. A permit shall be attached by the installer to the panel box of each manufactured or mobile home upon completion of installation.

History. Code 1981, § 8-2-164, enacted by Ga. L. 1992, p. 2750, § 3; Ga. L. 2004, p. 607, § 2; Ga. L. 2010, p. 9, § 1-22/HB 1055.

8-2-165. Compliance with manufacturer's installation instructions; random inspections on installations.

(a) Any installation of a manufactured home or a mobile home in this state shall be performed in strict compliance with the applicable manufacturer's installation instructions, specifically including, without limitation, correctly installed tie-downs and anchors. In the absence of such instructions, installations shall be performed in accordance with the applicable rules and regulations adopted by the Commissioner.

(b) During such time as the Commissioner has contracted or entered into cooperative agreements pursuant to his or her authority under

Code Section 8-2-160.1, the Commissioner or his or her agent shall perform random inspections on installations performed by each installer each year. The inspections required by this subsection shall be independent of any requirements under Subpart I of Part 3282 of the Manufactured Home Procedural and Enforcement Regulations of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

History.
Code 1981, § 8-2-165, enacted by Ga. L. 1992, p. 2750, § 3; Ga. L. 2004, p. 607, § 2.

8-2-166. Penalties.

Any person determined by the Commissioner to be in violation of this part may be penalized by a fine of not more than $500.00 for each such violation and by the suspension or revocation of licensure. Multiple violations of this part occurring in a single installation shall constitute one violation. Each installation performed in violation of this part shall constitute a separate violation. In addition to any penalty imposed by the Commissioner, any person convicted of a violation of this part shall be guilty of and may be punished as for a misdemeanor.

History.
Code 1981, § 8-2-166, enacted by Ga. L. 1992, p. 2750, § 3; Ga. L. 2004, p. 607, § 2; Ga. L. 2024, p. 1052, § 1(b)(3)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in this Code section.

8-2-167. Requirements not consistent with part prohibited.

No political subdivision may adopt or enforce any requirement not consistent with this part.

History.
Code 1981, § 8-2-167, enacted by Ga. L. 1992, p. 2750, § 3; Ga. L. 2004, p. 607, § 2.

8-2-168. Hearings.

(a) The adoption of rules and conduct of hearings under this part shall be in compliance with the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(b) The Commissioner is authorized to provide by regulation the manner in which he or she will conduct presentations of views during his or her participation as the state administrative agency as required by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

History.
Code 1981, § 8-2-168, enacted by Ga. L. 1992, p. 2750, § 3; Ga. L. 2004, p. 607, § 2.

PART 3A

INSTALLATION OF PRE-OWNED MANUFACTURED HOMES

8-2-170. Definitions.

As used in this part, the term:

(1) "Install" means to construct a foundation system and to place or erect a manufactured home on such foundation system. Such term includes, without limitation, supporting, blocking, leveling, securing, or anchoring such manufactured home and connecting multiple or expandable sections of such manufactured home.

(2) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length or, when erected on site, is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et seq.

(3) "Pre-owned manufactured home" means any manufactured home that has been previously used as a residential dwelling and has been titled.

History.
Code 1981, § 8-2-170, enacted by Ga. L. 2010, p. 306, § 1/SB 384; Ga. L. 2024, p. 1052, § 1(b)(4)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "means any" for "is any" in paragraph (3).

RESEARCH REFERENCES

Am. Jur. 2d.
53A Am. Jur. 2d, Mobile Homes and Trailer Parks, § 1 et seq.

8-2-171. Health and safety standards for pre-owned manufactured homes; inspections; immunity.

(a) On and after September 1, 2010, any person who is the owner of real property or who has a right to the use of real property may install and occupy a pre-owned manufactured home on such property, provided

that such pre-owned manufactured home is in compliance with the provisions of this part and any applicable county or municipal zoning ordinances.

(b) No county or municipality shall impose any health and safety standards or conditions based upon the age of a manufactured home.

(c) A county or municipality may establish health and safety standards and conditions and an inspection program for pre-owned manufactured homes which are relocated from their current locations.

(d) Neither a county or municipality nor any inspector thereof inspecting a pre-owned manufactured home pursuant to this Code section shall be liable for any injuries to persons resulting from any defects or conditions in such pre-owned manufactured home.

History.
Code 1981, § 8-2-171, enacted by Ga. L. 2010, p. 306, § 1/SB 384.

JUDICIAL DECISIONS

Statute did not protect inspector whose purported inspection was made four years before the statute was enacted. — O.C.G.A. § 8-2-171(d), providing that no municipal or county inspector inspecting a pre-owned manufactured home pursuant to that Code section shall be liable for injuries to persons resulting from defects in the home, did not protect a city inspector whose inspection was made four years prior to the statute's enactment. Vann v. Finley, 313 Ga. App. 153, 721 S.E.2d 156, 2011 Ga. App. LEXIS 1080 (2011), cert. dismissed, No. S12C0667, 2012 Ga. LEXIS 387 (Ga. Apr. 24, 2012).

Part 4

Manufactured or Mobile Homes

RESEARCH REFERENCES

Am. Jur. 2d.
53A Am. Jur. 2d, Mobile Homes and Trailer Parks, § 1 et seq.

Subpart 1

General Provisions

8-2-180. Definitions.

As used in this part, the term:

(1) "Clerk of superior court" means the clerk of the superior court of the county in which the property to which the home is or is to be affixed is located.

(2) "Commissioner" means the state revenue commissioner and includes any county tax commissioner when so authorized by the state revenue commissioner to act on his or her behalf in carrying out the responsibilities of this part.

(3) "Home" means a manufactured home.

(4) "Manufactured home" has the meaning specified in paragraph (4) of Code Section 8-2-160.

History.
Code 1981, § 8-2-180, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.

Law reviews.
For survey article on real property law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 397 (2003).
For annual survey of real property law, see 58 Mercer L. Rev. 367 (2006).

8-2-181. Manufactured home as personal property; requirements for real property status; requirements for Certificate of Permanent Location.

(a) Except as provided in Subpart 1A of this part, a manufactured home shall constitute personal property and shall be subject to the "Motor Vehicle Certificate of Title Act," Chapter 3 of Title 40, until such time as the home is converted to real property as provided for in this part or as provided in Subpart 1A of this part.

(b) A manufactured home shall become real property if:

(1) The home is or is to be permanently affixed on real property and one or more persons with an ownership interest in the home also has an ownership interest in such real property; and

(2) The owner of the home and the holders of all security interests therein execute and file a Certificate of Permanent Location:

(A) In the real estate records of the county where the real property is located; and

(B) With the commissioner.

(c) The Certificate of Permanent Location shall be in a form prescribed by the commissioner and shall include:

(1) The name and address of the owner of the home;

(2) The names and addresses of the holders of any security interest in and of any lien upon the home;

(3) The title number assigned to the home;

(4) A description of the real estate on which the home is or is to be

located, including the name of the owner and a reference by deed book and page number to the chain of title of such real property; and

(5) Any other data the commissioner prescribes.

History.
Code 1981, § 8-2-181, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.

Law reviews.
For annual survey of real property law, see 58 Mercer L. Rev. 367 (2006).

JUDICIAL DECISIONS

Application with federal law. — Provisions of O.C.G.A. § 8-2-181 did not apply for consideration of whether or not the debtors' mobile home, purchased and placed on the real property at issue in April 2000, was a fixture to the property so that the provisions of 11 U.S.C. § 1322 applied to a creditor's mortgage interest. Williamson v. Wash. Mut. Home Loans, Inc., 387 B.R. 914, 2008 Bankr. LEXIS 1585 (Bankr. M.D. Ga. 2008), aff'd, 400 B.R. 917, 2009 U.S. Dist. LEXIS 7939 (M.D. Ga. 2009).

In an appeal from a decision by a bankruptcy court in which that court found that a lender's claim was secured by a security interest in real property consisting of the debtors' principal residence, which was a mobile home, and could not be modified under 11 U.S.C. § 1322(b)(2), O.C.G.A. § 8-2-181 was inapplicable. The Georgia law became effective on May 31, 2003, whereas the loan was made in April 2000, and the date of the loan was the critical date in determining whether the lender's claim was protected by § 1322(b)(2). Williamson v. Wash. Mut. Home Loans, Inc., 400 B.R. 917, 2009 U.S. Dist. LEXIS 7939 (M.D. Ga. 2009).

8-2-182. Recording of Certificate of Permanent Location; responsibilities of commissioner; notification to tax assessors.

(a) When a Certificate of Permanent Location is properly filed with the clerk of superior court, the clerk shall record such certificate in the same manner as other instruments affecting the real property described in the Certificate of Permanent Location and shall charge and collect the fees usually charged for recording deeds and other instruments relating to real estate. Such certificate shall be indexed under the name of the current owner of the real property in both the grantor and grantee indexes. The clerk shall provide the owner with a certified copy of the Certificate of Permanent Location, reflecting its filing, and shall charge and collect the fees usually charged for the provision of certified copies of documents relating to real estate.

(b) Upon receipt of a certified copy of a properly executed Certificate of Permanent Location, along with the certificate of title, the commissioner shall file and retain a copy of such Certificate of Permanent Location together with all other prior title records related to the home. When a properly executed Certificate of Permanent Location has once been filed, the commissioner shall accept no further title filings with

respect to that home, except as may be necessary to correct any errors in the department's records and except as provided in Subparts 2 and 3 of this part.

(c) When a Certificate of Permanent Location is so filed, the commissioner shall issue to the clerk of the superior court with whom the original Certificate of Permanent Location was filed confirmation by the commissioner that the Certificate of Permanent Location has been so filed and the certificate of title has been surrendered.

(d) Upon receipt of confirmation of the filing of the Certificate of Permanent Location from the commissioner, the clerk of superior court shall provide a copy of the Certificate of Permanent Location to the appropriate board of tax assessors or such other local official as is responsible for the valuation of real property.

History.
Code 1981, § 8-2-182, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.

Law reviews.
For annual survey of real property law, see 58 Mercer L. Rev. 367 (2006).

8-2-183. Status of home as part of real property.

(a) When a Certificate of Permanent Location has been properly filed with the clerk of superior court, a certified copy of the Certificate of Permanent Location is properly filed with the commissioner, and the certificate of title is surrendered, the home shall become for all legal purposes a part of the real property on which it is located. Without limiting the generality of the foregoing, the home shall be subject to transfer by the owner of the real property, subject to any security interest in the real property and subject to foreclosure of any such interest, in the same manner as and together with the underlying real property.

(b) When a home has become a part of the real property as provided in this part, it shall be unlawful for any person to remove such home from the real property except with the written consent of the owner of the real property and the holders of all security interests in the real property and in strict compliance with the requirements of Subpart 2 of this part. Any person who violates this subsection shall be guilty of a misdemeanor of a high and aggravated nature.

History.
Code 1981, § 8-2-183, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.

Subpart 1A

Permanently Affixed Manufactured Home as Real Property

8-2-183.1. When manufactured home becomes real property; Certificate of Permanent Location; removal.

(a) A manufactured home which has not been issued a certificate of title from the commissioner and which is sold on or after July 1, 2006, shall become real property if:

(1) The home is or is to be permanently affixed on real property and one or more persons with an ownership interest in the home also has an ownership interest in such real property; and

(2) The owner of the home and the holders of all security interests therein execute and file a Certificate of Permanent Location in the real estate records of the county where the real property is located.

(b) The Certificate of Permanent Location shall be in a form prescribed by the commissioner and shall include:

(1) The name and address of the owner of the home;

(2) The names and addresses of the holders of any security interest in and of any lien upon the home;

(3) As an attachment, the manufacturer's original certificate of origin; and

(4) A description of the real estate on which the home is or is to be located, including the name of the owner and a reference by deed book and page number to the chain of title of such real property.

(c) A Certificate of Permanent Location shall be filed with the clerk of superior court, and the clerk shall record such certificate in the same manner as other instruments affecting the real property described in the Certificate of Permanent Location and shall charge and collect the fees usually charged for recording deeds and other instruments relating to real estate. Such certificate shall be indexed under the name of the current owner of the real property in both the grantor and grantee indexes.

(d) When a Certificate of Permanent Location is properly filed with the clerk of superior court, the home shall become for all legal purposes a part of the real property on which it is located. Without limiting the generality of the foregoing, the home shall be subject to transfer by the owner of the real property, subject to any security interest in the real property and subject to foreclosure of any such interest, in the same manner as and together with the underlying real property.

(e) When a properly executed Certificate of Permanent Location has once been filed, the commissioner shall accept no further title filings with respect to that home, except as may be necessary to correct any errors in the department's records and except as provided in Subparts 2 and 3 of this part.

(f) Upon recording the Certificate of Permanent Location, the clerk of superior court shall provide a copy of the Certificate of Permanent Location to the appropriate board of tax assessors or such other local official as is responsible for the valuation of real property.

(g) When a home has become a part of the real property as provided in this part, it shall be unlawful for any person to remove such home from the real property except with the written consent of the owner of the real property and the holders of all security interests in the real property and in strict compliance with the requirements of Subpart 2 of this part. Any person who violates this subsection shall be guilty of a misdemeanor of a high and aggravated nature.

History.
Code 1981, § 8-2-183.1, enacted by Ga. L. 2006, p. 702, § 1/SB 253.

Law reviews.
For annual survey of real property law, see 58 Mercer L. Rev. 367 (2006).

Subpart 2

Removal from Permanent Location

8-2-184. Reversion of manufactured home to personal property; Certificate of Removal from Permanent Location required.

(a) A home which has previously become real property shall become personal property if:

(1) The manufactured home is or is to be removed from the real property with the written consent of the owner of the real property and the holders of all security interests therein; and

(2) The owner of the real property and the holders of all security interests therein execute and file a Certificate of Removal from Permanent Location:

(A) With the commissioner; and

(B) In the real estate records of the county where the real property is located.

(b) The Certificate of Removal from Permanent Location shall be in a form prescribed by the commissioner and shall include:

(1) The name and address of the owner;

(2) The names and addresses of the holders of any security interest and of any lien;

(3) The title number formerly assigned to the home, if applicable;

(4) A description of the real estate on which the home was previously located, including the name of the owner and a reference by deed book and page number to the recording of the former Certificate of Permanent Location; and

(5) Any other data the commissioner prescribes.

History. Code 1981, § 8-2-184, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.

8-2-185. Duties of commissioner upon receipt of Certificate of Removal from Permanent Location.

(a) Upon receipt of a properly executed Certificate of Removal from Permanent Location, the commissioner shall file and retain a copy of such certificate together with all other prior title records related to the home and may thereafter issue a new certificate of title for the home. The commissioner shall charge and collect the fee otherwise prescribed by law for the issuance of a certificate of title.

(b) When a Certificate of Removal from Permanent Location is so filed, the commissioner shall return to the filing party the original of the Certificate of Removal from Permanent Location containing thereon confirmation by the commissioner that the Certificate of Removal from Permanent Location has been so filed.

History. Code 1981, § 8-2-185, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.

8-2-186. Acceptance and recording of Certificate of Removal from Permanent Location by clerk of superior court.

(a) The clerk of superior court shall not accept a Certificate of Removal from Permanent Location for filing unless the Certificate of Removal from Permanent Location contains thereon the confirmation by the commissioner that the Certificate of Removal from Permanent Location has been filed with the commissioner.

(b) When a Certificate of Removal from Permanent Location is properly filed with the clerk of superior court, the clerk shall record such certificate in the same manner as other instruments affecting the real property described in the Certificate of Removal from Permanent Location and shall charge and collect the fees usually charged for

recording deeds and other instruments relating to real estate. Such certificate shall be indexed under the name of the current owner of the real property in both the grantor and grantee indexes.

History.
Code 1981, § 8-2-186, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.

Subpart 3

Destruction of Manufactured Homes

8-2-187. Certificate of Destruction required.

(a) When a home which has previously become real property has been or is to be destroyed, the owner of the real property and the holders of all security interests therein shall execute and file a Certificate of Destruction:

(1) With the commissioner; and

(2) In the real estate records of the county where the real property is located.

(b) The Certificate of Destruction shall be in a form prescribed by the commissioner and shall include:

(1) The name and address of the owner;

(2) The names and addresses of the holders of any security interest and of any lien;

(3) The title number formerly assigned to the home, if applicable;

(4) A description of the real estate on which the home was previously located, including the name of the owner and a reference by deed book and page number to the recording of the former Certificate of Permanent Location;

(5) Verification of the destruction by a law enforcement officer; and

(6) Any other data the commissioner prescribes.

History.
Code 1981, § 8-2-187, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.

8-2-188. Duties of commissioner upon receipt of Certificate of Destruction.

(a) Upon receipt of a properly executed Certificate of Destruction, the

commissioner shall file and retain a copy of such certificate together with all other prior title records related to the home.

(b) When a Certificate of Destruction is so filed, the commissioner shall issue to the filing party the original of the Certificate of Destruction containing thereon confirmation by the commissioner that the Certificate of Destruction has been so filed.

History.
Code 1981, § 8-2-188, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.

8-2-189. Acceptance and recording of Certificate of Destruction by clerk of superior court.

(a) The clerk of superior court shall not accept a Certificate of Destruction for filing unless the Certificate of Destruction contains thereon the confirmation by the commissioner that the Certificate of Destruction has been filed with the commissioner.

(b) When a Certificate of Destruction is properly filed with the clerk of superior court, the clerk shall record such certificate in the same manner as other instruments affecting the real property described in the Certificate of Destruction and shall charge and collect the fees usually charged for recording deeds and other instruments relating to real estate. Such certificate shall be indexed under the name of the current owner of the real property in both the grantor and grantee indexes.

History.
Code 1981, § 8-2-189, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2004, p. 631, § 8; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.

Subpart 4

Taxation and Fees

8-2-190. Taxation as real property.

A manufactured home which constitutes real property shall not be subject to Article 10 of Chapter 5 of Title 48 but shall instead be taxed as real property and a part of the underlying real estate.

History.
Code 1981, § 8-2-190, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.

8-2-191. Filing fee.

The commissioner shall charge a fee of $18.00 for any filing under this part.

History.
Code 1981, § 8-2-191, enacted by Ga. L. 2003, p. 430, § 1; Ga. L. 2005, p. 334, § 3-1/HB 501; Ga. L. 2006, p. 702, § 1/SB 253.

ARTICLE 3

APPLICATION OF BUILDING AND FIRE RELATED CODES TO EXISTING BUILDINGS

8-2-200. Short title.

This article shall be known and may be cited as "The Uniform Act for the Application of Building and Fire Related Codes to Existing Buildings."

History.
Code 1981, § 8-2-200, enacted by Ga. L. 1984, p. 1160, § 1.

8-2-201. Purpose and applicability of article.

(a) It is a purpose of this article to encourage the sensitive rehabilitation, restoration, stabilization, or preservation of existing buildings throughout this state and to encourage the preservation of buildings and structures deemed to be historic in total or in part; provided, however, that such rehabilitation and preservation efforts should provide for the upgrading of the safety features of the building or structure to provide a practical level of safety to the public and surrounding property. It is the further purpose of this article to provide guidance regarding acceptable alternative solutions and to stimulate enforcement authorities to utilize alternative compliance concepts wherever practical to permit the continued use of existing buildings and structures without overly restrictive financial burdens on owners or occupants.

(b) The provisions of this article shall not be applicable to new construction.

History.
Code 1981, § 8-2-201, enacted by Ga. L. 1984, p. 1160, § 1; Ga. L. 2020, p. 493, § 8/SB 429.

8-2-202. Definitions.

As used in this article, the term:

(1) "Enforcement authority" means the Safety Fire Commis-

sioner, the state fire marshal, local building officials, local fire marshals, or any other state or local officials responsible for the implementation, application, or enforcement of any state law or local ordinance relating to building construction, or any state or local rule or regulation relating to building construction, or any building, mechanical, electrical, plumbing, life safety or fire prevention codes, or other construction standards that apply or are intended to apply to existing buildings. The term "enforcement authority" also means any local official designated by the local governing authority as the enforcement authority for the purposes of this article.

(2) "Existing building or structure" means any completed building or structure which has been placed in service for a minimum of five years.

(3) "Safety Fire Commissioner" or "Commissioner" means the office created in Code Section 25-2-2.

History.
Code 1981, § 8-2-202, enacted by Ga. L. 1984, p. 1160, § 1.

8-2-203. Effect of article on state and local enforcement authorities.

The provisions of this article shall be mandatory and binding on the state fire marshal, the Safety Fire Commissioner, and other state officials responsible for state building code, fire code, life safety code, or other construction code enforcement. This article is not mandatory or binding on local enforcement authorities; provided, however, that any local building, fire, life safety, plumbing, electrical, mechanical, or other construction code enforcement authority may apply the applicable provisions of this article to any existing building whenever the local governing authority has adopted this article by reference and whenever such local code enforcement authority determines the need to utilize compliance alternatives to any provisions of the rules, regulations, codes, or standards he or she is empowered to interpret, apply, or enforce under authority of any state law or local ordinance. This article is a tool for use of code enforcement authorities to use as deemed appropriate in attempting to resolve problems encountered while enforcing codes and standards with regard to existing buildings and structures. Enforcement authorities should advise appropriate appeals boards of the provisions, purposes, and intent of this article.

History.
Code 1981, § 8-2-203, enacted by Ga. L. 1984, p. 1160, § 1.

8-2-204. Alteration or repair without total compliance with new construction requirements.

The provisions of this article shall require any state code enforcement authority and shall permit any authorized local code enforcement authority to permit the repair, alteration, addition, or change of use or occupancy of existing buildings without total compliance with any state or local rule, regulation, code, or standard for new construction requirements under the following general conditions:

(1) All noted conditions hazardous to life, based on the provisions of applicable state and local standards or codes for existing buildings, shall be corrected to a reasonable and realistic degree as set forth in this article, with specific attention to Code Sections 8-2-214 through 8-2-219;

(2) The existing building becomes the minimum performance standard; and

(3) The degree of compliance of the building after changes must not be below that existing before the changes. Nothing in this article will require nor prohibit compliance with requirements more stringent than those provided in this article.

History.
Code 1981, § 8-2-204, enacted by Ga. L. 1984, p. 1160, § 1.

8-2-205. Identification and correction of certain conditions or defects.

With reference to existing buildings, authorized enforcement authorities should give special attention to the conditions or defects described in this Code section in accordance with the provisions of Code Section 8-2-204, so as to assure any such conditions or defects are identified and corrected as deemed appropriate by the enforcement authority having jurisdiction based on applicable state and local codes and through the utilization of appropriate compliance alternatives:

(1) **Structural.** Any building or structure or portion thereof which is in imminent danger of collapse because of but not limited to the following factors:

(A) Dilapidation, deterioration, or decay;

(B) Faulty structural design or construction;

(C) The removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; or

(D) The deterioration, decay, or inadequacy of the foundation;

(2) **Number of exits.** Less than two approved independent,

remote, and properly protected exit ways serving every story of a building, except where a single exit way is permitted by the applicable state or local fire or building code or life safety code;

(3) **Capacity of exits.** Any required door, aisle, passageway, stairway, or other required means of egress which is not of sufficient capacity to provide for the population of the portions of the building served and which is not so arranged as to provide safe and adequate means of egress to a place of safety; and

(4) **Mechanical systems.** Utilities and mechanical systems not in conformance with the codes in effect at the time of construction of a building which create a serious threat of fire or threaten the safety of the occupants of the building.

History.
Code 1981, § 8-2-205, enacted by Ga. L. 1984, p. 1160, § 1.

8-2-206. Consideration of compliance alternatives.

Code Sections 8-2-207 through 8-2-211 contain generally acceptable compliance alternatives illustrating principles which shall be applied to the rehabilitation of existing buildings by state enforcement authorities and which may be applied by authorized local enforcement authorities in Georgia. It is recognized for purposes of this article that all building systems interact with each other; therefore, any consideration of compliance alternatives should take into account all existing and proposed conditions to determine their acceptability. The compliance alternatives are not all-inclusive and do not preclude consideration and approval of other alternatives by any enforcement authority.

History.
Code 1981, § 8-2-206, enacted by Ga. L. 1984, p. 1160, § 1.

8-2-207. Compliance alternatives for inadequate number of exits.

Compliance alternatives for an inadequate number of exits include, but are not limited to, the following:

(1) Provide connecting fire-exit balconies acceptable to the enforcement authority between buildings;

(2) Provide alternate exit or egress facilities leading to safety outside the building or to a place of safe refuge in the building or an adjoining building as acceptable to the enforcement authority;

(3) Provide an exterior fire escape or escapes as acceptable to the enforcement authority where the providing of enclosed interior or enclosed exterior stairs is not practical; or

(4) Install early fire warning and fire suppression systems.

History.
Code 1981, § 8-2-207, enacted by Ga. L. 1984, p. 1160, § 1.

8-2-208. Compliance alternatives for excessive travel distances to approved exit.

Compliance alternatives for excessive travel distances to an approved exit include, but are not limited to, the following:

(1) Install an approved smoke detection system throughout the building;

(2) Install an approved complete automatic fire suppression system;

(3) Subdivide the exit travel route with smoke-stop doors acceptable to the enforcement authority;

(4) Increase the fire resistance rating of corridor walls and doors; or

(5) Provide additional approved means of escape.

History.
Code 1981, § 8-2-208, enacted by Ga. L. 1984, p. 1160, § 1.

8-2-209. Compliance alternatives for unenclosed or improperly enclosed exit stairways or vertical shafts.

Compliance alternatives for unenclosed or improperly enclosed exit stairways or vertical shafts include, but are not limited to, the following:

(1) Improve enclosure of exit stairway;

(2) Add a partial fire suppression system;

(3) Add a sprinkler draft curtain; or

(4) Add a smoke detection system.

History.
Code 1981, § 8-2-209, enacted by Ga. L. 1984, p. 1160, § 1.

RESEARCH REFERENCES

ALR.
Validity and construction of statute or ordinance requiring installation of automatic sprinklers, 63 A.L.R.5th 517.

8-2-210. Compliance alternatives for inadequate fire partitions or walls.

Compliance alternatives for inadequate or a total lack of fire partitions or fire separation walls shall be as set forth in Code Section 8-2-209.

History.
Code 1981, § 8-2-210, enacted by Ga. L. 1984, p. 1160, § 1.

8-2-211. Compliance alternatives for lack of required protection of openings in exterior walls.

Compliance alternatives for a lack of required protection of openings in exterior walls where a fire exposure is a risk include, but are not limited to, the following:

(1) Improve fire resistance of existing openings and protect them with fire-rated windows or doors as appropriate;

(2) Seal the openings with fire-rated construction as approved by the enforcement authority; or

(3) Install an approved fire suppression system.

History.
Code 1981, § 8-2-211, enacted by Ga. L. 1984, p. 1160, § 1.
Code Commission notes.
Pursuant to Code Section 28-9-5, in 1985, "resistance" was substituted for "resistence" in paragraph (1).

8-2-212. Filing of approved compliance alternatives.

Whenever action is taken on any existing building to repair, make alterations, or change the use or occupancy of an existing structure and, when said action proposes the use of compliance alternatives, the authorized enforcement authority shall ensure that at least one copy of the accepted compliance alternatives approved, including applicable plans, test data, or other data submitted for evaluation, be maintained on file in the office of the local enforcement authority. If said structure also falls under the jurisdiction of a state level enforcement authority, at least one copy of same material shall be maintained on file with that authority.

History.
Code 1981, § 8-2-212, enacted by Ga. L. 1984, p. 1160, § 1.

8-2-213. Final review of projects; agreement of local authorities.

Where an existing building or structure falls within the jurisdiction

of both state level and local level enforcement authorities, the final review of any part of the project which is under the jurisdiction of both such enforcement authorities shall occur with the state authority; provided, however, that the local fire and building authorities must agree in writing with any compliance alternatives before such can be approved by the state authority. It is the intent of this Code section that the state enforcement authority be very liberal in the consideration and approval of compliance alternatives which have the documented support of local enforcement authorities.

History.
Code 1981, § 8-2-213, enacted by Ga. L. 1984, p. 1160, § 1; Ga. L. 2020, p. 493, § 8/SB 429.

8-2-214. Additions.

Additions to an existing building shall comply with the applicable requirements of state and local laws, rules, regulations, codes, and standards for new construction. Such additions shall not impose loads either vertical or horizontal which would cause the existing building to be subjected to stresses exceeding those permitted under new construction. If the existing building does not comply with the standards provided in this article and the authorized enforcement authority finds that the addition adversely affects the performance of the total building, the authorized enforcement authority may require:

(1) The new addition to be separated from the existing structure by at least a two-hour fire wall with openings therein properly protected; or

(2) The installation of an approved automatic fire suppression system; or

(3) Other remedies which may be deemed appropriate by the enforcement authority.

History.
Code 1981, § 8-2-214, enacted by Ga. L. 1984, p. 1160, § 1.

8-2-215. Minor alterations or repairs; reduction or removal of features; alteration or repair without further compliance; installation of mechanical systems.

Minor alterations or repairs to an existing building which do not adversely affect the performance or safety of the building may be made with the same or like materials. Existing buildings which, in part or as a whole, exceed the requirements of any applicable construction or fire safety code, may, in the course of compliance with this article, have reduced or removed, in part or total, features not required by such code for new construction; provided, however, that such features were not a

condition of prior approval. Existing buildings and structures which, in part or as a whole, do not meet the requirements of the applicable code for new construction may be altered or repaired without further compliance to any such code by utilizing the provisions of this article, provided that their present degree of compliance to any applicable construction or fire safety code is not reduced. Any new mechanical systems installed in an existing building shall conform to applicable codes for new construction to the fullest extent practical as approved by the authorized enforcement authorities.

History.
Code 1981, § 8-2-215, enacted by Ga. L. 1984, p. 1160, § 1; Ga. L. 2020, p. 493, § 8/SB 429.

8-2-216. Continuation of legal use and occupancy.

The legal use and occupancy of any building or structure may be continued without change, except as may be provided otherwise by this article or as may be legally provided for by any applicable state or local law, ordinance, rule, regulation, code, or standard.

History.
Code 1981, § 8-2-216, enacted by Ga. L. 1984, p. 1160, § 1.

8-2-217. Total change in use or occupancy.

(a) A total change in the use or occupancy of an existing building which would cause a greater hazard to the public shall not be made unless such building is made to comply with the requirements of the applicable state and local rules, regulations, codes, and standards for the new use or occupancy; provided, however, that the compliance alternative provisions of this article may be utilized by authorized enforcement authorities where total or strict compliance with applicable state or local rules, regulations, codes, or standards is not practical.

(b) When the proposed use is of equal or lesser hazard as determined by an authorized enforcement authority, further compliance with any code for new construction is not required unless otherwise provided in this article. Alterations or repairs to an existing building or structure which do not adversely affect the performance of the building may be made with like materials. Any proposed change to the existing building or change in type of contents of the existing building shall not increase the fire hazard to adjacent buildings or structures. If the fire hazard to adjacent buildings or structures is increased, then requirements of applicable construction or fire safety codes for exterior walls shall apply.

History.
Code 1981, § 8-2-217, enacted by Ga. L. 1984, p. 1160, § 1; Ga. L. 1985, p. 149, § 8; Ga. L. 2024, p. 1052, § 1(b)(5)/SB 448, effective July 1, 2024.
Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "however, that" for "however," in subsection (a).

8-2-218. Change of portion of building to new use or occupancy.

(a) If a portion of a building is changed to a new use or occupancy and that portion is separated from the remainder of the building with vertical or horizontal fire separations complying with applicable state or local rules, regulations, codes, or standards or with compliance alternatives, then the portion changed shall be made to comply to the applicable requirements for the new use or occupancy to the extent noted in Code Section 8-2-217.

(b) If a portion of the building is changed to a new use or occupancy and that portion is not separated from the remainder of the building as noted in subsection (a) of this Code section, then the provisions of the applicable state and local rules, regulations, codes, and standards applying to each use or occupancy of the building shall apply to the entire building to the extent noted in Code Section 8-2-217; provided, however, that, if there are conflicting provisions in requirements for the various uses or occupancies, the authorized enforcement authority shall apply the strictest requirements.

History.
Code 1981, § 8-2-218, enacted by Ga. L. 1984, p. 1160, § 1; Ga. L. 2020, p. 493, § 8/SB 429; Ga. L. 2024, p. 1052, § 1(b)(6)/SB 448, effective July 1, 2024.
Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (b).

8-2-219. Changes which increase floor loading.

Any proposed change in the use or occupancy of an existing building or portion thereof which could increase the floor loading should be investigated by a Georgia registered professional engineer to determine the adequacy of the existing floor system to support the increased loads. If the existing floor system is found to be inadequate, it should be modified to support the increased loads or the proposed allowable floor loading shall be reduced by and posted by the appropriate enforcement authority.

History.
Code 1981, § 8-2-219, enacted by Ga. L. 1984, p. 1160, § 1.

8-2-220. Rules and regulations.

The Safety Fire Commissioner shall promulgate reasonable rules and regulations to implement and carry out the requirements of this article.

History.
Code 1981, § 8-2-220, enacted by Ga. L. 1984, p. 1160, § 1.

8-2-221. Appeals of rulings or decisions.

Should any person, firm, corporation, or other entity be dissatisfied with any ruling or decision of the state fire marshal pursuant to the provisions of this article, the right is granted to appeal within ten days to the Commissioner. If the person, firm, corporation, or other entity is dissatisfied with the decision of the Commissioner, appeal is authorized to the superior court within 30 days in the manner provided under Chapter 13 of Title 50. In the event of such appeal, the person, firm, corporation, or other entity shall give a surety bond which will be conditioned upon compliance with the order and direction of the state fire marshal or the Commissioner or both. The amount of bond shall be fixed by the Commissioner in such amount as will reasonably cover the order issued by the Commissioner or the state fire marshal or both.

History.
Code 1981, § 8-2-221, enacted by Ga. L. 1984, p. 1160, § 1.

8-2-222. Immunity of state and local entities; liability of property owner or user.

Nothing in this article shall be construed to constitute a waiver of the sovereign immunity of the state or any officer or employee thereof in carrying out the provisions of this article. Further, no action shall be maintained against the state, any municipality, county, or any duly authorized elected or appointed officer or duly authorized employee thereof, for damages sustained as a result of any fire or hazard covered by this article by reason of inspection or other action taken or not taken pursuant to this article. Nothing in this article shall be construed to relieve any property owner or lessee or person in charge thereof from any legal duty, obligation, or liability incident to the ownership, maintenance, or use of such property.

History.
Code 1981, § 8-2-222, enacted by Ga. L. 1984, p. 1160, § 1; Ga. L. 2020, p. 493, § 8/SB 429.

JUDICIAL DECISIONS

No application to city inspector performing a power reconnect inspection. — Neither O.C.G.A. § 8-2-222 nor O.C.G.A. § 25-2-38.1 operated to relieve a city inspector from liability for failure to properly inspect a mobile home prior to authorizing the connection of electrical power to the home because there was no evidence that the inspector conducted an inspection of the mobile home pursuant to the Uniform Act for the Application of Building and Fire Related Codes to Existing Buildings or the Minimum Fire Safety Standards Code. Vann v. Finley, 313 Ga. App. 153, 721 S.E.2d 156, 2011 Ga. App. LEXIS 1080 (2011), cert. dismissed, No. S12C0667, 2012 Ga. LEXIS 387 (Ga. Apr. 24, 2012).

CHAPTER 3

HOUSING GENERALLY

Article 1

Housing Authorities

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Cross references.

Relocation of persons and businesses displaced by federal-aid public works projects, § 22-4-1 et seq.

Development authorities of counties and municipalities, § 36-62-1 et seq.

Law reviews.

For comment, "Critical Housing Needs and the Emergency Low Income Housing Preservation Act of 1987: A Short-Term Solution to a Long-Term Problem," see 40 Emory L.J. 163 (1991).

RESEARCH REFERENCES

C.J.S.

39A C.J.S. (Rev), Health and Environment, §§ 51 et seq., 58 et seq.

ALR.

Validity of statute, ordinance, or regulation requiring compliance with housing standards before rent increase or possession by new tenant, 20 A.L.R.4th 1246.

Zoning Regulations Prohibiting or Limiting Fences, Hedges, or Walls, 75 A.L.R. 7th 2.

ARTICLE 1

HOUSING AUTHORITIES

Cross references.

Cooperation by cities, counties, and other governmental entities in aid of construction, operation, and other tasks of housing projects undertaken by municipal, county, and other governmental entities housing authorities, § 8-3-150 et seq.

Editor's notes.

Georgia L. 1937, p. 210, as amended, the basis for this article, has been the subject of a number of validating acts by which the General Assembly has "validated, ratified, confirmed, approved, and declared legal" the establishment and organization of housing authorities; contracts and agreements entered into by housing authorities; actions with regard to the issuance of bonds; and various other specified actions taken by housing authorities prior to the date of each such validating act. See Ga. L. 1939, p. 126, §§ 1-3; Ga. L. 1951, p. 127, §§ 1-3; Ga. L. 1959, p. 141, §§ 1-3; Ga. L. 1962, p. 734, §§ 1-3; and Ga. L. 1971, p. 94, § 1. None of these validating acts is codified. However, these acts have been indicated in the history citations for the sections in this article to which they appear to relate most directly. See the history citations for Code Sections 8-3-4, 8-3-6, 8-3-30, 8-3-32, 8-3-33, 8-3-50, 8-3-51, 8-3-70, 8-3-71, 8-3-73, 8-3-74, 8-3-77, 8-3-79, 8-3-81, 8-3-100, 8-3-104, 8-3-105, 8-3-106, 8-3-107, 8-3-108, 8-3-109, 8-3-134, 8-3-136, and 8-3-137. For case construing 1939 validating act (Ga. L. 1939, p. 126, §§ 1-3), see Hogg v. City of Rome, 189 Ga. 298, 6 S.E.2d 48 (1939).

Law reviews.

For note, "The Legal Nature of Public Purpose Authorities: Governmental, Private, or Neither," see 8 Ga. L. Rev. 680 (1974).

For article, "Tax-Exempt Financing of Section 8 Housing Projects," see 15 Ga. St. B.J. 68 (1978).

JUDICIAL DECISIONS

As to constitutionality, see Williamson v. Housing Auth., 186 Ga. 673, 199 S.E. 43, 1938 Ga. LEXIS 684 (1938); Barber v. Housing Auth., 189 Ga. 155, 5 S.E.2d 425, 1939 Ga. LEXIS 666 (1939); Telford v. City of Gainesville, 208 Ga. 56, 65 S.E.2d 246, 1951 Ga. LEXIS 292 (1951); Howard v. Housing Auth., 220 Ga. 640, 140 S.E.2d 880, 1965 Ga. LEXIS 589 (1965).

Purpose of GA. L. 1937, p. 210 (see now O.C.G.A. § 8-3-1 et seq.) is to ratify and place a stamp of approval upon the past acts of the various housing authorities. The law does not have the effect of "updating" the housing authority laws. Oxford v. Housing Auth., 104 Ga. App. 797, 123 S.E.2d 175, 1961 Ga. App. LEXIS 805 (1961).

Requirement of strict observance of statutes. — In proceedings under statute authority whereby a person may be deprived of that person's property, the statute must be strictly pursued. Compliance with all the statute's prerequisites must be shown. Cobb v. Housing Auth., 210 Ga. 676, 82 S.E.2d 848, 1954 Ga. LEXIS 441 (1954).

Taking or injuring of private property for public benefit is exercise of a high power and all conditions and limitations provided by law under which it may be done should be closely followed. Cobb v. Housing Auth., 210 Ga. 676, 82 S.E.2d 848, 1954 Ga. LEXIS 441 (1954).

OPINIONS OF THE ATTORNEY GENERAL

Exemption from state sales tax. — Housing authorities are not exempt from the payment of state sales taxes upon purchases made by the housing authorities. 1952-53 Ga. Op. Att'y Gen. 476.

RESEARCH REFERENCES

Am. Jur. 2d.

40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 6 et seq.

ALR.

Constitutionality and construction of Emergency Price Control Act as relating to rent, 155 A.L.R. 1461; 156 A.L.R. 1459; 157 A.L.R. 1457; 158 A.L.R. 1464.

PART 1

GENERAL PROVISIONS

8-3-1. Short title.

This article shall be known and may be cited as the "Housing Authorities Law."

History.

Ga. L. 1937, p. 210, § 1; Ga. L. 2024, p. 1052, § 1(b)(7)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "shall be known and may be cited" for "may be referred to" in this Code section.

JUDICIAL DECISIONS

Evidence in prosecution for possession of controlled substance with intent to distribute within 1,000 feet of public housing project. — Evidence was sufficient to sustain a defendant's conviction for possession of a controlled substance with intent to distribute within 1,000 feet of a public housing project as evidence that the public housing complex where drugs were found in the apartment of the defendant's girlfriend was under the jurisdiction of a housing authority, pursuant to O.C.G.A. §§ 8-3-1 and 8-3-2, was twice presented at trial, the evidence showed that the location consisted of dwelling units, and that these dwelling units were occupied by low and moderate income families. Robinson v. State, 314 Ga. App. 545, 724 S.E.2d 846, 2012 Ga. App. LEXIS 233 (2012).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms.

13B Am. Jur. Pleading and Practice Forms, Housing Laws and Urban Redevelopment, § 2.

8-3-2. Legislative findings and declaration of necessity.

It is declared that there exist in the state unsanitary and unsafe dwelling accommodations; that persons of low income are forced to reside in such accommodations; that within the state there is a shortage of safe and sanitary dwelling accommodations available at rents which persons of low income can afford and that such persons are therefore forced to occupy overcrowded and congested dwelling accommodations; that the aforesaid conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the residents of the state and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection and other public services and facilities; that these distressed areas cannot be cleared, nor can the shortage of safe and sanitary dwellings for persons of low income be relieved, solely through the operation of private enterprise, and that the construction of housing projects for persons of low income, as such persons are defined in Code Section 8-3-3, would therefore not be competitive with private enterprise; that the clearance, replanning, and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired; and that it is in the public interest that work on such projects be commenced as soon as possible in order to relieve unemployment which now constitutes an emergency. The necessity in the public interest for the provisions enacted in this article is declared as a matter of legislative determination.

History.
Ga. L. 1937, p. 210, § 2; Ga. L. 1996, p. 1417, § 1.

JUDICIAL DECISIONS

Evidence in prosecution for possession of controlled substance with intent to distribute within 1,000 feet of public housing project. — Evidence was sufficient to sustain a defendant's conviction for possession of a controlled substance with intent to distribute within 1,000 feet of a public housing project as evidence that the public housing complex where drugs were found in the apartment of the defendant's girlfriend was under the jurisdiction of a housing authority, pursuant to O.C.G.A. §§ 8-3-1 and 8-3-2, was twice presented at trial, the evidence showed that the location consisted of dwelling units, and that these dwelling units were occupied by low and moderate income families. Robinson v. State, 314 Ga. App. 545, 724 S.E.2d 846, 2012 Ga. App. LEXIS 233 (2012).

RESEARCH REFERENCES

Am. Jur. 2d.
40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 1 et seq.

8-3-3. Definitions.

As used in this article, the term:

(1) "Area of operation," in the case of a housing authority of a city, means such city and any area which lies within the territorial boundaries of any other city, provided that a resolution shall have been adopted by the governing body of such other city declaring that there is a need for the city housing authority to exercise its powers within the territorial boundaries of said other city. No city, county, regional, or consolidated authority shall operate in any area in which an authority already established is operating without the consent by resolution of the authority already operating therein.

(2) "Authority" or "housing authority" means any of the public corporations created by or pursuant to this article or any amendments thereto.

(3) "Bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this article.

(4) "City" means any city in the state. "The city" means the particular city for which a particular housing authority is created.

(5) "Clerk" means the clerk of the city or the clerk of the county, as the case may be, or the officer charged with the duties customarily imposed on such clerk.

(6) "County" means any county in the state. "The county" means the particular county for which a particular housing authority is created.

(7) "Dormitory housing project" means the construction, acquisition, remodeling, or improving of, or the adding to, any facility for use in connection with the housing of students at any member institution of the University System of Georgia.

(8) "Federal government" means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(9) "Governing body" means, in the case of a city, the council, commission, board of aldermen, or other legislative body of the city, and, in the case of a county, the judge of the probate court, the county commissioners, or other legislative body of the county.

(10) "Housing project" means:

(A) Any work or undertaking:

(i) To demolish, clear, or remove buildings from any slum area, including the adaptation of such area to public purposes such as parks or other recreational or community purposes;

(ii) To provide decent, safe, and sanitary urban or rural dwellings, apartments, or other living accommodations for persons of low income, including the providing of buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, parks, site preparation, or gardening or for administrative, community, health, recreational, educational, welfare, or other purposes; provided, however, that a project which is or is expected to be subject to a private enterprise agreement shall qualify as a "housing project" within the meaning of this article if at least 20 percent of the project is occupied by persons of low income; or

(iii) To accomplish a combination of the foregoing; and

(B) The planning of the buildings and improvements; the acquisition of property; the demolition of existing structures; the construction, reconstruction, alteration, and repair of the improvements; and all other work in connection therewith.

(11) "Mayor" means the mayor of the city or the officer thereof charged with the duties customarily imposed on the mayor.

(12) "Obligee of the authority" or "obligee" means any bondholder, or the trustee or trustees for any bondholders; any lessor demising to

the authority property used in connection with a housing project, or any assignee or assignees of such lessor's interest or any part thereof; and the federal government when it is a party to any contract with the authority.

(13) "Persons of low income" means persons or families who lack the income necessary (as determined by the authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings without overcrowding.

(13.1) "Private enterprise agreement" means a contract between a housing authority and a person or entity operating for profit for:

(A) The management of a housing project;

(B) The development of and the provision of credit enhancement with respect to a housing project;

(C) The ownership or operation of a housing project by the for profit entity in which the housing authority participates, either directly or indirectly through a wholly owned subsidiary, for purposes of facilitating the development, provision of credit enhancement, operation, or management of such housing project in accordance with this article. Such participation may involve ownership by the housing authority of an interest in the housing project through the for profit entity, ownership by the housing authority of the land on which the housing project is developed, or provision by the housing authority of a combination of funds to the for profit entity for a portion of the construction costs of the housing project and funds to the for profit entity to subsidize the operating costs of units for persons of low income to the extent such contract is designated as a private enterprise agreement by the housing authority; or

(D) Any combination of any of the foregoing.

(14) "Real property" means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto or used in connection therewith, and every estate, interest, and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise, and the indebtedness secured by such liens.

(15) "Slum" means any area comprised predominantly of dwellings which are detrimental to safety, health, and morals by reason of dilapidation; overcrowding; faulty arrangement or design; lack of ventilation, light, or sanitary facilities; or any combination of these factors.

History.
Ga. L. 1937, p. 210, § 3; Ga. L. 1939, p. 112, § 1; Ga. L. 1943, p. 146, §§ 1-4; Ga. L. 1951, p. 219, § 1; Ga. L. 1959, p. 65, § 2; Ga. L. 1987, p. 283, §§ 1, 2; Ga. L. 1996, p. 1417, § 2; Ga. L. 2007, p. 203, § 1/HB 30; Ga. L. 2021, p. 448, § 1/SB 144.

JUDICIAL DECISIONS

Construction of "slum" and "housing project". — Terms "slum" and "housing project" cannot be construed to include the property of the condemnee sought to be taken since such property is forest land and to construe the terms "slum area" and "housing project," to include this property would be contrary to Ga. Const. 1945, Art. XVI (see now Ga. Const. 1983, Art. IX, Sec. II, Para. VII). Howard v. Housing Auth., 220 Ga. 640, 140 S.E.2d 880, 1965 Ga. LEXIS 589 (1965).

"Public property" status upheld in suit with private contractor. — Because a county housing authority owned the property, regardless of the county's future plans to sell the property to private parties, it remained public property; thus, a private contractor was not authorized to place a lien on the property. Vakilzadeh Enters. v. Hous. Auth. of DeKalb, Ga., 271 Ga. App. 130, 608 S.E.2d 724, 2004 Ga. App. LEXIS 1633 (2004).

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Geographic jurisdiction of a city housing authority established under the Housing Authority Law is governed primarily by the definition of "area of operation" in O.C.G.A. § 8-3-3(1). 1997 Op. Att'y Gen. No. U97-22.

Concurrent jurisdiction of housing authorities in overlapping areas. — City wherein a city housing authority has been activated and a county housing authority or a regional housing authority operating within the county, in which such city is located, would have concurrent jurisdiction in that ten-mile area. 1950-51 Ga. Op. Att'y Gen. 95.

Approvals by authority exercising concurrent jurisdiction not required. — Housing authority undertaking a housing project within a ten-mile area need not obtain any approvals therefor from the other authority operating therein. 1950-51 Ga. Op. Att'y Gen. 95.

8-3-3.1. Additional definitions.

As used in this article, the term:

(1) "Community facilities" means the land, buildings, improvements, and equipment for such recreational, community, educational, and commercial facilities as the authority determines improve the quality of an eligible housing unit.

(2) "Eligible housing unit" means real and personal property located in the state constituting single or multifamily dwelling units suitable for occupancy by low and moderate income families and such community facilities as may be incidental or appurtenant thereto; provided, however, that all multifamily dwelling units located within an apartment complex shall qualify as "eligible housing units" if at

least 20 percent of the multifamily dwelling units within the complex are occupied by or are held available for occupancy by low and moderate income families.

(3) "Low and moderate income families" means persons and families of one or more persons, irrespective of race, creed, national origin, or sex determined by the authority to require such assistance as is made available by this article on account of insufficient personal or family income, taking into consideration, without limitation, such factors as:

(A) The amount of total income of such persons and families available for housing needs;

(B) The size of the families;

(C) The cost and condition of housing facilities available;

(D) The ability of such persons and families to compete successfully in the normal private housing market and to pay the amounts at which private enterprise is providing sanitary, decent, and safe housing; and

(E) If appropriate, standards established for various federal programs with respect to housing determining eligibility based on income of such persons and families.

(4) "Mortgage lenders" means national banking associations, banks chartered under the laws of the state, savings and building and loan associations chartered under the laws of the state or of the United States of America, the Federal National Mortgage Association, and federal or state credit unions. The term shall also include mortgage bankers and other financial institutions or governmental agencies which are authorized to deal in mortgages insured or guaranteed by the federal government and other entities authorized to extend loans for single or multifamily housing under the laws of the state.

(5) "Mortgage loans" means notes and other evidences of indebtedness secured by mortgages.

(6) "Mortgaged property" means all properties, real, personal, and mixed, and all interests therein, including grants or subsidies with respect thereto, mortgaged, pledged, or otherwise provided in any manner as security for mortgage loans or loans to mortgage lenders.

(7) "Mortgages" means security deeds, mortgages, deeds of trust, and other instruments granting security interests in real and personal properties constituting eligible housing units.

History.
Ga. L. 1982, p. 2228, § 1; Code 1981, § 8-3-3.1, enacted by Ga. L. 1982, p. 2228, § 4; Ga. L. 1986, p. 797, § 1.

U.S. Code.
The Federal National Mortgage Association, referred to in paragraph (4), is provided for in 12 U.S.C. § 1716 et seq.

8-3-4. Creation of housing authorities.

In each city and in each county of the state there is created a public body corporate and politic to be known as the "housing authority" of the city or county; provided, however, that such authority shall not transact any business or exercise its powers under this article until or unless the governing body of the city or the county, as the case may be, by proper resolution shall declare at any time hereafter that there is need for an authority to function in such city or county. The determination as to whether there is such need for an authority to function may be made by the governing body on its own motion or shall be made by the governing body upon the filing of a petition signed by 25 residents of the city or county, as the case may be, asserting that there is need for an authority to function in such city or county and requesting that the governing body so declare.

History.
Ga. L. 1937, p. 210, § 4; Ga. L. 1939, p. 126, § 1; Ga. L. 1951, p. 127, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1.

JUDICIAL DECISIONS

Constitutionality. — Housing Authorities Law (see now O.C.G.A. § 8-3-1 et seq.) does not violate Ga. Const. 1945, Art. I, Sec. I, Para. III (see now Ga. Const. 1983, Art. I, Sec. I, Para. I) because the law vests in the governing body of a municipality authority to determine its need for a housing authority without making any provision for notice to the citizens and taxpayers thereof since the fact-finding power so lodged by the legislature in such governing body is a ministerial function only and not one judicial in character. Telford v. City of Gainesville, 208 Ga. 56, 65 S.E.2d 246, 1951 Ga. LEXIS 292 (1951).

Instrumentality of state. — Housing authority created by the Housing Authorities Law (see now O.C.G.A. § 8-3-1 et seq.) is in effect an instrumentality of the state. Knowles v. Housing Auth., 212 Ga. 729, 95 S.E.2d 659, 1956 Ga. LEXIS 510 (1956), overruled in part as stated in Pass v. Athens Housing Authority, 368 Ga. App. 445, 890 S.E.2d 342, 2023 Ga. App. LEXIS 331 (2023), overruled in part as stated in Files v. Hous. Auth. of City of Douglas, 368 Ga. App. 455, 890 S.E.2d 356, 2023 Ga. App. LEXIS 326 (2023).

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Town which becomes a city subsequent to the passage of the Housing Authorities Law (see now O.C.G.A. § 8-3-1 et seq.) would have created therefor a housing authority at the time such town became a city. 1952-53 Ga. Op. Att'y Gen. 371.

RESEARCH REFERENCES

Am. Jur. 2d.
40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 6 et seq.
ALR.
Fair Housing Act (42 U.S.C.A. §§ 3601 et seq.) — Supreme Court Cases, 30 A.L.R. Fed. 3d 3.

8-3-5. Findings required before adoption of resolution.

(a) A governing body shall adopt a resolution declaring that there is need for a housing authority in the city or county, as the case may be, if it shall find that insanitary or unsafe inhabited dwelling accommodations exist in such city or county or that there is a shortage of safe or sanitary dwelling accommodations in such city or county available to persons of low income at rentals they can afford.

(b) In determining whether dwelling accommodations are unsafe or insanitary, said governing body may take into consideration the degree of overcrowding; the percentage of land coverage; the light, air, space, and access available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions which endanger life or property by fire or other causes exist in such buildings.

History.
Ga. L. 1937, p. 210, § 4.

JUDICIAL DECISIONS

Constitutionality. — Housing Authorities Law (see now O.C.G.A. § 8-3-1 et seq.) does not violate Ga. Const. 1945, Art. I, Sec. I, Para. III (see now Ga. Const. 1983, Art. I, Sec. I, Para. I) because the law vests in the governing body of a municipality authority to determine its need for a housing authority without making any provision for notice to the citizens and taxpayers thereof, since the fact-finding power so lodged by the legislature in such governing body is a ministerial function only and not one judicial in character. Telford v. City of Gainesville, 208 Ga. 56, 65 S.E.2d 246, 1951 Ga. LEXIS 292 (1951).

RESEARCH REFERENCES

Am. Jur. 2d.
40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 19.

8-3-6. Resolution as conclusive evidence of authority's establishment and authority.

In any action or proceeding involving the validity or enforcement of, or otherwise relating to, any contract of an authority, the authority shall be conclusively deemed to have become established and autho-

rized to transact business and exercise its powers under this article upon proof of the adoption of a resolution by the governing body declaring the need for the authority. Such resolution shall be deemed sufficient if it declares that there is need for an authority and finds in substantially such terms as appear in subsection (a) of Code Section 8-3-5, no further detail being necessary, that either or both of the conditions enumerated in that subsection exist in the city or county, as the case may be.

History.
Ga. L. 1937, p. 210, § 4; Ga. L. 1939, p. 126, § 1; Ga. L. 1951, p. 127, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1; Ga. L. 2011, p. 99, § 7/HB 24.
Cross references.
Hearsay rule exceptions; availability of declarant immaterial, § 24-8-803.
Self authentication, § 24-9-902.
Public records, § 24-10-1005.
Editor's notes.
Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that the amendment made by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.
Law reviews.
For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011).
For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

8-3-7. Applicability of local laws, ordinances, and regulations to housing projects.

All housing projects of an authority shall be subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the housing project is situated.

History.
Ga. L. 1937, p. 210, § 13.

JUDICIAL DECISIONS

Compliance with city ordinances is not condition precedent to condemnation. — Though the housing authority under Ga. L. 1937, p. 210, § 13 (see now O.C.G.A. § 8-3-7) is amenable to the zoning ordinances of the city, a compliance by the defendant authority with such ordinances and regulations is not made a condition precedent to the condemning by the authority of private property by exercise of the power of eminent domain, and the fact that the property sought to be condemned has not been zoned by the municipality for the use contemplated by the authority is not a valid ground or reason to enjoin it from proceeding with the project. West v. Housing Auth., 211 Ga. 133, 84 S.E.2d 30, 1954 Ga. LEXIS 488 (1954).

Duty to inspect for smoke detectors. — In its capacity as administrator of a federal housing program, when qualifying a house, a city housing authority was considered an "owner" under an applicable city ordinance and thus had a duty to inspect the dwelling and, if necessary, provide a smoke detector. Housing Auth. v. Jefferson, 223 Ga. App. 60, 476 S.E.2d 831, 1996 Ga. App. LEXIS 1066 (1996).

RESEARCH REFERENCES

ALR.

Exclusionary zoning, 48 A.L.R.3d 1210.

Retroactive effect of zoning regulation, in absence of saving clause, on pending application for building permit, 50 A.L.R.3d 596.

Validity of statutes, ordinances, and regulations requiring the installation or maintenance of various bathroom facilities in dwelling units, 79 A.L.R.3d 716.

Validity of statutory classifications based on population — zoning, building, and land use statutes, 98 A.L.R.3d 679.

Applicability of zoning regulations to governmental projects or activities, 53 A.L.R.5th 1.

8-3-8. Exemption of authorities and their property from taxes and special assessments; payments in lieu of taxes and special assessments.

The property of an authority is declared to be public property used for essential public and governmental purposes and not for purposes of private or corporate benefit and income. That portion of any housing project subject to a private enterprise agreement contemplated by subparagraph (C) of paragraph (13.1) of Code Section 8-3-3 consisting of the eligible housing units therein that are occupied or reserved for occupancy by persons of low income is declared to be public property used for essential public and governmental purposes and not for purposes of private or corporate benefit or income. Therefore, an authority and its property, as well as only that portion of any housing project subject to a private enterprise agreement contemplated by subparagraph (C) of paragraph (13.1) of Code Section 8-3-3 consisting of the eligible housing units therein that are occupied or reserved for occupancy by persons of low income, shall be exempt from all taxes and special assessments of the city, the county, and the state or any political subdivision thereof, provided that, in lieu of such taxes or special assessments, an authority may agree to make payments to the city or the county or any such political subdivision for improvements, services, and facilities furnished by such city, county, or political subdivision for the benefit of a housing project; but in no event shall such payments exceed the estimated cost to such city, county, or political subdivision of the improvements, services, or facilities to be so furnished.

History.

Ga. L. 1937, p. 210, § 21; Ga. L. 1996, p. 1417, § 3.

JUDICIAL DECISIONS

Constitutionality. — See Culbreth v. Southwest Ga. Regional Hous. Auth., 199 Ga. 183, 33 S.E.2d 684, 1945 Ga. LEXIS 286 (1945), overruled in part as stated in Pass v. Athens Housing Authority, 368 Ga. App. 445, 890 S.E.2d 342, 2023 Ga. App. LEXIS 331 (2023).

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"Property". — Word "property" includes real and personal property. 1952-53 Ga. Op. Att'y Gen. 421.

Funds as public funds. — Funds of a local housing authority held exclusively for a public purpose are public funds within the meaning of former Code 1933, §§ 89-812 and 89-813 (see now O.C.G.A. §§ 45-8-13 and 45-8-15). 1957 Ga. Op. Att'y Gen. 7.

Payment of sums in lieu of taxes not required. — Language of Ga. L. 1937, p. 210, § 13 (see now O.C.G.A. § 8-3-8) indicates that there is nothing which would compel the housing authority to pay any sums in lieu of taxes. 1963-65 Ga. Op. Att'y Gen. 76.

Housing authorities are exempt from ad valorem taxation. 1960-61 Ga. Op. Att'y Gen. 9.

Sales taxes. — Housing authorities are not exempt from the payment of state sales taxes upon purchases made by the housing authorities. 1952-53 Ga. Op. Att'y Gen. 476.

Purchase and pledge of securities for repayment of deposit by state bank. — State bank may purchase obligations of a public housing agency and pledge those obligations as security for the repayment of a deposit of funds made with the bank by the housing agency provided the purchase of such obligations does not exceed 10 percent of the capital and unimpaired surplus of the bank. 1957 Ga. Op. Att'y Gen. 7.

RESEARCH REFERENCES

C.J.S.
84 C.J.S. (Rev), Taxation, § 292 et seq.

ALR.
Exemption of property or bonds of housing authority from taxation, 133 A.L.R. 365; 152 A.L.R. 239.

8-3-9. Filing reports with clerk; recommending legislation or other necessary action.

At least once a year, an authority shall file with the clerk a report of its activities for the preceding year and shall make recommendations with reference to such additional legislation or other action as it deems necessary in order to carry out the purposes of this article.

History.
Ga. L. 1937, p. 210, § 22.

8-3-10. Vesting of fee simple title upon an authority's exercise of power of eminent domain.

Whenever a housing authority is or has been created under the terms of this article, and whenever it is determined by the commissioners or other governing body of such authority to be necessary or advisable to exercise the power of eminent domain by condemning property, and whenever such condemnation proceedings are instituted and carried on under Chapter 2 of Title 22 or through any other method of condemnation provided by law, then upon the payment by such authority seeking condemnation of the amount of the award, or the amount of the final judgment on appeal, such authority shall become vested with a fee simple indefeasible title to the property to which such condemnation

proceedings relate. It is declared to be necessary in order to enable such authorities to exercise their franchise that, upon such condemnation proceedings being had, such housing authorities shall become vested with fee simple indefeasible title to the property involved in such proceedings.

History.
Ga. L. 1939, p. 112, § 7.

RESEARCH REFERENCES

ALR.
Eminent domain: possibility of overcoming specific obstacles to contemplated use as element in determining existence of necessary public use, 22 A.L.R.4th 840.

8-3-11. Renting of housing units.

It is declared to be the policy of this state that each housing authority shall manage and operate its housing projects or, in the event of its use of a private enterprise agreement, shall cause each housing project subject thereto to be managed and operated in an efficient manner so as to enable it to fix the rentals for dwelling accommodations for persons of low income at the lowest possible rates consistent with its providing decent, safe, and sanitary dwelling accommodations for persons of low income, and that no housing authority shall construct or operate the dwelling accommodations in any such project that are occupied or reserved for occupancy by persons of low income for a profit or as a source of revenue to the city or the county. To this end, an authority shall fix the rentals for those dwelling accommodations in such housing projects that are occupied or reserved for occupancy by persons of low income at no higher rates than it shall find necessary in order to produce revenues which, together with all other available moneys, revenues, income, and receipts of the authority from whatever sources derived, will be sufficient:

(1) To pay, as the same become due, the principal of and the interest on the bonds of the authority which from time to time are outstanding;

(2) To meet the cost of maintaining and operating the eligible housing units in such projects that are used, occupied, or reserved for use or occupancy by persons of low income, including the cost of any insurance; to meet the administrative expenses of the authority; and to provide reasonable reserves for maintenance and operating expenses; and

(3) To create and maintain such reasonable reserves as may be required in connection with the issuance of any bonds of the authority now outstanding or hereafter issued, and to create and maintain reasonable reserves for its future operations.

History.
Ga. L. 1937, p. 210, § 9; Ga. L. 1959, p. 65, § 1; Ga. L. 1996, p. 1417, § 4.

JUDICIAL DECISIONS

Housing projects to be managed efficiently. — Each housing authority shall manage and operate the authority's housing projects in an efficient manner so as to enable the authority to fix the rentals for dwelling accommodations at the lowest possible rates consistent with the authority's providing decent, safe, and sanitary dwelling accommodations. Housing Auth. v. Davis, 158 Ga. App. 600, 281 S.E.2d 345, 1981 Ga. App. LEXIS 2330 (1981).

RESEARCH REFERENCES

C.J.S.
87 C.J.S., Towns, § 179 et seq.

ALR.
Short-Term Rental Property Under Zoning Laws, 86 A.L.R.7th 4.

8-3-12. Dwelling accommodations for persons of low income; duties with respect to rentals and tenant selection.

(a) In the operation or management of housing projects, an authority shall at all times observe or cause to be observed the following duties with respect to rentals and tenant selection in those dwelling accommodations that are reserved for occupancy by persons of low income:

(1) It may rent or lease such dwelling accommodations only to persons of low income;

(2) It may rent or lease such dwelling accommodations only at rentals within the financial reach of such persons of low income;

(3) It may rent or lease such dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed low-income occupants thereof without overcrowding;

(4) It shall not accept any person as a tenant in such dwelling accommodations if the person or persons who would occupy the dwelling accommodations have, at the time of admission, an aggregate annual net income, less an exemption of $100.00 for each minor member of the family other than the head of the family and his or her spouse, in excess of five times the annual rental of the dwelling accommodation to be furnished such person or persons. In computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost to the occupants, as determined by the authority, of heat, water, electricity, gas, cooking range, and other necessary services or facilities, whether or not the

charge for such services and facilities is in fact included in the rental; and

(5) It shall prohibit subletting by low-income tenants.

(b) Nothing contained in this Code section or Code Section 8-3-11 shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority or by any for profit entity in which the authority participates, directly or indirectly, through a private enterprise agreement, to take possession of a housing project or cause the appointment of a receiver thereof or acquire title thereto through foreclosure proceedings, free from all the restrictions imposed by this Code section or Code Section 8-3-11, provided that an authority may agree to conditions as to tenant eligibility or preference required by the federal government pursuant to federal law in any contract for financial assistance with the authority.

History.
Ga. L. 1937, p. 210, § 10; Ga. L. 1939, p. 112, § 4; Ga. L. 1951, p. 219, § 5; Ga. L. 1996, p. 1417, § 5.
Cross references.
Criminal penalty for fraudulently obtaining or attempting to obtain public housing or reduction in public housing rent, § 16-9-55.

RESEARCH REFERENCES

Am. Jur. 2d.
40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 6 et seq.

8-3-13. Cooperation and joint operation by authorities.

(a) Any two or more authorities may join or cooperate with one another in the exercise, either jointly or otherwise, of any or all of their powers for the purpose of financing (including the issuance of bonds, notes, or other obligations and giving security therefor), planning, undertaking, owning, constructing, operating, or contracting with respect to a housing project or projects located within the area of operation of any one or more of said authorities. For such purpose, an authority may by resolution prescribe and authorize any other housing authority or authorities, so joining or cooperating with it, to act on its behalf with respect to any or all powers. For purposes of this Code section the term "authorities" shall include an urban residential finance authority created pursuant to the provisions of Chapter 41 of Title 36.

(b) Any authorities joining or cooperating with one another may by resolution appoint from among the commissioners of such authorities an executive committee with full power to act on behalf of such authorities with respect to any or all of their powers, as prescribed by resolutions of such authorities.

History.
Ga. L. 1937, p. 210, § 11; Ga. L. 1943, p. 146, § 8; Ga. L. 1988, p. 901, § 1.

RESEARCH REFERENCES

ALR.
Constitutionality, construction, and application of statutes or governmental projects for improvement of housing conditions (slum clearance), 172 A.L.R. 966.

8-3-14. Consolidated housing authorities for two or more municipalities.

(a) As used in this Code section, the term "municipality" means any municipality in this state.

(b) If the governing body of each of two or more municipalities by resolution declares that there is a need for one housing authority for all of such municipalities to exercise in such municipalities the powers and other functions prescribed for a housing authority, a public body corporate and politic to be known as a consolidated housing authority, which may be an existing housing authority designated by the municipalities as the consolidated housing authority or a new housing authority, with such corporate name as it selects, shall thereupon exist for all of such municipalities and exercise its powers and other functions within its area of operation as defined in this article, including the power to undertake projects therein. Upon the creation of a consolidated housing authority, any housing authority created for any of such municipalities, other than an existing housing authority designated as the consolidated housing authority, shall cease to exist except for the purpose of winding up its affairs and executing a deed of its real property to the consolidated housing authority.

(c) The creation of a consolidated housing authority and the finding of need therefor shall be subject to the same provisions and limitations as are applicable to the creation of a regional housing authority; and all of the provisions of this article applicable to regional housing authorities and the commissioners thereof shall be applicable to consolidated housing authorities and the commissioners thereof; provided, however, that Code Section 8-3-107 shall not be applicable to the consolidation of housing authorities into a designated existing housing authority; and provided, further, that the area of operation of a consolidated housing authority shall include all of the territory within the boundaries of each municipality joining in the creation of such authority; and provided, further, that for all such purposes, the term "county" shall be construed as meaning "municipality," the term "governing body" in Code Section 8-3-106 shall be construed as meaning "mayor or other executive head of the municipality," and the terms "county housing authority" and

"regional housing authority" shall be construed as meaning "housing authority of the city" and "consolidated housing authority," respectively.

(d) The governing body of a municipality for which a housing authority has not been created may adopt the resolution provided for in subsection (b) of this Code section if it first declares that there is a need for a housing authority to function in said municipality, which declaration shall be made in the same manner and subject to the same conditions as the declaration of the governing body of a city required by Code Sections 8-3-4 through 8-3-6 for the purpose of authorizing a housing authority created for a city to transact business and exercise its powers.

(e) Except as otherwise provided in this Code section, a consolidated housing authority and the commissioners thereof shall, within the area of operation of such consolidated housing authority, have the same functions, rights, powers, duties, privileges, immunities, and limitations as those provided for housing authorities created for cities, counties, or groups of counties and the commissioners of such housing authorities, in the same manner as though all the provisions of law applicable to housing authorities created for cities, counties, or groups of counties were applicable to consolidated housing authorities.

History. Ga. L. 1943, p. 146, § 6; Ga. L. 2007, p. 203, § 2/HB 30; Ga. L. 2021, p. 448, § 2/SB 144.

8-3-15. Extraterritorial operation of city housing authorities.

(a) In addition to its other powers, a housing authority created for a city may exercise any or all of its powers within the territorial boundaries of any other municipality not included in the area of operation of such housing authority for the purpose of planning, undertaking, financing, constructing, and operating a housing project or projects within such municipality, provided that a resolution shall have been adopted by the governing body of such municipality in which the authority is to exercise its powers, and by any housing authority theretofore established by such municipality and authorized to exercise its powers therein declaring that there is a need for the housing authority seeking to exercise extraterritorial powers so to exercise its powers within such municipality.

(b) No governing body of a city or other municipality shall adopt such resolution unless it shall have found in substantially the following terms:

(1) That insanitary or unsafe inhabited dwelling accommodations exist in such municipality or that there is a shortage of safe or sanitary dwelling accommodations in such municipality available to persons of low income at rentals they can afford; and

(2) That these conditions can be best remedied through the exercise of the aforesaid city housing authority's powers within the territorial boundaries of such municipality.

(c) Any such findings made pursuant to subsection (b) of this Code section shall not have the effect of establishing a housing authority for any such municipality under this article nor of thereafter preventing such municipality from establishing a housing authority or joining in the creation of a consolidated housing authority.

(d) During the time that, pursuant to any findings made pursuant to subsection (b) of this Code section, a housing authority has outstanding, or is under contract to issue, any evidences of indebtedness for a project within the city or other municipality, no other housing authority may undertake a project within such municipality without the consent of said housing authority which has such outstanding indebtedness or obligation.

(e) A municipality shall have the same powers to furnish financial and other assistance to a housing authority exercising its powers within such municipality under this Code section as though the municipality were within the area of operation of such authority.

(f) Any city housing authority operating housing projects that are outside such city and within ten miles of the boundaries of such city on July 1, 2021, shall be entitled to continue to operate such extraterritorial housing projects; provided, however, that no new housing projects outside such city shall be authorized without the governing body of the county or municipality where such housing project will be located consenting to the expansion of the housing authority's area of operation into such county or other municipality. Any such project shall conform to existing zoning classifications and land use plans of the political subdivision in which the proposed project will be located.

History.
Ga. L. 1943, p. 146, § 6; Ga. L. 2021, p. 448, § 3/SB 144.

8-3-16. Providing housing in rural areas.

Any housing authority which has rural areas under its jurisdiction may undertake the provision of housing for families of low income in such rural areas and may comply with any conditions not inconsistent with the purposes of this article required by the federal government pursuant to federal law in any contract for financial assistance with the authority concerning such undertakings.

History.
Ga. L. 1943, p. 146, § 6; Ga. L. 1945, p. 270, § 1; Ga. L. 1951, p. 219, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 6 et seq.

8-3-17. Dormitories.

(a) The great increase in population in the State of Georgia which has taken place in recent years has created a serious shortage in dormitory housing accommodations at the various units of the University System of Georgia, causing overcrowded and congested conditions which are unsafe and undesirable and seriously impair the proper operation of such institutions. In addition, at some institutions now in operation or in the process of construction, there is a total lack of dormitory housing accommodations. This situation constitutes an emergency; and it is imperative that provisions be made to alleviate the overcrowded, congested, and unsafe accommodations and to supply accommodations where the same are now nonexistent by the construction of dormitory facilities or additional facilities for such institutions so as to make adequate, safe, and uncongested dormitory housing available for students enrolled at such institutions.

(b) Any housing authority now or hereafter established may undertake the construction, acquisition, remodeling, and improvement of, the addition to, and the maintenance and operation of projects to provide dormitory housing at any unit of the University System of Georgia located within its area of operation so as to provide housing for students enrolled at such institution, if the authority finds and determines that an acute shortage of housing for such persons exists or impends in its area of operation or any part thereof, and that necessary and adequate housing would not otherwise be provided when needed. In the ownership, development, or administration of dormitory housing projects, a housing authority shall have all the rights, powers, privileges, and immunities that it may now or hereafter have under any provision of law relating to the ownership, development, and administration of low rent housing and slum clearance projects or any other projects it is now or hereafter authorized to undertake, in the same manner as though all laws applicable thereto were applicable to dormitory housing projects. Such rights shall include specifically, but without limitation, the right to issue bonds from time to time, in the authority's discretion, in order to provide funds to pay the cost, in whole or in part, of constructing, acquiring, remodeling, improving, and adding to any dormitory housing project; and the right to issue refunding bonds for the purpose of refunding or retiring bonds previously issued by the authority for any such project. Such bonds may be of such type as the housing authority may determine, including bonds on which the principal and interest are payable:

(1) Exclusively from the income and revenues of the dormitory project financed in whole or in part from the proceeds of such bonds, or with such proceeds together with a grant from the federal government or the State of Georgia, or from any other source in aid of such project;

(2) Exclusively from the income and revenues of certain designated projects of the authority, including projects other than dormitory housing projects of the authority even though the same were not financed in whole or in part with the proceeds of the bonds; or

(3) From its revenues generally that are not otherwise pledged or obligated.

Any of such bonds may be additionally secured by a pledge of any revenues of any project or projects or other properties of the authority. A housing authority may, notwithstanding the provisions of any other law, make and agree to make with respect to any dormitory housing project owned and administered by it under this article such payments as may be agreed upon for facilities and services furnished to such dormitory housing project by the city, county, or other political subdivision of the state in which such dormitory housing project is located, or by the unit of the University System of Georgia which such dormitory housing project serves. In the operation of such dormitory housing projects the housing authority owning and administering the same shall not be subject to the limitations provided in Code Section 8-3-12, in the second sentence of Code Section 8-3-11, and in Code Section 8-3-74.

(c) A housing authority may exercise any or all of its powers to aid or cooperate with the state and federal governments in making dormitory housing available at units of the University System of Georgia, may act as agent for the state or federal governments in developing and administering dormitory housing projects undertaken by either of them, and may lease such dormitory housing projects from either of them. Without limiting the generality of the foregoing, authority is also specifically granted to the Board of Regents of the University System of Georgia, for and on behalf of the units and institutions under its control, and any housing authority to enter into leases of any such project or projects for a term of not exceeding 50 years; and the Board of Regents of the University System of Georgia, for and on behalf of any unit or institution or combination of units or institutions, may obligate itself to pay an agreed sum for the use of such property so leased and also to obligate itself, as a part of the lease contract, to pay the cost of maintaining, repairing, and operating the property so leased from the authority, and may arrange with public bodies and private agencies for such services and facilities as may be necessary or desirable for such dormitory housing projects.

(d) Any other law to the contrary notwithstanding, if the Board of Regents of the University System of Georgia and a housing authority determine it expedient to construct any dormitory housing project on any lands, title to which is held by any unit or institution under the control of the board of regents, the board is authorized to execute a lease upon such lands, whether improved or unimproved, to the authority for such parcel or parcels as shall be needed for a period of not to exceed 50 years at such annual rental, which may be purely nominal, as the board and the housing authority may agree upon, provided that, at the expiration of such term, title to said land and all improvements thereon shall revert to and vest in such unit or institution under the control of said board. The board of regents shall also have the right, any other law to the contrary notwithstanding, should it determine with the housing authority that it is necessary and desirable to do so, to convey, by a deed executed by the chairman of the board of regents upon resolution of said board, for such consideration as may be agreed upon (which consideration may be nominal), to a housing authority for a dormitory housing project title to any land, whether improved or unimproved, owned by any unit or institution under its control which is to be served by such dormitory housing project, including land to which the regents of the University System of Georgia hold title, provided that title to such land and all improvements thereon shall revert or be reconveyed by the housing authority to such unit or institution when all bonds, and the interest thereon, which were issued by the housing authority to finance such construction, or bonds issued to refinance such obligations, or to finance in whole or in part any additions or improvements thereto, have been paid in full.

(e) Any action to protect or enforce any right in connection with the construction, acquisition, ownership, maintenance, alteration, expansion, improvement, or operation of dormitory housing projects, or involving any question in connection with the issuance of bonds to finance any such undertaking, or with the rights of the holders thereof or the security therefor, shall be brought in the superior court of the county in which the dormitory housing project is located. Any action pertaining to the validation of any bonds issued to finance in whole or in part the cost of any such dormitory housing project or any refunding bonds shall likewise be brought in said court, which shall have exclusive, original jurisdiction of such actions.

(f) Bonds of the authority issued to finance in whole or in part the cost of any dormitory housing project and any refunding bonds shall be confirmed and validated in accordance with the procedure set forth in Article 3 of Chapter 82 of Title 36, the "Revenue Bond Law," and the judgment of validation shall have the same effect as is provided in that chapter.

History.
Ga. L. 1959, p. 65, § 3; Ga. L. 1982, p. 3, § 8.
Cross references.
Authority of board of regents to sell, lease, or otherwise dispose of property that can no longer be advantageously used in the university system, § 20-3-60 et seq.

Part 2

Powers of Housing Authorities Generally

8-3-30. General powers; applicability of laws as to acquisition, operation, or disposition of property by other public bodies.

(a) An authority shall constitute a public body corporate and politic exercising public and essential governmental functions and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others granted by this article:

(1) To sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal bylaws, rules, and regulations, not inconsistent with this article, to carry into effect the powers and purposes of the authority;

(2) Within its area of operation, to prepare, carry out, acquire, lease, and operate housing projects; to provide for the construction, reconstruction, improvement, alteration, or repair of any housing project or any part thereof;

(3) To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants thereof; and, notwithstanding anything to the contrary contained in this article or in any other provision of law, to include in any contract let in connection with a project stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor and comply with any conditions which the federal government may have attached to its financial aid of the project;

(4) To lease or rent any dwellings, houses, accommodations, lands, buildings, structures, or facilities embraced in any housing project and, subject to the limitations contained in this article, to establish and revise the rents or charges therefor; to own, hold, and improve real or personal property; to purchase, lease, obtain options upon, or

acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge, or dispose of any real or personal property or any interest therein; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards; to procure insurance or guarantees from the federal government of the payment of any debts or parts thereof, whether or not incurred by said authority, secured by mortgages on any property included in any of its housing projects;

(5) Subject to any agreement with bondholders, to invest moneys of the authority not required for immediate use to carry out the purposes of this part, including the proceeds from the sale of any bonds and any moneys held in reserve funds, in obligations which shall be limited to the following:

(A) Bonds or other obligations of the state or other states or of other counties, municipal corporations, and political subdivisions of this state or bonds or other obligations the principal and interest of which are guaranteed by the state;

(B) Bonds or other obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government;

(C) Obligations of and obligations guaranteed by agencies or instrumentalities of the United States government, including those issued by the Federal Land Bank, Federal Home Loan Bank, Federal Intermediate Credit Bank, Bank for Cooperatives, and any other such agency or instrumentality now or hereafter in existence; provided, however, that all such obligations shall have a current credit rating from a nationally recognized rating service of at least one of the three highest rating categories available and have a nationally recognized market;

(D) Bonds or other obligations issued by any public housing agency or municipality in the United States, which bonds or obligations are fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States government, or project notes issued by any public housing agency, urban renewal agency, or municipality in the United States and fully secured as to payment of both principal and interest by a requisition, loan, or payment agreement with the United States government;

(E) Certificates of deposit of national or state banks located within the state which have deposits insured by the Federal

Deposit Insurance Corporation or the Georgia Deposit Insurance Corporation, including the certificates of deposit of any bank, savings and loan association, or building and loan association acting as depository, custodian, or trustee for any such bond proceeds; provided, however, that the portion of such certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation or the Georgia Deposit Insurance Corporation, if any such excess exists, shall be secured by deposit with the Federal Reserve Bank of Atlanta, Georgia, the Federal Home Loan Bank of Atlanta, Georgia, any national or state bank located within the state, or with a trust office within this state, or one or more of the following securities in an aggregate principal amount equal at least to the amount of such excess:

(i) Direct and general obligations of the state or other states or of any county or municipality in the state;

(ii) Obligations of the United States or subsidiary corporations included in subparagraph (B) of this paragraph;

(iii) Obligations of agencies and instrumentalities of the United States government included in subparagraph (C) of this paragraph; or

(iv) Bonds, obligations, or project notes of public housing agencies, urban renewal agencies, or municipalities included in subparagraph (D) of this paragraph;

(F) Interest-bearing time deposits, repurchase agreements, reverse repurchase agreements, rate guarantee agreements, or other similar banking arrangements with a bank or trust company having capital and surplus aggregating at least $50 million or with any government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York having capital aggregating at least $50 million or with any corporation which is subject to registration with the Board of Governors of the Federal Reserve System pursuant to the requirements of the Bank Holding Company Act of 1956, provided that each such interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangement shall permit the moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys;

(G) Any and all other obligations of investment grade quality having a credit rating from a nationally recognized rating service of at least one of the three highest rating categories available and having a nationally recognized market, including, but not limited to, collateralized mortgage obligations, owner trusts offering

collateralized mortgage obligations, guaranteed investment contracts offered by any firm, agency, business, governmental unit, bank, insurance company, corporation chartered by the United States Congress, or other entity, real estate mortgage investment conduits, mortgage obligations, mortgage pools, and pass-through securities; and

(H) Securities of or other interests in any no-load, open-end management type investment company or investment trust registered under the Investment Company Act of 1940, as amended, or any common trust fund maintained by any bank or trust company which holds such proceeds as trustee or by an affiliate thereof so long as:

(i) The portfolio of such investment company or investment trust or common trust fund is limited to the obligations referenced in subparagraphs (B) and (C) of this paragraph and repurchase agreements are fully collateralized by any such obligations;

(ii) Such investment company or investment trust or common trust fund takes delivery of such collateral either directly or through an authorized custodian;

(iii) Such investment company or investment trust or common trust fund is managed so as to maintain its shares at a constant net asset value; and

(iv) Securities of or other interests in such investment company or investment trust or common trust fund are purchased and redeemed only through the use of national or state banks located within this state having corporate trust powers;

(6) Within its area of operation, to investigate into living, dwelling, and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of decent, safe, and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning, and reconstructing slum areas, and the problem of providing dwelling accommodations for persons of low income and to cooperate with the city, the county, or the state or any political subdivision thereof in action taken in connection with such problem; and to engage in research, studies, and experimentation on the subject of housing;

(7) Acting through one or more commissioners or other person or persons designated by the authority, to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information;

to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers, and issue commissions for the examination of witnesses who are outside of the state or unable to attend before the authority, or who are excused from attendance; to make available to appropriate agencies, including those charged with the duty of abating or requiring the correction of nuisances or like conditions or of demolishing unsafe or insanitary structures within its area of operation, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety, or welfare;

(8) To exercise all or any part or combination of powers granted by this Code section;

(9) To invest moneys held in debt service reserve funds or sinking funds not required for immediate use or disbursement in obligations of the types specified in paragraph (5) of this subsection, provided that, for the purpose of this paragraph, the amounts and maturities of such obligations shall be based upon and correlated to the debt service (principal installments and interest payments) schedule for which moneys are to be supplied;

(10) To incorporate one or more nonprofit corporations as subsidiary corporations of the authority for the purpose of carrying out any of the powers of the authority and accomplishing any of the purposes of the authority. Any such subsidiary corporation shall be a nonprofit corporation and a public body corporate and politic exercising public and essential governmental functions. Any subsidiary corporations created pursuant to this power shall be created pursuant to Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," and the Secretary of State shall be authorized to accept such filings. Some or all of the members of the board of directors of the authority shall constitute the members of and shall serve as directors of any subsidiary corporation and such service shall not constitute a conflict of interest. Upon dissolution of any subsidiary corporation of the authority, any assets shall revert to the authority or to any successor to the authority or, failing such succession, to the city or the county, as applicable. The authority shall not be liable for the debts or obligations or bonds of any subsidiary corporation or for the actions or omissions to act of any subsidiary corporation unless the authority expressly so consents; and

(11) To incorporate one or more corporations as subsidiary corporations of the authority for the purpose of carrying out any of the powers of the authority and accomplishing any of the purposes of the authority. Any subsidiary corporations created pursuant to this paragraph shall be created pursuant to Chapter 2 of Title 14, the

"Georgia Business Corporation Code," and the Secretary of State shall be authorized to accept such filings. Some or all of the members of the board of commissioners of the authority may serve as directors of any subsidiary corporation and such service shall not constitute a conflict of interest; provided, however, that no member of the board of commissioners of the authority shall be eligible to serve as a director of any subsidiary corporation if that member has any financial interest in the subsidiary corporation. Upon dissolution of any subsidiary corporation of the authority, any assets shall be distributed to the authority as the sole shareholder or to any successor to the authority or, failing such succession, to the city or county, as applicable. The authority shall not be liable for the debts, obligations, or bonds of any subsidiary corporation or for the actions or omissions to act of any subsidiary corporation unless the authority expressly so consents.

(b) No provisions of law with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

(c) No loan made by an authority to an entity with which the authority has entered into a private enterprise agreement shall be deemed usurious or otherwise in violation of Code Section 7-4-17 so long as such loan complies with Code Section 7-4-18.

History.

Ga. L. 1937, p. 210, § 8; Ga. L. 1939, p. 126, § 2; Ga. L. 1951, p. 127, § 2; Ga. L. 1959, p. 141, § 2; Ga. L. 1962, p. 734, § 2; Ga. L. 1987, p. 283, § 3; Ga. L. 1993, p. 1067, §§ 1, 2; Ga. L. 1996, p. 1417, § 6; Ga. L. 1998, p. 857, § 1; Ga. L. 2000, p. 1428, §§ 1, 2; Ga. L. 2001, p. 4, § 8; Ga. L. 2010, p. 404, § 1/SB 369.

JUDICIAL DECISIONS

Construction. — In proceedings under statutory authority whereby a person may be deprived of one's property, the statute must be strictly construed. Cobb v. Housing Auth., 210 Ga. 676, 82 S.E.2d 848, 1954 Ga. LEXIS 441 (1954).

Taking or injuring of private property for the public benefit is the exercise of a high power, and all the conditions and limitations provided by law, under which it may be done, should be closely followed. Cobb v. Housing Auth., 210 Ga. 676, 82 S.E.2d 848, 1954 Ga. LEXIS 441 (1954).

"Acquire". — To "acquire" is treated as something entirely different from the construction, reconstruction, improvement, alteration, or repair of an existing facility; and there is no reason to hold that a different meaning is attributable when the word "acquisition" is used in Ga. L. 1962, p. 734, § 2. Housing Auth. v. Marbut Co., 127 Ga. App. 379, 193 S.E.2d 574, 1972 Ga. App. LEXIS 892 (1972).

Right of eminent domain rests largely in the discretion of the housing authority as to what and how much land is to be taken. The owner of land sought to be condemned cannot prevent such taking merely because there is other property which might have been more suitable for the purpose. Housing Auth. v. Hall, 217 Ga. 856, 126 S.E.2d 223, 1962 Ga. LEXIS 412 (1962).

Liability for employee's defamatory remarks. — In order for an authority to be liable for the defamatory remarks of its employee, evidence must be offered that

the authority as a public body corporate and politic as contemplated by the terms of O.C.G.A. § 8-3-30, had through its board of commissioners either authorized, approved, or ratified the alleged slanderous statements. Anderson v. Housing Auth., 171 Ga. App. 841, 321 S.E.2d 378, 1984 Ga. App. LEXIS 2348 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Preparation, operation of projects, cooperation. — Under Ga. L. 1962, p. 734, § 2, authorities may prepare, carry out, lease, and operate projects; and under that Code section, they can cooperate with "the city, the county, the state, or any political subdivision"; none of these powers include management contracts with private organizations, and powers are strictly construed. 1972 Op. Att'y Gen. No. U72-50.

Purchase and pledge of obligations by state bank. — State bank may purchase obligations of a public housing agency and pledge them as security for the repayment of a deposit of funds made with the bank by the housing agency provided the purchase of such obligations does not exceed 10 percent of the capital and unimpaired surplus of the bank. 1957 Ga. Op. Att'y Gen. 7.

Funds as public funds. — Funds of a local housing authority held exclusively for a public purpose are public funds within the meaning of former Code 1933, §§ 89-812 and 89-813 (see now O.C.G.A. §§ 45-8-13 and 45-8-15). 1957 Ga. Op. Att'y Gen. 7.

Employees of housing authority exempt from state loyalty oath. — Although a city housing authority is an instrumentality of the state, it is not an agency, board, or department of the state and, therefore, employees of the housing authority of a city are not required to sign the loyalty oath. 1950-51 Ga. Op. Att'y Gen. 98.

Geographic jurisdiction of a city housing authority established under the Housing Authority Law is governed primarily by the definition of "area of operation" in O.C.G.A. § 8-3-3(1). 1997 Op. Att'y Gen. No. U97-22.

RESEARCH REFERENCES

ALR.

Constitutionality, construction, and application of statutes or governmental projects for improvement of housing conditions (slum clearance), 172 A.L.R. 966.

Suability and liability for torts of public housing authority, 61 A.L.R.2d 1246.

Validity and construction of statute or ordinance providing for repair or destruction of residential building by public authorities at owner's expense, 43 A.L.R.3d 916.

What entities or projects are "public" for purposes of state statutes requiring payment of prevailing wages on public works projects, 5 A.L.R.5th 470.

What are "prevailing wages," or the like, for purposes of state statute requiring payment of prevailing wages on public works projects, 7 A.L.R.5th 400.

Employers subject to state statutes requiring payment of prevailing wages on public works projects, 7 A.L.R.5th 444.

8-3-31. Eminent domain.

An authority shall have the right to acquire by the exercise of the power of eminent domain any real property which it may deem necessary for its purposes under this article after the adoption by it of a resolution declaring that the acquisition of the real property described therein is necessary for such purposes. An authority may exercise the

power of eminent domain in the manner provided in Title 22; or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise of the power of eminent domain. Property already devoted to a public use may be acquired, except that no real property belonging to the city, the county, the state, or any political subdivision thereof may be acquired without the consent of such city, county, state, or other political subdivision.

History.
Ga. L. 1937, p. 210, § 12.

JUDICIAL DECISIONS

Nature and exercise of power. — Right to take private property by the exercise of the power of eminent domain is an element of sovereignty and will be upheld only when every prerequisite to its exercise has been fully met. Scheuer v. Housing Auth., 214 Ga. 842, 108 S.E.2d 264, 1959 Ga. LEXIS 369 (1959).

Conferring power within legislature's power. — Conferring of the right of eminent domain upon housing authorities by Ga. L. 1937, p. 210 (see now O.C.G.A. § 8-3-30 et seq.) was within the power of the General Assembly. Williamson v. Housing Auth., 186 Ga. 673, 199 S.E. 43, 1938 Ga. LEXIS 684 (1938).

No judicial interference absent bad faith or abuse of power. — Selection of what and how much property will be taken for a needed public use by a condemning authority will not be interfered with or controlled by the courts unless such selection is made in bad faith or beyond the power conferred by law. Varnadoe v. Housing Auth., 221 Ga. 467, 145 S.E.2d 493, 1965 Ga. LEXIS 498 (1965).

RESEARCH REFERENCES

ALR.
Eminent domain: possibility of overcoming specific obstacles to contemplated use as element in determining existence of necessary public use, 22 A.L.R.4th 840.

8-3-31.1. Eminent domain to be exercised solely for public use.

(a) As used in this Code section, the term "public use" shall have the meaning specified in Code Section 22-1-1.

(b) Any exercise of the power of eminent domain under this chapter or Chapter 4 of this title must:

(1) Be for a public use; and

(2) Be approved by resolution of the governing body of the municipality or county in conformity with the procedures specified in Code Section 22-1-10.

History.
Code 1981, § 8-3-31.1, enacted by Ga. L. 2006, p. 39, § 2/HB 1313.

Cross references.
Eminent domain, generally, § 21-1-1 et seq.

Editor's notes.
Ga. L. 2006, p. 39, § 25/HB 1313, not codified by the General Assembly, provides that this Code section shall apply to those condemnation proceedings filed on or after February 9, 2006, where title has not vested in the condemning authority unless constitutionally prohibited.

Ga. L. 2006, p. 39, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'The Landowner's Bill of Rights and Private Property Protection Act.'"

Law reviews.
For article on 2006 enactment of this Code section, see 23 Ga. St. U. L. Rev. 157 (2006).

RESEARCH REFERENCES

Am. Jur. 2d.
40A Am. Jur. 2d., Housing Laws and Urban Redevelopment, § 21 et seq.

8-3-32. Cooperation with federal government.

An authority is empowered to borrow money or accept grants or other financial assistance from the federal government for, or in aid of, any housing project within its area of operation; to take over or lease or manage any housing project or undertaking constructed or owned by the federal government; and, to these ends, to comply with such conditions and enter into such mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable. It is the purpose and intent of this article to authorize every authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance, or operation of any housing project by such authority.

History.
Ga. L. 1937, p. 210, § 20; Ga. L. 1939, p. 126, § 2; Ga. L. 1951, p. 127, § 2; Ga. L. 1959, p. 141, § 2; Ga. L. 1962, p. 734, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Geographic jurisdiction of a city housing authority established under the Housing Authority Law is governed primarily by the definition of "area of operation" in O.C.G.A. § 8-3-3(1). 1997 Op. Att'y Gen. No. U97-22.

RESEARCH REFERENCES

Am. Jur. 2d.
40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, §§ 6, 7.

ALR.
Home Owners' Loan Act, 121 A.L.R. 117; 125 A.L.R. 809.

8-3-33. Contracts with federal government.

(a) In any contract or amendatory or superseding contract for a loan and annual contributions heretofore or hereafter entered into between a housing authority and the federal government with respect to any housing project undertaken by said housing authority, the authority is

authorized to make such covenants (including covenants with holders of bonds issued by the authority for purposes of the project involved) and to confer upon the federal government such rights and remedies as the authority deems necessary to assure the fulfillment of the purposes for which the project was undertaken.

(b) In any contract with the federal government for annual contributions to an authority, the authority may obligate itself to convey to the federal government possession of or title to the project to which such contract relates, upon the occurrence of a substantial default, as defined in such contract, with respect to the covenants or conditions to which the authority is subject. Such obligation shall be specifically enforceable and shall not constitute a mortgage, any other laws notwithstanding.

(c) Any contract with the federal government for annual contributions to an authority may further provide that in case of a conveyance pursuant to subsection (b) of this Code section, the federal government may complete, operate, manage, lease, convey, or otherwise deal with the project in accordance with the terms of such contract.

(d) Any contract entered into pursuant to subsections (b) and (c) of this Code section shall require that, as soon as practicable after the federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the authority the project as then constituted.

History. Ga. L. 1943, p. 146, § 6; Ga. L. 1951, p. 127, § 2; Ga. L. 1951, p. 219, § 3; Ga. L. 1959, p. 141, § 2; Ga. L. 1962, p. 734, § 2.

8-3-34. Housing studies and analyses.

(a) Any housing authority may, within its area of operation, undertake studies and analyses of housing needs and of the measures required to meet such needs, including the gathering of data with respect to population and family groups, and the distribution of such groups according to income, and the gathering of data with respect to the amount and quality of available housing, and its distribution according to rental and sales prices, employment, wages, and other factors affecting local housing needs and the measures required to meet such needs.

(b) An authority may make the results of such studies and analyses available to the public and to the building, housing, and supply industries.

(c) An authority may also engage in research and disseminate information on the subject of housing generally.

History.
Ga. L. 1945, p. 270, § 2.

8-3-35. Legislative findings; additional powers; bonds.

(a) It is found and declared that from time to time there has existed and at the present time there exists an inadequate supply of funds at interest rates sufficiently low to enable the financing of safe and sanitary single and multifamily dwelling units for citizens of the state with low and moderate income; that the inability to finance such single and multifamily dwelling units results in an inability of builders to construct such housing, causing unemployment or underemployment in the housing construction and related businesses and causing a lack of safe and sanitary housing to be available to persons of low and moderate income; that such unemployment or underemployment in the housing construction and related businesses and an inadequate supply of safe and sanitary housing for persons of low and moderate income wastes human resources, increases the public assistance burden of the state, impairs the security of family life, impedes the economic and physical development of the state, adversely affects the welfare and prosperity of all of the people of the state, and accordingly creates and fosters conditions adverse to the general health and welfare of the citizens of the state; and that the making available in the manner provided in this Code section of a more adequate supply of funds at interest rates sufficiently low to enable the financing of safe and sanitary single and multifamily dwelling units for citizens of low and moderate income will result in the alleviation or reduction of the adverse consequences which have resulted and may result from continued unemployment and underemployment in the housing construction and related businesses and the inadequate supply of such housing for persons of low and moderate income.

(b) In addition to the powers otherwise granted in this article, any authority shall have the following powers:

(1) To purchase mortgage loans or other forms of collateral and participations therein from mortgage lenders and other holders of such collateral and to make commitments therefor;

(2) To contract with mortgage lenders for the origination of, or the servicing of, mortgage loans to be made by such mortgage lenders to finance eligible housing units within the authority's area of operation and the servicing of the mortgages securing such mortgage loans;

(3) To make loans to mortgage lenders, provided that:

(A) The proceeds of such loans shall be required to be used by such mortgage lenders for the making of mortgage loans to finance eligible housing units within the authority's area of operation; and

(B) If required by the authority, the mortgages in connection with the mortgage loans so made, together with any additional security required by the authority, shall be mortgaged, pledged, assigned, or otherwise provided as security for such loans to mortgage lenders;

(4) To issue bonds from time to time, in its discretion, to provide funds to purchase mortgage loans or other forms of collateral or participation interests therein from mortgage lenders and to make loans to mortgage lenders and to make direct loans for eligible housing units as authorized in this Code section and to issue refunding bonds for the purpose of refunding or retiring bonds previously issued by it for any such purpose, in accordance with the provisions of this article, which may include, but are not limited to, bonds on which the principal and the interest are payable:

(A) Exclusively from the income and revenues of the authority from one or more specified mortgage loans or other forms of collateral or participation interests therein from one or more specific loans to mortgage lenders, regardless of whether such mortgage loans or other forms of collateral or participation interests therein were purchased or such loans to mortgage lenders were made from the proceeds of such bonds; or

(B) From revenues of the authority generally that are not otherwise pledged or obligated;

(5) To exercise any and all rights accorded to the owner and holder of a mortgage under and in accordance with the terms of said instrument and the applicable laws of the state with respect to the mortgaged property, directly or through mortgage lenders or others acting on behalf of the authority or on behalf of the holders of its bonds, including, but without limitation, the power to foreclose, to forbear enforcement of any remedy on such terms as the authority shall deem appropriate, to sell the equity of redemption, to purchase the equity of redemption, and otherwise to sell and dispose of the mortgaged property, all as shall seem in the best interest of the authority and the holders of its bonds; and

(6) To mortgage, pledge, assign, or grant security interests in any or all of its mortgage loans or other collateral or participation interests therein, its mortgages, and any interest of the authority created thereby in the underlying real and personal properties covered by such mortgages as security for the payment of the principal of, and interest on, any bonds issued by the authority, or as security for any agreements made in connection therewith, whether then owned or thereafter acquired, and to pledge the revenues from which bonds are payable as security for the payment of the principal

of and interest on said bonds and any agreements made in connection therewith.

(c) No eligible housing unit shall become subject to the provisions of Code Section 8-3-11 or Code Section 8-3-12 or entitled to the benefits of Code Section 8-3-8 solely by reason of having been financed, directly or indirectly, with proceeds of bonds issued by an authority for the purposes described in this Code section.

(d) Any bonds issued by an authority as permitted under the terms of this article which are issued for the purposes described in this Code section shall be issued in accordance with the provisions of this article, except that such bonds may be sold at any price which shall be approved by the authority and may be sold at public or private sale without any public advertisement.

(e) Bonds of an authority which are issued for the purposes described in this Code section shall be confirmed and validated in accordance with the procedures set forth in Article 3 of Chapter 82 of Title 36, the "Revenue Bond Law," and the judgment of validation shall have the same effect as is provided in said "Revenue Bond Law."

(f) Any action pertaining to issuance of bonds of an authority issued for the purposes described in this Code section, the rights of the holders thereof or the security therefor, and any action pertaining to the validation of any such bonds, shall be brought in the superior court of the county in which the eligible housing units to be financed with proceeds of such bonds are located, or if such eligible housing units shall be located in more than one county, in either the superior court of the county in which the authority is located or in the superior court of any county where any of such eligible housing units are situated.

History.

Ga. L. 1982, p. 2228, § 2; Code 1981, § 8-3-35, enacted by Ga. L. 1982, p. 2228, § 5; Ga. L. 1983, p. 3, § 6; Ga. L. 1989, p. 14, § 8; Ga. L. 2008, p. 239, § 1/SB 397; Ga. L. 2024, p. 1052, § 1(b)(8)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "Title 36," for "Title 36 known as" in subsection (e).

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1997, quotation marks were added at the beginning and end of "Revenue Bond Law" at the end of subsection (e).

8-3-36. Prohibition of nonresidents suspected of criminal acts.

Any housing authority created pursuant to this article, acting through its director or his or her designee, is authorized to prohibit, without breaching the peace, any person who is reasonably suspected of committing a criminal act on the premises of a housing project and who

is not a resident of said project from entering, loitering, or remaining upon the common areas of such project.

History.
Code 1981, § 8-3-36, enacted by Ga. L. 1998, p. 857, § 2.

RESEARCH REFERENCES

ALR.
Validity, construction, and application of loitering statutes and ordinances, 72 A.L.R.5th 1.

PART 3

HOUSING AUTHORITY COMMISSIONERS

8-3-50. Appointment, qualifications, and tenure of commissioners; reimbursement for expenses.

(a)(1) When the governing body of a city adopts a resolution as provided in Code Section 8-3-5, it shall promptly notify the mayor of such adoption. Upon receiving such notice, the mayor shall appoint five persons as commissioners of the authority created for such city. In the event the mayor fails or refuses to submit appointments within 30 days after notice from the governing body of approval of a resolution of necessity or termination of existing appointments, the governing body may appoint the commissioners of the authority created for such city.

(2) In any city other than a city described in subparagraphs (A) and (B) of paragraph (3) of this subsection in which the governing body thereof has adopted a resolution as provided in Code Section 8-3-5 and the authority has passed a resolution so requesting, the mayor shall appoint, in addition to the other commissioners authorized in paragraph (1) of this subsection, one or two additional commissioners of whom at least one is directly assisted by the public housing authority in such city and who shall be known as a resident commissioner. Each resident commissioner shall be appointed for initial and subsequent terms of office of one year and shall have full voting rights. Each authority shall determine how many commissioners shall constitute a quorum of such authority. In the event any person serving as a resident commissioner ceases to be directly assisted by the public housing authority within such city, then such person shall cease to be a resident commissioner and a vacancy shall result. Vacancies in the office of resident commissioner shall be filled for the unexpired term by appointment of the mayor.

(3)(A) In any city with a population of 350,000 or more according to the United States decennial census of 1970 or any future such

census in which the governing body has adopted a resolution as provided in Code Section 8-3-5, the mayor shall appoint, in addition to the other commissioners authorized under paragraph (1) of this subsection, two commissioners to be known as resident commissioners who shall be residents of a housing project in such city. These resident commissioners shall be appointed for a term of office of one year. The two resident commissioners shall be voting members and four commissioners shall constitute a quorum of such authority for the purpose of conducting its business and exercising its powers and for all other purposes. In the event any person serving as a resident commissioner ceases to be a resident of a housing project in such city, then such person shall cease to be a resident commissioner and a vacancy shall result. Vacancies in the office of resident commissioner shall be filled for the unexpired term by appointment by the mayor of said city.

(B) In any city of this state having a population of not less than 95,000 nor more than 130,000 according to the United States decennial census of 1990 or any future such census in which the governing body has adopted a resolution as provided in Code Section 8-3-5, the mayor shall appoint, in addition to the commissioners authorized in paragraphs (1) and (2) of this subsection, an additional commissioner who shall be a recipient of direct assistance from the public housing authority within the city. Such additional commissioner shall be appointed for a term of office of five years and until the appointment and qualification of a successor. Successors shall also be appointed for terms of five years.

(b)(1) When the governing body of a county adopts a resolution as provided in Code Section 8-3-5, said body shall appoint five persons as commissioners of the authority created for said county.

(2) In any county other than a county described in paragraph (3) of this subsection in which the governing body thereof has adopted a resolution as provided in Code Section 8-3-5 and the authority has passed a resolution so requesting, the governing body shall appoint, in addition to the other commissioners authorized in paragraph (1) of this subsection, one or two additional commissioners of whom at least one is directly assisted by the public housing authority in such county and who shall be known as a resident commissioner. Each resident commissioner shall be appointed for initial and subsequent terms of office of one year and shall have full voting rights. Each authority shall determine how many commissioners shall constitute a quorum of such authority. In the event any person serving as a resident commissioner ceases to be a recipient of direct assistance from the

public housing authority within such county, then such person shall cease to be a resident commissioner and a vacancy shall result. Vacancies in the office of resident commissioner shall be filled for the unexpired term by appointment of the governing body of such county.

(3) In any county with a population of 800,000 or more according to the United States decennial census of 2000 or any future such census in which the governing body has adopted a resolution as provided in Code Section 8-3-5, the governing body shall, in addition to the other commissioners authorized under paragraph (1) of this subsection:

(A) Appoint two commissioners to be known as "resident commissioners" who shall be residents of a housing project located within the unincorporated areas of such county. The tenants of each housing project located within the unincorporated areas of the county shall, upon request of the governing body of the county, be entitled to nominate one resident of such housing project for the appointment as resident commissioner, and the governing body shall appoint two of such nominees as resident commissioners. Such resident commissioners shall be appointed for terms of office of one year and shall be voting members. In the event any person serving as resident commissioner ceases to be a resident of a housing project located within the unincorporated area of such county, then such person shall cease to be a resident commissioner and a vacancy shall result. Vacancies in the office of resident commissioner shall be filled for the unexpired term by appointment by the governing body of such county; and

(B) Appoint an additional two members who shall be subject to the provisions of this Code section in the same manner as the five commissioners otherwise provided for in paragraph (1) of this subsection. Each commissioner provided for in this subparagraph shall be appointed for a term of office of five years and until the appointment and qualification of his or her successor, except that the initial appointment of one of the positions created by this subparagraph shall be for a term of office of four years and until the appointment and qualification of his or her successor.

(c) Except as provided otherwise in this Code section, the commissioners who are first appointed shall be designated to serve for terms of office of one, two, three, four, and five years, respectively, from the date of their appointment; but thereafter commissioners shall be appointed for a term of office of five years, except that all vacancies shall be filled for the unexpired term.

(d) No commissioner of an authority may be an officer or employee of the city or county for which the authority is created.

(e) A commissioner shall hold office until his or her successor has been appointed and has qualified.

(f) A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

(g) A commissioner shall receive no compensation for his or her services; but he or she shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his or her duties.

History.

Ga. L. 1937, p. 210, § 5; Ga. L. 1939, p. 112, § 3; Ga. L. 1939, p. 126, § 1; Ga. L. 1943, p. 146, § 7; Ga. L. 1951, p. 127, § 1; Ga. L. 1951, p. 612, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1; Ga. L. 1971, p. 414, § 1; Ga. L. 1972, p. 3908, § 1; Ga. L. 1982, p. 507, §§ 1, 2; Ga. L. 1982, p. 1087, §§ 1, 2; Ga. L. 1982, p. 2107, § 2; Ga. L. 1983, p. 3, § 6; Ga. L. 1989, p. 1241, § 1; Ga. L. 1991, p. 390, § 1; Ga. L. 1992, p. 6, § 8; Ga. L. 1992, p. 2059, § 1; Ga. L. 1992, p. 2408, § 1; Ga. L. 1994, p. 237, § 2; Ga. L. 1999, p. 737, § 1; Ga. L. 2002, p. 1473, § 1; Ga. L. 2004, p. 631, § 8; Ga. L. 2020, p. 493, § 8/SB 429.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1999, "paragraph (3)" was substituted for "subparagraph (b)(3)" in paragraph (b)(2).

Editor's notes.

The provisions of paragraphs (2) and (3) of subsection (b) as added by the 1983 amendment were originally enacted in substantially the same form by Ga. L. 1982, p. 504, § 1, effective May 1, 1982. However, that 1982 Act did not amend the Code.

Law reviews.

For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

JUDICIAL DECISIONS

Mayor's authority under § 8-3-50(a)(1). — Mayor properly exercised the power of appointment granted under the plain language of O.C.G.A. § 8-3-50(a)(1), and the trial court properly held that the city council was not required to approve the mayor's appointments to the housing authority's board. Hous. Auth. v. Ellis, 288 Ga. App. 834, 655 S.E.2d 621, 2007 Ga. App. LEXIS 1310 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Service by mayor on county or city board. — There is nothing in Ga. L. 1951, p. 612 prohibiting the mayor of a city from remaining as a member or chair person of the board of commissioners of the housing authority of a county; the mayor would be ineligible, however, to serve as a member or chair person of a city housing authority. 1958-59 Ga. Op. Att'y Gen. 40.

8-3-51. Authority; quorum; voting; officers; employees.

(a) The powers of each authority shall be vested in the commissioners thereof in office from time to time. Three commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action

may be taken by the authority upon a vote of a majority of the commissioners present, unless in any case the bylaws of the authority shall require a larger number.

(b) The mayor shall designate which of the commissioners appointed shall be the first chairman; but, when the office of the chairman of the authority thereafter becomes vacant, the authority shall select a chairman from among its commissioners.

(c) An authority shall select from among its commissioners a vice-chairman; and it may employ a secretary (who shall be executive director), technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require; and it shall determine their qualifications, duties, and compensations.

(d) For such legal services as it may require, an authority may call upon the chief law officer of the city or the county or may employ its own counsel and legal staff.

(e) An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

History.
Ga. L. 1937, p. 210, § 5; Ga. L. 1939, p. 112, § 3; Ga. L. 1939, p. 126, § 1; Ga. L. 1943, p. 146, § 7; Ga. L. 1951, p. 127, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1; Ga. L. 1989, p. 14, § 8.

OPINIONS OF THE ATTORNEY GENERAL

Attorney for housing authority. — There is no prohibition against members of the General Assembly, city attorneys, or county attorneys being employed as attorneys for a housing authority. 1960-61 Ga. Op. Att'y Gen. 9.

8-3-52. Disclosure and abstention requirements for interested commissioners and employees.

(a) No commissioner or employee of the authority shall voluntarily acquire any interest, direct or indirect, in any project or in any property included or planned to be included in any project, or in any contract or proposed contract in connection with any project. Where the acquisition is not voluntary, such commissioner or employee shall immediately disclose such interest in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Upon such disclosure, such commissioner or employee shall not participate in any action by the authority involving such project, property, or contract, respectively.

(b) If any commissioner or employee of the authority previously owned or controlled an interest, direct or indirect, in any project or in any property included or planned to be included in any project, or in any contract or proposed contract in connection with any project, he shall

immediately disclose such interest in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Upon such disclosure, such commissioner or employee shall not participate in any action by the authority involving such project, property, or contract, respectively.

(c) A commissioner shall not participate in any action concerning the employment to a remunerative position of the person who appointed said commissioner to office.

(d) In the selection of a depository for funds of the authority, any commissioner who has a financial interest in the depository under consideration shall disclose his interest and abstain from taking any part in the consideration of or voting on the selection of the depository.

(e) Any violation of this Code section shall constitute misconduct in office.

(f) This Code section shall not be applicable to the acquisition of any interest in notes or bonds of the authority issued in connection with any project, or to the execution of agreements by banking institutions for the deposit or handling of funds in connection with a project, or to agreements by such institutions to act as trustee under any trust indenture.

History.
Ga. L. 1937, p. 210, § 6; Ga. L. 1951, p. 219, § 4; Ga. L. 1982, p. 906, §§ 2, 3.

Cross references.
Conflicts of interest involving state officers and employees, § 45-10-20 et seq.

8-3-53. Removal of commissioners.

For inefficiency or neglect of duty or misconduct in office, a commissioner of an authority may be removed by the mayor or, in the case of an authority for a county, by the governing body of said county, provided that a commissioner shall be removed only after he shall have been given a copy of the charges at least ten days prior to the hearing thereon and shall have had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the clerk.

History.
Ga. L. 1937, p. 210, § 7; Ga. L. 1943, p. 146, § 7.

PART 4

OBLIGATIONS ON BONDS AND LEASES

8-3-70. Authorized bonds.

An authority shall have power to issue bonds from time to time, in its discretion, for any of its corporate purposes. An authority shall also have power to issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. An authority may issue such types of bonds as it may determine, including bonds on which the principal and interest are payable:

(1) Exclusively from the income and revenues of the housing project financed with the proceeds of such bonds, or with such proceeds together with a grant from the federal government in aid of such project;

(2) Exclusively from the income and revenues of certain designated housing projects whether or not they were financed in whole or in part with the proceeds of such bonds; or

(3) From its revenues generally.

Any of such bonds may be additionally secured by a pledge of any revenues or a mortgage of any housing project or projects or of any other property of the authority.

History.
Ga. L. 1937, p. 210, § 14; Ga. L. 1939, p. 126, § 3; Ga. L. 1951, p. 127, § 3; Ga. L. 1959, p. 141, § 3; Ga. L. 1962, p. 734, § 3; Ga. L. 1971, p. 94, § 1.

RESEARCH REFERENCES

Am. Jur. 2d.
40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 28.

C.J.S.
64A C.J.S. (Rev), Municipal Corporations, § 2025 et seq.

8-3-71. Bonds not personal liability nor public debt.

(a) Neither the commissioners of an authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

(b) The bonds and other obligations of an authority shall not be a debt of the city, the county, the state, or any political subdivision of the state; and such bonds or obligations shall so state on their face. Neither the city, the county, the state, nor any political subdivision of the state shall be liable on such bonds or other obligations; nor in any event shall such bonds or obligations be payable out of any funds or properties other than those of said authority. The bonds shall not constitute an

indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

History.
Ga. L. 1937, p. 210, § 14; Ga. L. 1939, p. 126, § 3; Ga. L. 1951, p. 127, § 3; Ga. L. 1959, p. 141, § 3; Ga. L. 1962, p. 734, § 3; Ga. L. 1971, p. 94, § 1.

8-3-72. Issued for public purpose; tax exemption; bonds as contract.

Bonds of an authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities. All such bonds shall be exempt from state, county, municipal, or other taxation in the State of Georgia; and interest on such bonds shall be exempt from income taxation or other taxation by the State of Georgia or by any political subdivision thereof. The provisions of this article exempting from taxation both the properties of housing authorities and the bonds and interest thereon shall constitute, by virtue of this article and without the necessity of the same being restated in such bonds, a contract between the bondholders, including all transferees of such bonds, from time to time, on the one hand and the respective housing authorities issuing such bonds and the state on the other.

History.
Ga. L. 1937, p. 210, § 14; Ga. L. 1939, p. 124, § 1.
Cross references.
Constitutional authorization for tax exemptions for public property, Ga. Const. 1983, Art. VII, Sec. II, Paras. I to IV.

RESEARCH REFERENCES

C.J.S.
84 C.J.S. (Rev), Taxation, § 292 et seq.

8-3-73. Form; terms; interest.

Bonds of an authority shall be authorized by its resolution and may be issued in one or more series and shall bear such date or dates; mature at such time or times; bear interest at such rate or rates; be in such denomination or denominations; be in such form, either coupon or registered; carry such conversion or registration privileges; have such rank or priority; be executed in such manner; be payable in such medium of payment, at such place or places; and be subject to such terms of redemption, with or without premium, as such resolution, its trust indenture, or mortgage may provide.

History.
Ga. L. 1937, p. 210, § 15; Ga. L. 1939, p. 126, § 3; Ga. L. 1951, p. 127, § 3; Ga. L. 1959, p. 141, § 3; Ga. L. 1962, p. 734, § 3; Ga. L. 1970, p. 113, § 1; Ga. L. 1971, p. 94, § 1; Ga. L. 1980, p. 1094, § 1.

Cross references.
Repeal of interest rate limitations, § 36-82-123.

8-3-74. Sale of bonds.

The bonds of an authority may be sold at public or private sale in such a manner and for such price as the authority may determine to be in the best interest of the authority.

History.
Ga. L. 1937, p. 210, § 15; Ga. L. 1939, p. 126, § 3; Ga. L. 1951, p. 127, § 3; Ga. L. 1959, p. 141, § 3; Ga. L. 1962, p. 734, § 3; Ga. L. 1971, p. 94, § 1; Ga. L. 1980, p. 1094, § 1; Ga. L. 1987, p. 283, § 4; Ga. L. 1993, p. 1067, § 3.

8-3-75. Signatures; negotiability.

In case any of the commissioners or officers of the authority whose signatures appear on any bonds or coupons shall cease to be such commissioners or officers before the delivery of such bonds, such signatures shall nevertheless be valid and sufficient for all purposes, the same as if they had remained in office until such delivery. Any law to the contrary notwithstanding, any bonds issued pursuant to this article shall be fully negotiable.

History.
Ga. L. 1937, p. 210, § 15.

8-3-76. Validity.

Any bond reciting in substance that it has been issued by an authority to aid in financing a housing project to provide dwelling accommodations for persons of low income shall be conclusively deemed, in any action or proceeding involving the validity or enforceability of such bond or the security therefor, to have been issued for a housing project of such character.

History.
Ga. L. 1937, p. 210, § 15.

8-3-77. Powers of authorities as to securing payment of bonds and lease obligations.

In connection with the issuance of bonds or the incurring of obligations under leases and in order to secure the payment of such bonds or obligations, an authority shall have power:

(1) To pledge all or any part of its gross or net rents, fees, or revenues to which its right then exists or may thereafter come into existence;

(2) To mortgage all or any part of its real or personal property then owned or thereafter acquired;

(3) To covenant against pledging all or any part of its rents, fees, and revenues or against mortgaging all or any part of its real or personal property to which its right or title then exists or may thereafter come into existence or to covenant against permitting or suffering any lien on such revenues or property; to covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any housing project or any part thereof; and to covenant as to what other, or additional, debts or obligations may be incurred by it;

(4) To covenant as to the bonds to be issued and as to the issuance of such bonds in escrow or otherwise and as to the use and disposition of the proceeds thereof; to provide for the replacement of lost, destroyed, or mutilated bonds; to covenant against extending the time for the payment of its bonds or interest thereon; and to redeem the bonds, to covenant for their redemption, and to provide the terms and conditions thereof;

(5) To covenant, subject to the limitations contained in this article, as to rents and fees to be charged in the operation of a housing project or projects, as to the amount to be raised each year or other period of time by rents, fees, and other revenues, and as to the use and disposition to be made thereof; to create or to authorize the creation of special funds for moneys held for construction or operating costs, debt service, reserves, or other purposes; and to covenant as to the use and disposition of the moneys held in such funds;

(6) To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated; to prescribe the amount of bonds the holders of which must consent thereto; and to prescribe the manner in which such consent may be given;

(7) To covenant as to the use of any or all of its real or personal property; and to covenant as to the maintenance of its real and personal property, the replacement thereof, the insurance to be carried thereon, and the use and disposition of insurance moneys;

(8) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation; and to covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds or obligations shall become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;

(9) To vest in a trustee or trustees or the holders of bonds or any proportion of them the right to enforce the payment of the bonds or

any covenants securing or relating to the bonds; to vest in a trustee or trustees the right, in the event of a default by said authority, to take possession and use, operate, and manage any housing project or part thereof, and to collect the rents and revenues arising therefrom, and to dispose of such moneys in accordance with the agreement of the authority with said trustee; to provide for the powers and duties of a trustee or trustees and to limit the liabilities thereof; and to provide the terms and conditions upon which the trustee or trustees or the holders of bonds or any proportion of them may enforce any covenant or rights securing or relating to the bonds; and

(10) To exercise all or any part or combination of the powers granted by this Code section; to make covenants other than and in addition to the covenants expressly authorized by this Code section, of like or different character; to make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bond or, in the absolute discretion of said authority, as will tend to make the bonds more marketable, notwithstanding that such covenants, acts, or things may not be enumerated in this Code section.

History.
Ga. L. 1937, p. 210, § 16; Ga. L. 1939, p. 126, §§ 2, 3; Ga. L. 1951, p. 127, §§ 2, 3; Ga. L. 1959, p. 141, §§ 2, 3; Ga. L. 1962, p. 734, §§ 2, 3; Ga. L. 1971, p. 94, § 1.

8-3-78. Remedies of obligee of an authority generally.

An obligee of an authority shall have the right, in addition to all other rights which may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee:

(1) By mandamus, suit, action, or proceeding at law or in equity, to compel said authority and the commissioners, officers, agents, or employees thereof to observe each and every term, provision, and covenant contained in any contract of said authority with or for the benefit of such obligee and to require the carrying out of any or all such covenants and agreements of said authority and the fulfillment of all duties imposed upon said authority by this article; and

(2) By suit, action, or proceeding in equity, to enjoin any acts or things which may be unlawful or the violation of any of the rights of such obligee of said authority.

History.
Ga. L. 1937, p. 210, § 17.

JUDICIAL DECISIONS

Right of obligee of authority to mandamus. — Although mandamus will not lie when there is another specific legal remedy, when the statute creating the

housing authority specifically provides that all real property of the authority is totally exempt from levy and sale by virtue of an execution and authorizes the authority to pledge all or any part of its gross or net rents, fees, or revenues to secure the payment of any bonds issued by it, an action upon the contract and any judgment rendered therein or execution based thereon would not afford the plaintiff an adequate remedy for the enforcement of its claim, and the obligee has the right to compel the authority by mandamus. Housing Auth. v. Ayers, 211 Ga. 728, 88 S.E.2d 368, 1955 Ga. LEXIS 442 (1955).

8-3-79. Additional remedies conferrable on obligee by an authority.

An authority shall have power by its resolution, trust indenture, mortgage, lease, or other contract to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in such resolution or instrument, by suit, action, or proceeding in any court of competent jurisdiction:

(1) To cause possession of any housing project or any part thereof to be surrendered to any such obligee;

(2) To obtain the appointment of a receiver of any housing project of said authority or any part thereof and of the rents and profits therefrom. If such receiver is appointed, he may enter and take possession of such housing project or any part thereof and operate and maintain it, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said authority as the court shall direct; and

(3) To require said authority and the commissioners thereof to account as if it and they were the trustees of an express trust.

History.
Ga. L. 1937, p. 210, § 18; Ga. L. 1939, p. 126, §§ 2, 3; Ga. L. 1951, p. 127, §§ 2, 3; Ga. L. 1959, p. 141, §§ 2, 3; Ga. L. 1962, p. 734, §§ 2, 3; Ga. L. 1971, p. 94, § 1; Ga. L. 1990, p. 8, § 8.

8-3-80. Property exempt from execution.

All real property of an authority shall be exempt from levy and sale by virtue of an execution; and no execution or other judicial process shall issue against the same nor shall any judgment against an authority be a charge or lien upon its real property, provided that this Code section shall not apply to or limit the right of obligees to foreclose or otherwise enforce any mortgage of an authority or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by an authority on its rents, fees, or revenues.

History.
Ga. L. 1937, p. 210, § 19.

8-3-81. Bonds and other obligations of authorities as legal investments.

Notwithstanding any restrictions on investments contained in any laws of this state, the state and all public officers, municipal corporations, political subdivisions, and public bodies; all banks, bankers, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest any sinking funds, moneys, or other funds belonging to them or within their control in any bonds or other obligations issued by a housing authority pursuant to this article, or issued by any public housing authority or agency in the United States, when such bonds or other obligations are secured by a pledge of annual contributions to be paid by the United States government or any agency thereof. Such bonds and other obligations shall be authorized security for all public deposits, it being the purpose of this Code section to authorize any persons, firms, corporations, associations, political subdivisions, bodies, and officers, public or private, to use any funds owned or controlled by them, including but not limited to sinking, insurance, investment, retirement, compensation, pension and trust funds, and funds held on deposit, for the purchase of any such bonds or other obligations; provided, however, that nothing contained in this Code section shall be construed as relieving any person, firm, or corporation from any duty of exercising reasonable care in selecting securities.

History.
Ga. L. 1939, p. 122, § 1; Ga. L. 1951, p. 127, § 3; Ga. L. 1959, p. 141, § 3; Ga. L. 1962, p. 734, § 3; Ga. L. 1971, p. 94, § 1; Ga. L. 1989, p. 14, § 8.

RESEARCH REFERENCES

ALR.
Rights and liabilities of municipality as to interest earned on improvement assessments or other special funds collected or held by it, 143 A.L.R. 1341.

Part 5

Regional Housing Authorities

8-3-100. Procedure for creating an authority.

If the governing body of each of two or more contiguous counties by resolution declares that there is a need for one housing authority to be

created for all of such counties to exercise in such counties powers and other functions prescribed for a regional housing authority, a public body corporate and politic to be known as a regional housing authority shall thereupon exist for all of such counties and shall exercise its powers and other functions in such counties. Thereupon, each county housing authority created for each of such counties shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as provided in this part. Notwithstanding any other provision of this Code section to the contrary, the governing body of a county shall not adopt a resolution as aforesaid if there is a county housing authority created for such county which has any bonds or notes outstanding unless, first, all holders of such bonds and notes consent in writing to the substitution of such regional housing authority in lieu of such county housing authority on all such bonds and notes, and, second, the commissioners of such county housing authority adopt a resolution consenting to the transfer of all rights, contracts, obligations, and property, real and personal, of such county housing authority to such regional housing authority as provided in this part. When the above two conditions are complied with and such regional housing authority is created and authorized to exercise its powers and other functions, all rights, contracts, agreements, obligations, and property, real and personal, of such county housing authority shall be in the name of and vest in such regional housing authority; and all obligations of such county housing authority shall be the obligations of such regional housing authority; and all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against such county housing authority.

History.
Ga. L. 1943, p. 146, § 6; Ga. L. 1951, p. 127, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1.

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Operation of regional authority renders county authority obsolete. — It is clear from the language of Ga. L. 1943, p. 146, § 6 (see now O.C.G.A. § 8-3-100) that any county authority within the area of operation of a regional authority must cease to operate upon the establishment of the regional authority. 1950-51 Ga. Op. Att'y Gen. 99.

8-3-101. Transfer of property to an authority.

When any real property of a county housing authority vests in a regional housing authority as provided in Code Section 8-3-100, the county housing authority shall execute a deed of such property to the regional housing authority, which thereupon shall file such deed in the office provided for the filing of deeds, provided that nothing contained in

this Code section shall affect the vesting of property in the regional housing authority as provided in Code Section 8-3-100.

History.
Ga. L. 1943, p. 146, § 6.

8-3-102. Resolution declaring need.

(a) The governing body of each of two or more contiguous counties may by resolution declare that there is a need for one regional housing authority to be created for all such counties to exercise in such counties powers and other functions prescribed for a regional housing authority, only if such governing body finds:

(1) That insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford; and

(2) That a regional housing authority would be a more efficient or economical administrative unit than the housing authority of such county.

(b) In determining whether dwelling accommodations are unsafe or insanitary, the governing body of a county shall take into consideration the safety and sanitation of dwellings, the light and air space available to the inhabitants of such dwellings, the degree of overcrowding, the size and arrangement of the rooms, and the extent to which conditions which endanger life or property by fire or other causes exist in such dwellings.

History.
Ga. L. 1943, p. 146, § 6.

8-3-103. Public hearings on adoption of resolution.

The governing body of a county shall not adopt any resolution authorized by Code Sections 8-3-100, 8-3-102, and 8-3-104 unless a public hearing has first been held. The clerk of such county shall give notice of the time, place, and purpose of the public hearing at least ten days prior to the day on which the hearing is to be held. Such notice shall be given by publication in a newspaper published in such county or, if there is no newspaper published in such county, in a newspaper published in the state and having a general circulation in such county. Upon the date fixed for such public hearing, an opportunity to be heard shall be granted to all residents of such county and to all other interested persons.

History.
Ga. L. 1943, p. 146, § 6.

8-3-104. Resolution as conclusive evidence of establishment.

In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the regional housing authority, the regional housing authority shall be conclusively deemed to have become created as a public body corporate and politic and to have become established and authorized to transact business and exercise its powers under this part upon proof of the adoption of a resolution by the governing body of each of the counties creating the regional housing authority declaring the need for the regional housing authority. Each such resolution shall be deemed sufficient if it declares that there is need for the regional housing authority and finds in substantially such terms as appear in paragraphs (1) and (2) of subsection (a) of Code Section 8-3-102, no further detail being necessary, that the conditions enumerated in those paragraphs exist.

History.
Ga. L. 1943, p. 146, § 6; Ga. L. 1951, p. 127, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1; Ga. L. 2011, p. 99, § 8/HB 24.

Cross references.
Hearsay rule exceptions; availability of declarant immaterial, § 24-8-803.
Self-authentication, § 24-9-902.
Public records, § 24-10-1005.

Editor's notes.
Ga. L. 2011, p. 99, § 101/HB 24, not codified by the General Assembly, provides that the amendment made by that Act shall apply to any motion made or hearing or trial commenced on or after January 1, 2013.

Law reviews.
For article, "Evidence," see 27 Ga. St. U. L. Rev. 1 (2011).
For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

8-3-105. Powers of authority generally.

Except as otherwise provided in this part, a regional housing authority and the commissioners thereof shall, within the area of operation of such regional housing authority, have the same functions, rights, powers, duties, privileges, immunities, and limitations provided for housing authorities created for cities or counties and the commissioners of such housing authorities. All the provisions of law applicable to housing authorities created for cities or counties and the commissioners of such authorities shall be applicable to regional housing authorities and the commissioners thereof.

History.
Ga. L. 1943, p. 146, § 6; Ga. L. 1951, p. 127, § 2; Ga. L. 1959, p. 141, § 2; Ga. L. 1962, p. 734, § 2.

8-3-106. Appointment of commissioners.

The governing bodies of the counties desiring to form a regional housing authority shall have the right to establish by resolution the

composition and size of the board of commissioners of the regional housing authority; provided, however, that each county shall have at least one commissioner on the board of commissioners of the regional housing authority and that at least one of the commissioners shall be a recipient of direct assistance from a public housing authority located within such region. The governing body of each county shall appoint the successors of the commissioner or commissioners appointed by it. A certificate of the appointment of any commissioner appointed pursuant to this Code section shall be filed with the clerk of the county, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

History. Ga. L. 1943, p. 146, § 6; Ga. L. 1951, p. 127, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1; Ga. L. 1997, p. 573, § 1; Ga. L. 1999, p. 737, § 2.

8-3-107. Appointment of additional commissioner.

If the area of operation of a regional housing authority consists of an even number of counties, the commissioners of the regional housing authority appointed by the governing bodies of such counties shall appoint one additional commissioner whose term of office shall be as provided in Code Section 8-3-108 for a commissioner of a regional housing authority. The commissioners of such authority appointed by the governing bodies of such counties shall likewise appoint each person to succeed such additional commissioner, provided that the term of office of such person begins during the terms of office of the commissioners appointing him. A certificate of the appointment of any such additional commissioner of such regional housing authority shall be filed with the other records of the regional housing authority and shall be conclusive evidence of the due and proper appointment of such additional commissioner.

History. Ga. L. 1943, p. 146, § 6; Ga. L. 1951, p. 127, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1.

8-3-108. Terms of office and removal of commissioners.

(a) The commissioners of a regional housing authority shall be appointed for terms of five years, except that all vacancies shall be filled for the unexpired terms. Each commissioner shall hold office until his successor has been appointed and has qualified.

(b) For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed by the officer or officers, or their successors, appointing such commissioner; but he shall be removed only after he has been given a copy of the charges at least ten days prior to the hearing thereon and has had an opportunity to be heard in person or by counsel.

(c) In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed as required for the certificate of appointment of such commissioner.

History.
Ga. L. 1943, p. 146, § 6; Ga. L. 1951, p. 127, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1.

8-3-109. Powers of commissioners.

(a) The commissioners shall constitute the regional housing authority, and the powers of such authority shall be vested in such commissioners in office from time to time.

(b) The commissioners of a regional housing authority shall elect a chairman from among the commissioners and shall have power to select or employ such other officers and employees as the regional housing authority may require.

(c) A majority of the commissioners of a regional housing authority shall constitute a quorum of such authority for the purpose of conducting its business and exercising its powers and for all other purposes.

(d) Nothing contained in this article shall be construed to prevent meetings of the commissioners of a housing authority anywhere within the perimeter boundaries of the area of operation of the authority or within any additional area where the housing authority is authorized to undertake a housing project.

History.
Ga. L. 1943, p. 146, § 6; Ga. L. 1951, p. 127, § 1; Ga. L. 1959, p. 141, § 1; Ga. L. 1962, p. 734, § 1.

8-3-110. Area of operation of county and regional authorities.

The area of operation of a housing authority created for a county shall include all of the county for which it is created; and the area of operation of a regional housing authority shall include all of the counties for which such regional housing authority is created and established, provided that a county or regional housing authority shall not undertake any housing project or projects within the boundaries of any city unless a resolution shall have been adopted by the governing body of such city, and also by any housing authority which shall have been theretofore established and authorized to exercise its powers in such city, declaring that there is a need for the county or regional housing authority to exercise its powers within such city.

History.
Ga. L. 1943, p. 146, § 6.
Editor's notes.
The language of this Code section was enacted by a 1943 amendment to Ga. L. 1937, p. 210, and was designated by Section 4B of the 1937 Act. The 1937 Act was amended further by Ga. L. 1952, p.

365, § 1, which repealed Section 4B and enacted a new Section 4B. However, the new Section 4B contained language which wholly repeated the language of the original Section 4B. Since the 1952 Act thus did not have the practical effect of repealing the language of the original Section 4B, the 1943 amendment (Ga. L. 1943, p. 146, § 6) is being treated as the sole basis for this Code section. The remainder of the language of the Section 4B enacted by the 1952 Act is codified at Code Sections 8-3-111 through 8-3-118.

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County authority abolished upon establishment of regional authority. — It is clear from the language of Ga. L. 1943, p. 146, § 6 (see now O.C.G.A. § 8-3-100) that any county authority within the area of operation of a regional authority must cease to operate upon the establishment of the regional authority. 1950-51 Ga. Op. Att'y Gen. 99.

8-3-111. Increase in area of operation.

(a) The area of operation of a regional housing authority shall be increased from time to time to include one or more additional contiguous counties not already within the area of operation of a regional housing authority if the governing body of each of the counties then included in the area of operation of such regional housing authority, the commissioners of the regional housing authority, and the governing body of each such additional county or counties each adopt a resolution declaring that there is a need for the inclusion of such additional county or counties in the area of operation of such regional housing authority. Upon the adoption of such resolution, the county housing authority created for each such additional county shall cease to exist except for the purpose of winding up its affairs and executing a deed to the regional housing authority as provided in Code Section 8-3-112.

(b) Notwithstanding any other provision of this Code section, such resolutions shall not be adopted if there is a county housing authority created for any such additional county which has any bonds or notes outstanding unless, first, all holders of such bonds and notes consent in writing to the substitution of such regional housing authority in lieu of such county housing authority as the obligor thereon and, second, the commissioners of such county housing authority adopt a resolution consenting to the transfer of all the rights, contracts, obligations, and property, real and personal, of such county housing authority to such regional housing authority as hereinafter provided.

(c) When the above two conditions are complied with and the area of operation of such regional housing authority is increased to include such additional county, as provided in this Code section, all rights, contracts, agreements, obligations, and property, real and personal, of such county housing authority shall be in the name of and vest in such regional housing authority, all obligations of such county housing authority shall be the obligation of such regional housing authority, and

all rights and remedies of any person against such county housing authority may be asserted, enforced, and prosecuted against such regional housing authority to the same extent as they might have been asserted, enforced, and prosecuted against such county housing authority.

History.
Ga. L. 1952, p. 365, § 1.

8-3-112. Transfer of property to authority.

When any real property of a county housing authority vests in a regional housing authority as provided in Code Section 8-3-111, the county housing authority shall execute a deed of such property to the regional housing authority which thereupon shall file such deed in the office provided for the filing of deeds, provided that nothing contained in this Code section shall affect the vesting of property in the regional housing authority as provided in Code Section 8-3-111.

History.
Ga. L. 1952, p. 365, § 1.

8-3-113. Requirements for declaration of need for expansion of authority.

The governing body of each of the counties in the area of operation of the regional housing authority, the commissioners of the regional housing authority, and the governing body of each such additional county or counties may by resolution declare that there is a need for the inclusion of such county or counties in the area of operation of the regional housing authority, only if:

(1) The governing body of each such additional county or counties finds that insanitary or unsafe inhabited dwelling accommodations exist in such county or there is a shortage of safe or sanitary dwelling accommodations in such county available to persons of low income at rentals they can afford; and

(2) The governing body of each of the counties then included in the area of operation of the regional housing authority, the commissioners of the regional housing authority, and the governing body of each such additional county or counties find that the regional housing authority would be a more efficient or economical administrative unit if the area of operation of the regional housing authority is increased to include such additional county or counties.

History.
Ga. L. 1952, p. 365, § 1.

8-3-114. Exclusion of counties; procedure; effect.

(a) The area of operation of a regional housing authority which has undertaken the development of one or more housing projects may be decreased from time to time to exclude one or more counties from such area if the governing body of each of the counties in such area and the commissioners of the regional housing authority each adopt a resolution declaring that there is a need for excluding such county or counties from such area, provided that this action may not be taken if the regional housing authority has outstanding any bonds or notes, unless all holders of such bonds and notes consent in writing to such action.

(b) If any action taken pursuant to subsection (a) of this Code section decreases the area of operation of the regional housing authority to only one county, such authority shall thereupon constitute and become a housing authority for such county in the same manner and with the same rights, powers, and immunities as though such authority were created by and authorized to transact business and exercise its powers pursuant to Code Sections 8-3-4 through 8-3-6; and the commissioners of such authority shall be thereupon appointed as provided in Code Section 8-3-50 for the appointment of commissioners of a housing authority created for a county.

History.
Ga. L. 1952, p. 365, § 1.

8-3-115. Requirements for declaration of need for exclusion from authority.

The governing body of each of the counties in the area of operation of the regional housing authority and the commissioners of the regional housing authority may adopt a resolution declaring that there is a need for excluding a county or counties from such area only if:

(1) Each such governing body of the counties to remain in the area of operation of the regional housing authority and the commissioners of the regional housing authority find that, because of facts arising or determined subsequent to the time when such area first included the county or counties to be excluded, the regional housing authority would be a more efficient or economical administrative unit if such county or counties were excluded from such area; and

(2) The governing body of each such county or counties to be excluded and the commissioners of the regional housing authority each also find that, because of the aforesaid changed facts, another housing authority for such county or counties would be a more efficient or economical administrative unit to function in such county or counties.

History.
Ga. L. 1952, p. 365, § 1.

8-3-116. Detachment of county by its own resolution; effect.

(a) Notwithstanding Code Sections 8-3-114 and 8-3-115, the governing body of any county may by resolution detach the county from the area of operation of its regional housing authority if such housing authority has undertaken no housing projects and, upon the adoption of such resolution, the county shall cease to be included in the area of operation of the regional housing authority, provided that this action may not be taken if the regional housing authority has outstanding any bonds, notes, or other obligations, unless all the holders of such bonds, notes, or other obligations consent in writing to such action.

(b) The housing authority thereafter established for any county detached from the area of operation of a regional housing authority may assume and pay all or any portion of the outstanding bonds, notes, or other obligations of such regional housing authority, provided that the exclusion of any county from the area of operation of the regional housing authority and the failure of the housing authority of such county to assume all or any part of such bonds, notes, or other obligations shall not in any way affect the said bonds, notes, or other obligations nor the rights or remedies of the obligees of such regional housing authority with respect thereto.

History.
Ga. L. 1952, p. 365, § 1.

8-3-117. Creation of authority after exclusion or detachment.

(a) At any time after the exclusion or detachment of any county from the area of operation of a regional housing authority, as provided in Code Sections 8-3-114 through 8-3-116, the governing body of any such county may adopt a resolution declaring that there is need for a housing authority in the county if the governing body shall find such need according to the provisions of Code Sections 8-3-4 through 8-3-6. Thereafter a public body corporate and politic to be known as the housing authority of the county shall exist for such county, and five commissioners shall be appointed for such authority by the governing body of such county. The authority may transact business and exercise its powers in the same manner and shall have the same rights, powers, and immunities as though created by said Code Sections 8-3-4 through 8-3-6.

(b) Nothing contained in this Code section shall be construed as preventing such county from thereafter being included within the area of operation of a regional housing authority as provided in this article.

History.
Ga. L. 1952, p. 365, § 1.

8-3-118. Public hearing prior to adoption of resolution.

The governing body of a county shall not adopt any resolution authorized by Code Sections 8-3-110 through 8-3-117 unless a public hearing has first been held in the manner prescribed in Code Section 8-3-103.

History.
Ga. L. 1952, p. 365, § 1.

Part 6

Providing Housing for Persons Engaged in National Defense Industries or Activities

8-3-130. Declaration of necessity.

The preparation for national defense requires a great migration of persons to engage in national defense industries and activities which would be jeopardized unless housing is available for such persons. An acute shortage of housing for such persons exists or impends in localities in the state. It is therefore of vital importance that all agencies qualified to do so have the powers and authority to develop and administer projects to provide housing for persons engaged in war or national defense activities and to aid and cooperate with the federal government in making such housing available for such persons.

History.
Ga. L. 1943, p. 161, § 1; Ga. L. 1951, p. 607, § 1.

8-3-131. Definitions.

As used in this part, the term:

(1) "City" means any city in this state.

(2) "Federal government" means the United States government and any department, agency, or instrumentality thereof.

(3) "Persons" means an individual and those members of his family living with him.

History.
Ga. L. 1943, p. 161, § 6; Ga. L. 2020, p. 493, § 8/SB 429; Ga. L. 2024, p. 1052, § 1(b)(9)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted a

period for a semicolon at the end of paragraph (1) and substituted a period for "; and" at the end of paragraph (2).

8-3-132. Conditions precedent to exercise of powers; scope of rights and powers.

(a) Any housing authority established pursuant to this article may undertake the development or administration, or both, of projects to provide housing for persons engaged or to be engaged in national defense industries or activities if it finds that an acute shortage of housing for such persons exists or impends in its area of operation or any part thereof and that the necessary housing would not otherwise be provided when needed.

(b) In the ownership, development, or administration of projects under this part, a housing authority shall have all the rights, powers, privileges, and immunities that it has under any provision of law relating to the ownership, development, or administration of low-rent housing and slum clearance projects in the same manner as though all the provisions of law applicable thereto were applicable to projects developed or administered hereunder, provided that a housing authority may, notwithstanding the provisions of other laws, make and agree to make, with respect to any project owned and administered by it under this part, such payments for services and facilities furnished for such project by the city, county, or other political subdivision of the state in which such project is located as may be agreed upon; provided, further, that a project developed or administered under this part by a housing authority to provide housing for persons engaged or to be engaged in national defense industries or activities shall not be subject to the limitations provided in Code Section 8-3-12 or in the second sentence of Code Section 8-3-11.

History.
Ga. L. 1943, p. 161, § 2; Ga. L. 1951, p. 607, § 2.

RESEARCH REFERENCES

ALR.
Constitutionality and construction of Emergency Price Control Act as relating to rent, 155 A.L.R. 1461; 156 A.L.R. 1459; 157 A.L.R. 1457; 158 A.L.R. 1464.

8-3-133. Existence of war or national emergency as condition precedent to initiation of project.

(a) No housing authority shall initiate the development of any housing project under this part after the termination of a period of war

or national emergency as declared by the President or the Congress of the United States.

(b) Notwithstanding the provisions of subsection (a) of this Code section, housing authorities may initiate projects within areas which, as of January 1, 1981, are designated as impacted areas in which housing is necessary in the interest of national security, for purposes of Section 810(b) of the federal National Housing Act.

History. Ga. L. 1943, p. 161, § 9; Ga. L. 1951, p. 607, § 3; Ga. L. 1981, p. 1420, §§ 1, 2; Ga. L. 1982, p. 3, § 8.

8-3-134. Cooperation with other entities.

A housing authority may exercise any or all of its powers to aid and cooperate with the federal government in making housing available for persons engaged or to be engaged in national defense industries or activities; may act as agent for the federal government in developing and administering projects undertaken by the federal government to provide such housing; may lease such projects from the federal government; and may arrange with other public bodies and with private agencies for such services and facilities as may be needed for such projects.

History. Ga. L. 1943, p. 161, § 3; Ga. L. 1951, p. 127, § 2; Ga. L. 1951, p. 607, § 2; Ga. L. 1959, p. 141, § 2; Ga. L. 1962, p. 734, § 2.

8-3-135. Aid and cooperation by state public bodies in development and administration of projects.

(a) With respect to projects undertaken by a housing authority or the federal government to provide housing for persons engaged or to be engaged in national defense industries or activities, any state public body, as defined in Code Section 8-3-152, shall have all the rights and powers to aid and cooperate in the development or administration of such projects that it has under any provision of law relating to its aiding or cooperating in the development or administration of low-rent housing and slum clearance projects in the same manner as though all the provisions of law applicable thereto were applicable to projects undertaken by a housing authority or by the federal government to provide housing for persons engaged or to be engaged in national defense industries or activities.

(b) With respect to projects located outside the territorial boundaries of a state public body which are undertaken by a housing authority or the federal government to provide housing for persons engaged or to be engaged in national defense industries or activities, such state public body may furnish or contract to furnish, upon such terms as it deems advisable, public services or facilities for any such project if the

governing body of the city or county, as the case may be, in which such project is located shall, by resolution, consent thereto.

History.
Ga. L. 1943, p. 161, § 4; Ga. L. 1951, p. 607, § 2.

8-3-136. Issuance of bonds, notes, and other obligations.

(a) The development of a project shall be deemed to have been initiated under this part if a housing authority has issued any bonds, notes, or other obligations to finance the cost thereof.

(b) Bonds or other obligations issued by a housing authority for a project developed or administered under this part shall be security for public deposits and legal investments to the same extent and for the same persons, institutions, associations, corporations, bodies, and officers as bonds or other obligations issued pursuant to other provisions of this article.

History.
Ga. L. 1943, p. 161, §§ 5, 6; Ga. L. 1951, p. 127, § 3; Ga. L. 1959, p. 141, § 3; Ga. L. 1962, p. 734, § 3; Ga. L. 1971, p. 94, § 1.

8-3-137. Authorization for projects.

(a) This part shall constitute an independent authorization for a housing authority to undertake the development or administration of projects to provide housing for persons engaged or to be engaged in national defense industries or activities and to cooperate with, or act as agent for, the federal government in the development or administration of projects undertaken by the federal government to make housing available for such persons. In acting under this part, a housing authority shall not be subject to any limitations, restrictions, or requirements of other laws (except those relating to land acquisition) which prescribe or limit the procedure or action to be taken in the development or administration of any buildings, property, or public works, including, but not limited to, low-rent housing and slum clearance projects or undertakings or projects of municipal or public corporations or political subdivisions or agencies of the state.

(b) A housing authority may do any and all things necessary or desirable to cooperate with, or act as agent for, the federal government, or to secure financial aid, for the expeditious development or the administration of projects to make housing available for persons engaged or to be engaged in national defense industries or activities and to effectuate the purposes of this part.

History.
Ga. L. 1943, p. 161, § 7; Ga. L. 1951, p. 127, § 2; Ga. L. 1951, p. 607, § 2; Ga. L. 1959, p. 141, § 2; Ga. L. 1962, p. 734, § 2.

ARTICLE 2

HOUSING COOPERATION LAW

JUDICIAL DECISIONS

As to constitutionality of the Housing Cooperation Law, see Williamson v. Housing Auth., 186 Ga. 673, 199 S.E. 43, 1938 Ga. LEXIS 684 (1938).

8-3-150. Short title.

This article shall be known and may be cited as the "Housing Cooperation Law."

History.
Ga. L. 1937, p. 697, § 1; Ga. L. 2020, p. 493, § 8/SB 429.
Law reviews.
For survey of developments in Georgia real property law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 219 (1981).

8-3-151. Legislative findings and declaration of necessity.

It has been found and declared in Article 1 of this chapter, the "Housing Authorities Law," that there exist in the state unsafe and insanitary housing conditions and a shortage of safe and sanitary dwelling accommodations for persons of low income; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities; and that the public interest requires the remedying of these conditions. It is found and declared that the assistance provided in this article for the remedying of the conditions set forth in Article 1 of this chapter constitutes a public use and purpose and an essential governmental function for which public moneys may be spent, and that the provisions hereinafter enacted are necessary in the public interest.

History.
Ga. L. 1937, p. 697, § 2.

8-3-152. Definitions.

As used in this article, the term:

(1) "Federal government" means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(2) "Housing authority" means any housing authority created pursuant to Article 1 of this chapter, the "Housing Authorities Law."

(3) "Housing project" means any work or undertaking of a housing authority pursuant to Article 1 of this chapter or any similar work or undertaking of the federal government.

(4) "State public body" means any city, county, commission, district, authority, or other subdivision or public body of the state.

History.
Ga. L. 1937, p. 697, § 3.

8-3-153. Powers of state public bodies as to housing projects generally.

(a) For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of housing projects located within the area in which it is authorized to act, any state public body may, upon such terms, with or without consideration, as it may determine:

(1) Dedicate, sell, convey, or lease any of its property to a housing authority or the federal government;

(2) Cause parks, playgrounds, recreational or community facilities, or any other works which it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects;

(3) Furnish, dedicate, close, pave, install, grade, regrade, plan, or replan streets, roads, roadways, alleys, sidewalks, or other places which it is otherwise empowered to undertake;

(4) Plan or replan, zone or rezone any part of such state public body; make exceptions from building regulations and ordinances; and, in the case of a city, change its map;

(5) Cause services to be furnished to a housing authority of the character which such state public body is otherwise empowered to furnish;

(6) Enter into agreements with respect to the exercise by such state public body of its powers relating to the repair, closing, or demolition of unsafe, insanitary, or unfit dwellings;

(7) Notwithstanding any other law, employ any funds belonging to or within the control of such state public body, including funds derived from the sale or furnishing of property or facilities to a housing authority, in the purchase of the bonds or other obligations of a housing authority; and exercise all the rights of any holder of such bonds or other obligations;

(8) Enter into agreements (which may extend over any period, notwithstanding any provision or rule of law to the contrary) with a

housing authority or the federal government respecting action to be taken by such state public body pursuant to any of the powers granted by this article. If at any time title to, or possession of, any project is held by any public body or governmental agency authorized by law to engage in the development or administration of low-rent housing, slum clearance, or urban redevelopment projects, including any agency or instrumentality of the United States of America, such agreements shall inure to the benefit of and may be enforced by such public body or governmental agency; and

(9) Do any and all things, necessary or convenient to aid and cooperate in the planning, undertaking, construction, or operation of such housing projects.

(b) With respect to any housing project which a housing authority has acquired or taken over from the federal government and which the housing authority by resolution has found and declared to have been constructed in a manner that will promote the public interest and afford necessary safety, sanitation, and other protection, no state public body shall require any changes to be made in the housing project or the manner of its construction or take any other action relating to such construction.

(c) In connection with any public improvements made by a state public body in exercising the powers granted by this article, such state public body may incur the entire expense thereof. Any law to the contrary notwithstanding, any sale, conveyance, lease, or agreement provided for in this Code section may be made by a state public body without appraisal, public notice, advertisement, or public bidding.

History.
Ga. L. 1937, p. 697, § 4; Ga. L. 1939, p. 127, § 1; Ga. L. 1951, p. 204, § 1.

JUDICIAL DECISIONS

Authorities for public use and purpose; scope of city's authority. — Housing authorities are for a public use and purpose, and broad powers are given to the governing body of a city by the Housing Cooperation Law, Ga. L. 1937, p. 697 (see now O.C.G.A. § 8-3-151 et seq.). Telford v. City of Gainesville, 208 Ga. 56, 65 S.E.2d 246, 1951 Ga. LEXIS 292 (1951).

City may make agreement with housing authority for elimination of unsafe dwellings. — City's agreement to cooperate with the city's local housing authority in effecting elimination of unsafe or insanitary dwellings does not contemplate or provide for an unlawful delegation of the city's police power to abate nuisances to the public housing administration but amounts only to an assurance of a proper exercise of it by the city to the end that it will do what it ought in any event to do, namely, eliminate unsafe or insanitary dwellings in the interest of general welfare. Telford v. City of Gainesville, 208 Ga. 56, 65 S.E.2d 246, 1951 Ga. LEXIS 292 (1951).

8-3-154. Contracts for payments to state public bodies for improvements, services, and facilities provided.

In connection with any housing project located wholly or partly within the area in which it is authorized to act, any state public body may contract with a housing authority or the federal government with respect to the sum or sums, if any, which the housing authority or the federal government may agree to pay, during any year or period of years, to the state public body for the improvements, services, and facilities to be provided by the state public body for the benefit of said housing project or its residents; but in no event shall the amount of such payments exceed the estimated cost to the state public body of the improvements, services, or facilities to be so supplied; provided, however, that the absence of a contract for such payments shall in no way relieve state public bodies of the duty to furnish, for the benefit of said housing project and its residents, customary improvements and such services and facilities as state public bodies usually furnish without a service fee.

History.
Ga. L. 1937, p. 697, § 5.

8-3-155. Appropriations to an authority by a city or a county for first-year expenses; loans and donations to authority.

(a) When any housing authority which is created for any city or county becomes authorized to transact business and exercises its powers therein, the city council or the county commissioners, as the case may be, shall immediately make an estimate of the amount of money necessary for the administrative expense and overhead of such housing authority during the first year thereafter and shall appropriate such amount to the authority out of any moneys in such city or county treasury not appropriated to some other purposes. The moneys so appropriated shall be paid to the authority as a donation.

(b) Any city or county located in whole or in part within the area of operation of a housing authority shall have the power from time to time to lend or donate money to the authority or to agree to take such action. The housing authority, when it has money available therefor, shall make reimbursement for all such loans made to it.

History.
Ga. L. 1937, p. 697, § 6.

JUDICIAL DECISIONS

Housing Cooperation Law, Ga. L. 1937, p. 697 (see now O.C.G.A. § 8-3-151 et seq.) is not violative of Ga. Const. 1976, Art. IX, Sec. IV, Para. III (see now Ga. Const. 1983, Art. IX, Sec. II, Para. VIII) which, among other things, provides

that the General Assembly shall not authorize any municipality to appropriate money to any corporation except for purely charitable purposes. Williamson v. Housing Auth., 186 Ga. 673, 199 S.E. 43, 1938 Ga. LEXIS 684 (1938).

Ga. L. 1937, p. 697, § 6 imposes no obligation upon the city to pay operating expenses if there is in the treasury of the city money not appropriated to other purposes. Hogg v. City of Rome, 189 Ga. 298, 6 S.E.2d 48, 1939 Ga. LEXIS 718 (1939).

Housing Cooperation Law, Ga. L. 1937, p. 697 (see now O.C.G.A. § 8-3-151 et seq.) imposes no obligation upon a city to pay the operating expenses of the city housing authority for the first year, unless there is in the city treasury money not appropriated for other purposes. Hogg v. City of Rome, 189 Ga. 298, 6 S.E.2d 48, 1939 Ga. LEXIS 718 (1939).

When a petition alleges that all funds in the city treasury have been appropriated for other purposes, and thus it would constitute a violation of the legal duty for the city commissioners to use such appropriated funds, such petition, in the absence of specific allegations that such duty is being violated, may be dismissed, the presumption of law being that such duty will not be so violated. Hogg v. City of Rome, 189 Ga. 298, 6 S.E.2d 48, 1939 Ga. LEXIS 718 (1939).

8-3-156. Procedure for exercise of powers granted by article to state public bodies.

The exercise by a state public body of the powers granted by this article may be authorized by resolution of the governing body of such state public body. The resolution shall be adopted by a majority of the members of the governing body present at a meeting of said governing body, which resolution may be adopted at the meeting at which such resolution is introduced. Such a resolution or resolutions shall take effect immediately and need not be laid over or published or posted.

History.

Ga. L. 1937, p. 697, § 7; Ga. L. 1939, p. 127, § 2; Ga. L. 1941, p. 253, § 1; Ga. L. 1943, p. 142, §§ 1, 2; Ga. L. 1943, p. 166, §§ 1-3; Ga. L. 1949, p. 23, §§ 1-4; Ga. L. 1959, p. 141, § 4; Ga. L. 1961, p. 54, §§ 2-4.

ARTICLE 3

OFFICE OF HOUSING

Cross references.

Urban residential finance authorities for municipalities of 400,000 or more in population, § 36-41-1 et seq.

Editor's notes.

Ga. L. 1991, p. 1653, § 1-1, effective July 1, 1991, repealed the Code sections formerly codified as this article and enacted the current article. The former unit consisted of §§ 8-3-170 to 8-3-176, 8-3-176.1, 8-3-177 to 8-3-189 (Part 1), 8-3-190, 8-3-190.1, 8-3-191 to 8-3-193, 8-3-193.1, 8-3-194 to 8-3-198 (Part 2), and 8-3-199 and 8-3-199.1 (Part 3) and was based on Ga. L. 1974, p. 975, §§ 1-17; Ga. L. 1975, p. 1651, §§ 1-29; Ga. L. 1976, p. 651, § 6; Ga. L. 1977, p. 259, §§ 1-8; Ga. L. 1977, p. 603, §§ 1-3; Ga. L. 1978, p. 1541, § 1; Ga. L. 1978, p. 1543, § 1; Ga. L. 1979, p. 1266, § 1; Ga. L. 1980, p. 351, § 1; Ga. L. 1980, p. 1269, §§ 1-11; Ga. L. 1981, p. 718, §§ 1-9; Ga. L. 1982, p. 3, § 8; Ga. L. 1982, p. 1716, §§ 1-13; Ga. L. 1982, p. 1813, §§ 1, 2, 32-35; Ga. L. 1982, p. 2228, §§ 3, 6; Ga. L. 1983, p. 3, § 6; Ga. L. 1983, p. 1228, §§ 1-10; Ga. L. 1984, p. 22, § 8; Ga. L. 1984, p. 1374, §§ 1-4; Ga. L. 1985, p. 149, § 8; Ga. L. 1985, p. 818, §§ 1, 2; Ga. L. 1985, p. 1121, §§ 1, 2; Ga. L. 1986, p. 344, § 1; Ga. L. 1986, p. 899, §§ 1, 2, 3, 4, 6, 7; Ga. L. 1987, p. 3, § 8; Ga. L. 1987, p. 234, §§ 1-9; Ga. L. 1988, p.

1550, §§ 1-6; Ga. L. 1989, p. 14, § 8; Ga. L. 1989, p. 792, §§ 1-6; Ga. L. 1990, p. 8, § 8(2); Ga. L. 1990, p. 45, § 1; Ga. L. 1990, p. 1039, §§ 1-11; Ga. L. 1990, p. 2024, § 1. For present provisions governing the Housing and Finance Authority, see § 50-26-1 et seq.

Ga. L. 1991, p. 94, § 8, and Ga. L. 1991, p. 391, §§ 1, 2, amended former Code Section 8-3-170 prior to its repeal by Ga. L. 1991, p. 1653, § 1-1.

JUDICIAL DECISIONS

Constitutionality. — Former Georgia Residential Finance Authority Act was not unconstitutional on the ground that the state may not make loans since the funds used to carry out the purposes of the authority were derived from the sale of the authority's revenue bonds, and was thus private, not public, money. Rich v. State, 237 Ga. 291, 227 S.E.2d 761, 1976 Ga. LEXIS 1472 (1976).

Former Georgia Residential Finance Authority Act was a valid exercise of the police power by the General Assembly pursuant to a legitimate public purpose, namely, the promotion of housing for low and moderate income families and the stimulation of the housing market. Rich v. State, 237 Ga. 291, 227 S.E.2d 761, 1976 Ga. LEXIS 1472 (1976).

Former Georgia Residential Finance Authority Act was not void as being an illegal delegation of legislative power to the authority. Rich v. State, 237 Ga. 291, 227 S.E.2d 761, 1976 Ga. LEXIS 1472 (1976).

Georgia Residential Finance Authority Act did not violate the provisions of the Revenue Bond Law (see now O.C.G.A. Art. 3, Ch. 82, T. 36) in not presenting an allowable undertaking under that law. Rich v. State, 237 Ga. 291, 227 S.E.2d 761, 1976 Ga. LEXIS 1472 (1976).

OPINIONS OF THE ATTORNEY GENERAL

Georgia Residential Finance Authority constitutes public housing agency as defined in 42 U.S.C. § 1437a. — Former Georgia Residential Finance Authority was a public housing agency as defined in the United States Housing Act of 1937, 42 U.S.C. § 1437a(6) (now 42 U.S.C. § 1437a(b)(6)), and was empowered to participate in the section 8 Housing Assistance Payments Program created by the Housing and Community Development Act of 1974, 42 U.S.C. § 1437f(a). 1981 Op. Att'y Gen. No. 81-61.

RESEARCH REFERENCES

ALR.
Home Owners' Loan Act, 110 A.L.R. 250; 121 A.L.R. 117; 125 A.L.R. 809.

8-3-170. Legislative findings; powers and duties of State Office of Housing.

The General Assembly finds and declares that housing is an issue of paramount concern to this state which affects the health, welfare, and safety of the citizens of this state and the economic viability and planned growth of its communities. The General Assembly further finds and declares that the provision of and planning for housing and housing related matters are issues that are intrinsically intertwined with the

ability to provide for the financing of housing activities. For this reason, the General Assembly designates the Georgia Housing and Finance Authority as the State Office of Housing and assigns it the following powers and duties:

(1) To be responsible for the planning, development, and implementation of a coordinated state housing program;

(2) To provide technical and financial assistance on housing and housing related matters throughout the state;

(3) To perform such housing related duties as may be assigned it by the Governor or the General Assembly;

(4) To apply for and receive and to administer federal funds under any federal housing program for which the state is an eligible applicant and, in the administration of such funds, to enter into such contracts as it deems necessary and to expend such state funds as the General Assembly may appropriate for such purposes;

(5) To coordinate activities and work in conjunction with the Farmers Home Administration, which activities may include, but not be limited to, processing loan applicants and loans, community outreach activities, and financial assistance in the form of interest or down payment subsidies or write-downs; and

(6) To coordinate housing related activities and work in conjunction with private, federal, or quasi-governmental entities, which entities shall include, but not be limited to, the Federal Housing Administration, the United States Department of Veterans Affairs, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association.

History.
Code 1981, § 8-3-170, enacted by Ga. L. 1991, p. 1653, § 1-1.

8-3-171. State housing goal and report; assistance by other agencies and political subdivisions.

The General Assembly affirms the state's policy to provide decent, safe, and affordable housing to all segments of the population of this state. The State Office of Housing is authorized and directed to develop a state housing goal and shall prepare a state housing goal report for presentation to the General Assembly, commencing with the 1990 session and continuing every even-numbered year thereafter. The report shall identify housing needs and housing accomplishments and outline plans for achieving the state housing goal. The state and its agencies, institutions, authorities, commissions, bureaus, and entities

which are political subdivisions of the state, cities and counties, local housing authorities, and any urban residential finance authority are authorized and directed to provide such information and perform such duties and functions as may be required to assist the State Office of Housing to prepare its reports and perform its functions.

History.
Code 1981, § 8-3-171, enacted by Ga. L. 1991, p. 1653, § 1-1.

Law reviews.
For article, "Financing Affordable Housing in Georgia: The Possibility of a Dedicated Revenue Source," see 13 Ga. St. U.L. Rev. 363 (1997).

8-3-172. Funding for single-family housing; construction requirements.

(a) The State Office of Housing shall award state or federal funds to construct single-family affordable housing for individuals and families of low and very low income only to persons whose application indicates that the affordable housing that is the subject of the application and for which a building permit is issued on or after July 1, 2000, will be constructed so that:

(1) At least one entrance door, whether located at the front, side, or back of the building:

(A) Is on an accessible route served by a ramp or no-step entrance; and

(B) Has at least a standard 36 inch door;

(2) On the first floor of the building:

(A) Each interior door is at least a standard 32 inch door, unless the door provides access only to a closet of less than 15 square feet in area;

(B) Each hallway has a width of at least 36 inches and is level, with ramped or beveled changes at each door threshold;

(C) Each bathroom wall is reinforced for potential installation of grab bars;

(D) Each electrical panel or breaker box, light switch, or thermostat is not higher than 48 inches above the floor; and

(E) Each electrical plug or other receptacle is at least 15 inches above the floor; and

(3) The main breaker box is located inside the building on the first floor.

(b) A person who builds single-family affordable housing to which this Code section applies may obtain a waiver from the State Office of

Housing of the requirement described in subparagraph (a)(1)(A) of this Code section if the cost of grading and other improvements to the terrain which are required in order to meet the requirement of such subparagraph is unreasonably expensive.

History.

Code 1981, § 8-3-172, enacted by Ga. L. 2000, p. 490, § 1.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 2000, "single-family" was substituted for "single family" in the beginning of subsection (a) and in subsection (b).

ARTICLE 4

FAIR HOUSING

Editor's notes.

Ga. L. 1988, p. 698, § 1, effective July 1, 1988, repealed the Code sections formerly codified as this article and enacted the current article. The former article, which dealt with discrimination in sale, lease, or financing of housing, consisted of §§ 8-3-200 through 8-3-208 and was based on Ga. L. 1978, p. 1593.

Ga. L. 1990, p. 1284, § 1, effective July 1, 1990, repealed the Code sections formerly codified as this article and enacted the current article. The former article, which dealt with fair housing, consisted of Code Sections 8-3-200 through 8-3-215 and was based on Ga. L. 1988, p. 698.

Administrative rules and regulations.

Georgia Fair Housing Law, Official Compilation of the Rules and Regulations of the State of Georgia, Commission on Equal Opportunity, Rule 186-2-.01 et seq.

Law reviews.

For comment, "'A Fresh Look': Title VII's New Promise for LGBT Discrimination Protection Post-Hively," see 68 Emory L.J. 1101 (2019).

OPINIONS OF THE ATTORNEY GENERAL

Editor's note. In light of the similarity of the statutory provisions, opinions decided under former Ga. L. 1978, p. 1593 are included in the annotations.

Ordinances exceeding scope of article void. — County and municipal fair housing ordinances, whose scope of coverage exceeds the general state law on the subject of discrimination in housing accommodations, are in conflict with Ga. Const. 1976, Art. I, Sec. II, Para. VII (see now Ga. Const. 1983, Art. III, Sec. VI, Para. IV) and are therefore void. 1980 Op. Att'y Gen. No. 80-150 (decided under former Ga. L. 1978, p. 1593).

RESEARCH REFERENCES

Am. Jur. Trials.

Housing Discrimination Litigation, 28 Am. Jur. Trials 1.

ALR.

Validity, construction, and application of statutes, or of condominium association's bylaws or regulations, restricting sale, transfer, or lease of condominium units, 17 A.L.R.4th 1247.

State civil rights legislation prohibiting sex discrimination in housing, 81 A.L.R.4th 205.

Evidence of discriminatory effect alone as sufficient to prove, or to establish prima facie case of, violation of Fair Housing Act (42 USCS § 3601 et seq.), 100 A.L.R. Fed. 97.

8-3-200. State policy; purposes and construction of article.

(a) It is the policy of the State of Georgia to provide, within constitutional limitations, for fair housing throughout this state.

(b) The general purposes of this article are:

(1) To provide for execution in the state of policies embodied in Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988;

(2) To safeguard all individuals from discrimination in any aspect relating to the sale, rental, or financing of dwellings or in the provision of brokerage services or facilities in connection with the sale or rental of a dwelling because of that individual's race, color, religion, sex, disability or handicap, familial status, or national origin;

(3) To promote the elimination of discrimination in any aspect relating to the sale, rental, or financing of dwellings or in the provision of brokerage services or facilities in connection with the sale or rental of a dwelling because of a person's race, color, religion, sex, disability or handicap, familial status, or national origin; and

(4) To promote the protection of each individual's interest in personal dignity and freedom from humiliation and the individual's freedom to take up residence wherever such individual chooses; to secure the state against domestic strife and unrest which would menace its democratic institutions; to preserve the public safety, health, and general welfare; and to further the interests, rights, and privileges of individuals within this state.

(c) This article shall be broadly construed to further the general purposes stated in this Code section and the special purposes of the particular provision involved.

History.
Code 1981, § 8-3-200, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, § 1; Ga. L. 2020, p. 493, § 8/SB 429.

JUDICIAL DECISIONS

Proof of violation. — Although there was evidence that a homeowner who listed the homeowner's house with a real estate agency committed discrimination when the homeowner refused to show the house to African-American homebuyers, the evidence did not support the homebuyers' claims that the agency and a broker who worked for the agency participated in that discrimination, and the appellate court reversed the trial court's judgment denying summary judgment in favor of the agency, the broker, and a real estate company that sold a franchise to the agency on the homebuyers' claims alleging violation of Georgia's Fair Housing Act, O.C.G.A. § 8-3-200 et seq., and intentional infliction of emotional distress. Coldwell Banker Real Estate Corp. v.

DeGraft-Hanson, 266 Ga. App. 23, 596 S.E.2d 408, 2004 Ga. App. LEXIS 289 (2004).

Disparate impact claim. — Since the defendants allegedly violated the Georgia Fair Housing Act, O.C.G.A. § 8-3-200 et seq., by discriminating against the plaintiff in renegotiating the terms of the plaintiff's residential mortgage, the evidence could be presented to establish a claim of disparate impact because the plaintiff alleged that the plaintiff was disabled, that the plaintiff's disability prevented the plaintiff from capably negotiating a modification of the plaintiff's residential loan, and that the defendants' policy of refusing to negotiate with any third parties prevented the plaintiff from using legal counsel to accommodate for the plaintiff's disability, thereby harming the plaintiff in the plaintiff's efforts to modify the plaintiff's loan. Renasant Corporation v. Korst, 361 Ga. App. 794, 865 S.E.2d 606, 2021 Ga. App. LEXIS 547 (2021).

RESEARCH REFERENCES

ALR.

Validity, construction, and application of § 804(c) of Civil Rights Act of 1968 (Fair Housing Act) (42 USCS § 3604(c)) prohibiting discriminatory notice, statement, or advertisement with respect to sale or rental of dwelling, 142 A.L.R. Fed 1.

Actions under Fair Housing Act (42 USCS § 3601 et seq.), based on sexual harassment or creation of hostile environment, 144 A.L.R. Fed. 595.

Construction and application of § 804(f) of Fair Housing Act (42 USCA § 3604(f)), prohibiting discrimination in housing because of individual's disability, 148 A.L.R. Fed. 1.

What constitutes reverse or majority race or national origin discrimination violative of federal constitution or statutes — nonemployment cases, 152 A.L.R. Fed. 1.

Award of attorney's fees to prevailing parties in actions under Fair Housing Act, 42 USCA § 3613(c)(2), 159 A.L.R. Fed. 279.

8-3-201. Definitions.

As used in this article, the term:

(1) "Administrator" means the administrator of the Commission on Equal Opportunity created under Article 2 of Chapter 19 of Title 45.

(2) "Aggrieved person" means any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be irrevocably injured by a discriminatory housing practice that is about to occur.

(2.1) "Board of commissioners" means the Board of Commissioners of the Commission on Equal Opportunity created by Code Section 45-19-23 or a panel of three members of said board.

(3) "Complainant" means the person, including the administrator, who files a complaint under Code Section 8-3-208.

(4) "Conciliation" means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the aggrieved person, the respondent, and the administrator.

(5) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

(6) "Covered multifamily dwelling" means a building which consists of four or more units and has an elevator or the ground floor units of a building which consists of four or more units and does not have an elevator.

(7) "Disability" means, with respect to a person:

(A) A physical or mental impairment which substantially limits one or more of such person's major life activities;

(B) A record of having such an impairment; or

(C) Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance.

(8) "Discriminatory housing practice" means an act that is unlawful under Code Section 8-3-202, 8-3-203, 8-3-204, 8-3-205, or 8-3-222.

(9) "Dwelling" means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(10) "Familial status" means, with respect to a person:

(A) That the person is a parent of or has legal custody of one or more individuals who have not attained the age of 18 years and such individuals are being domiciled with such parent or legal custodian;

(B) That the person is the designee of a parent or other person having legal custody, with the written permission of the parent or other person, and that one or more individuals who have not attained the age of 18 years are being domiciled with such person; or

(C) That the person is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(11) "Family" includes a single individual.

(12) "Person" means one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, or fiduciaries.

(13) "Respondent" means:

(A) The person or other entity or the state or local government or agency accused in a complaint of an unfair housing practice; and

(B) Any other person or entity identified in the course of an investigation and notified as required with respect to respondents so identified under subsection (d) of Code Section 8-3-207.

(14) "State" means the State of Georgia.

(15) "To rent" means to lease, to sublease, to let, and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

History. Code 1981, § 8-3-201, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, §§ 2, 3; Ga. L. 1995, p. 1302, § 2.

8-3-202. Unlawful practices in selling or renting dwellings; exceptions.

(a) Except as exempted by subsection (b) or (d) of this Code section or Code Section 8-3-205, it shall be unlawful:

(1) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, disability, familial status, or national origin;

(2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, disability, familial status, or national origin;

(3) To make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling, that indicates any preference, limitation, or discrimination based on race, color, religion, sex, disability, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination;

(4) To represent to any person because of race, color, religion, sex, disability, familial status, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available;

(5) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, familial status, or national origin or with a disability;

(6) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

(A) That buyer or renter;

(B) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(C) Any person associated with that buyer or renter;

(7)(A) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a disability of:

(i) That person;

(ii) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or

(iii) Any person associated with that person.

(B) For purposes of this paragraph, discrimination includes:

(i) A refusal to permit, at the expense of the person with disabilities, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(ii) A refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; or

(iii) In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct those dwellings in such a manner that:

(I) The public use and common use portions of such dwellings are readily accessible to and usable by persons with disabilities;

(II) All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by persons with disabilities in wheelchairs; and

(III) All premises within such dwellings contain the following features of adaptive design: (a) an accessible route into and through the dwelling; (b) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (c) reinforcements in bathroom walls to allow later installation of grab bars; and (d) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.

(C) Compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usableness for physically disabled people (commonly cited as "ANSI A117.1") suffices to satisfy the requirements of subdivision (B)(iii)(III) of this paragraph.

(D) In regard to persons with disabilities, discrimination includes, in connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, a failure to design and construct dwellings in such a manner that the dwellings have at least one building entrance on an accessible route, unless it is impracticable to do so because of the terrain or unusual characteristics of the site; or

(8) To require, as a condition of tenancy in public housing, any prohibition or restriction of any lawful possession of a firearm within an individual dwelling unless required by federal law or regulation.

(b)(1) Nothing in this Code section, other than paragraph (3) of subsection (a) of this Code section, shall apply to:

(A) Any single-family dwelling sold or rented by an owner, if:

(i) Such private individual owner does not own more than three such single-family dwellings at any one time;

(ii) Such bona fide private individual owner does not own any interest in, nor is there owned or reserved on his or her behalf, under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of more than three such single-family dwellings at any one time;

(iii) Such dwelling is sold or rented:

(I) Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person; and

(II) Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of paragraph (3) of subsection (a) of this Code section; but nothing in this paragraph shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to perfect or transfer the title; or

(B) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

(2) In the case of the sale of any such single-family dwelling by a private individual owner not residing in such dwelling at the time of such sale or who was not the most recent resident of such dwelling prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any 24 month period.

(c) For the purposes of subsection (b) of this Code section, a person shall be deemed to be in the business of selling or renting dwellings if:

(1) He has, within the preceding 12 months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

(2) He has, within the preceding 12 months, participated as agent, other than in the sale of his own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

(3) He is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(d) Nothing contained in this Code section shall require that a dwelling be made available for rental or lease to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

History.

Code 1981, § 8-3-202, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, § 4; Ga. L. 1995, p. 1302, §§ 13, 14, 16; Ga. L. 2014, p. 599, § 1-2/HB 60; Ga. L. 2020, p. 603, § 1/HB 969.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1990, "renter's" was substituted for "renter" in division (a)(7)(B)(i) and a comma was substituted for a semicolon following "owner" in the beginning of subparagraph (b)(1)(A).

Editor's notes.

Ga. L. 2014, p. 599, § 1/HB 60, not codified by the General Assembly,

provides that: "This Act shall be known and may be cited as the 'Safe Carry Protection Act.'"

Law reviews.

For article on the 2014 amendment of this Code section, see 31 Ga. St. U. L. Rev. 47 (2014).

JUDICIAL DECISIONS

Proof of violation. — Although there was evidence that a homeowner who listed the homeowner's house with a real estate agency committed discrimination when the homeowner refused to show the house to African-American homebuyers, the evidence did not support the homebuyers' claims that the agency and a broker who worked for the agency participated in that discrimination, and the appellate court reversed the trial court's judgment denying summary judgment in favor of the agency, the broker, and a real estate company that sold a franchise to the agency on the homebuyers' claims alleging violation of Georgia's Fair Housing Act, O.C.G.A. § 8-3-200 et seq., and intentional infliction of emotional distress. Coldwell Banker Real Estate Corp. v. DeGraft-Hanson, 266 Ga. App. 23, 596 S.E.2d 408, 2004 Ga. App. LEXIS 289 (2004).

Trial court erred in concluding as a matter of law that the adoption of leasing restriction amendments to a condominium association's bylaws did not constitute racially discriminatory housing practices in violation of the Georgia Fair Housing Act, O.C.G.A. § 8-3-200 et seq., because there was a genuine factual question as to whether the nondiscriminatory reason for adopting the amendments was pretextual; comments made by the president of the association's board of directors and a resident, combined with the timing of the amendments' adoption, established a prima facie case, the association and members of its board of directors articulated legitimate, nondiscriminatory reasons for the adoption of amendments, and a condominium owner provided evidence that the reasons were mere pretext. Bailey v. Stonecrest Condo. Ass'n, 304 Ga. App. 484, 696 S.E.2d 462, 2010 Ga. App. LEXIS 554 (2010).

Condominium owner failed to show direct evidence of discriminatory intent behind the adoption of amendments to the condominium association's bylaws prohibiting leasing because comments made by the president of the association's board of directors and another resident did not amount to direct evidence that the amendments were passed with a discriminatory intent; the comments did not relate directly to the motives of the decision-maker, namely the two-thirds of the voting members of the association, in adopting the amendments, which motives based on the text of the amendments were facially race-neutral. Bailey v. Stonecrest Condo. Ass'n, 304 Ga. App. 484, 696 S.E.2d 462, 2010 Ga. App. LEXIS 554 (2010).

Disparate impact claim. — Since the defendants allegedly violated the Georgia Fair Housing Act, O.C.G.A. § 8-3-200 et seq., by discriminating against the plaintiff in renegotiating the terms of the plaintiff's residential mortgage, the evidence could be presented to establish a claim of disparate impact because the plaintiff alleged that the plaintiff was disabled, that the plaintiff's disability prevented the plaintiff from capably negotiating a modification of the plaintiff's residential loan, and that the defendants' policy of refusing to negotiate with any third parties prevented the plaintiff from using legal counsel to accommodate for the plaintiff's disability, thereby harming the plaintiff in the plaintiff's efforts to modify the plaintiff's loan. Renasant Corporation v. Korst, 361 Ga. App. 794, 865 S.E.2d 606, 2021 Ga. App. LEXIS 547 (2021).

No violation. — Trial court properly granted summary judgment to a former landlord in an action by a tenant, alleging that the landlord's late husband repeatedly made sexual advances towards the tenant, in violation of O.C.G.A.

§ 8-3-202(a)(2) of the Georgia Fair Housing Act, and that the husband violated O.C.G.A. § 8-3-222 by these actions, as under principles of principal/agent liability, there was no evidence that the landlord authorized the husband to commit the sexual harassment, the landlord did not ratify the conduct, and it was outside the scope of the husband's employment as the property manager for the rental home. Stewart v. Storch, 274 Ga. App. 242, 617 S.E.2d 218, 2005 Ga. App. LEXIS 719 (2005).

In a dispute between a tenant and a landlord over whether the landlord made reasonable accommodations for the tenant's disability, the trial court correctly granted summary judgment because no genuine issues of material fact remained as the tenant failed to show that the requested accommodation to waive the pet fees for a service animal dog was necessary to afford the tenant an opportunity to use and enjoy the tenant's dwelling. Leslie v. 1125 Hammond LP, 368 Ga. App. 793, 889 S.E.2d 148, 2023 Ga. App. LEXIS 255 (2023).

RESEARCH REFERENCES

ALR.

Refusal to rent residential premises to persons with children as unlawful discrimination, 30 A.L.R.4th 1187.

What constitutes illegal discrimination under state statutory prohibition against discrimination in housing accommodations on account of marital status, 33 A.L.R.4th 964.

Validity, construction, and application of § 804(c) of Civil Rights Act of 1968 (Fair Housing Act) (42 USCS § 3604(c)) prohibiting discriminatory notice, statement, or advertisement with respect to sale or rental of dwelling, 142 A.L.R. Fed 1.

What constitutes reverse or majority race or national origin discrimination violative of federal constitution or statutes — nonemployment cases, 152 A.L.R. Fed. 1.

Assistance animals qualifying as reasonable accommodation under Fair Housing Act, 42 U.S.C.A. § 3604(f), 66 A.L.R. Fed. 2d 209.

Application of Clayton Act or Sherman Act to Merger or Acquisition of Television, Radio, News, or Internet Media Company, 38 A.L.R. Fed. 3d Art. 7.

Contempt and Arrest Proceedings Resulting from Statutory Turnover Obligations in Bankruptcy — 21st Century Cases, 38 A.L.R. Fed. 3d Art. 10.

Housing Subsidy as Reasonable Accommodation Under Fair Housing Act, 42 U.S.C.A. § 3604(f), 38 A.L.R. Fed. 3d Art. 12.

Whether Alleged Violation of Section 10(b) of Securities Exchange Act Was Primarily Omission or Misrepresentation of Fact for Purposes of Presumption of Investor's Reliance Under Affiliated Ute Citizens of Utah v. United States, 43 A.L.R. Fed. 3d Art. 3.

Relief from Zoning or Other Land Use Restrictions as Reasonable Accommodation Under Fair Housing Act, 42 U.S.C.A. § 3604(f), 43 A.L.R. Fed. 3d Art. 5.

Actions under Fair Housing Act (42 U.S.C.A. §§ 3604, 3617), Based on Harassment or Creation of Hostile Environment with Respect to Race or National Origin, 47 A.L.R. Fed. 3d Art. 3.

Protected Activity under Retaliation Provision of Fair Housing Act (42 U.S.C.A. § 3617), 47 A.L.R. Fed. 3d Art. 4.

U.S. Supreme Court's Federal Rules of Civil Procedure Decisions and Holdings, 48 A.L.R. Fed. 3d Art. 4.

8-3-203. Unlawful denial of or discrimination in membership or participation in service or organization relating to selling or renting dwellings.

It shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the

business of selling or renting dwellings or to discriminate against such person in the terms or conditions of such access, membership, or participation on account of race, color, religion, sex, disability, familial status, or national origin.

History.
Code 1981, § 8-3-203, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1995, p. 1302, § 13.

RESEARCH REFERENCES

ALR.
Assistance animals qualifying as reasonable accommodation under Fair Housing Act, 42 U.S.C.A. § 3604(f), 66 A.L.R. Fed. 2d 209.

8-3-204. Discrimination in residential real estate related transactions; appraisals.

(a) As used in this Code section, the term "residential real estate related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance:

(A) For purchasing, constructing, improving, repairing, or maintaining a dwelling; or

(B) Secured by residential real estate; or

(2) The selling, brokering, or appraising of residential real property.

(b) It shall be unlawful for any person or other entity whose business includes engaging in residential real estate related transactions to discriminate against any person in making available such a transaction or in the terms or conditions of such a transaction because of race, color, religion, sex, handicap, familial status, or national origin.

(c) Nothing in this article shall be construed to prohibit a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.

History.
Code 1981, § 8-3-204, enacted by Ga. L. 1990, p. 1284, § 1.

JUDICIAL DECISIONS

Insurance coverage. — Insurer was not required to defend its insureds in a race discrimination suit filed by potential property buyers who alleged that the insureds violated the Georgia Fair Housing Law, O.C.G.A. § 8-3-200 et seq., by refusing to sell them a lot in a subdivision because they were a bi-racial

couple; the bodily injury provision of the commercial general liability policy did not provide coverage because the buyers did not allege that the buyers were physically injured by the insureds' actions, and the policy's personal injury provision, which applied to personal injuries sustained when a right of occupancy was invaded, did not provide coverage because the buyers were not present occupants of the land at issue. Auto-Owners Ins. Co. v. Robinson, No. 3:05-CV-109, 2006 U.S. Dist. LEXIS 66551 (M.D. Ga. Sept. 6, 2006).

Disparate impact claim. — Since the defendants allegedly violated the Georgia Fair Housing Act, O.C.G.A. § 8-3-200 et seq., by discriminating against the plaintiff in renegotiating the terms of the plaintiff's residential mortgage, the evidence could be presented to establish a claim of disparate impact because the plaintiff alleged that the plaintiff was disabled, that the plaintiff's disability prevented the plaintiff from capably negotiating a modification of the plaintiff's residential loan, and that the defendants' policy of refusing to negotiate with any third parties prevented the plaintiff from using legal counsel to accommodate for the plaintiff's disability, thereby harming the plaintiff in the plaintiff's efforts to modify the plaintiff's loan. Renasant Corporation v. Korst, 361 Ga. App. 794, 865 S.E.2d 606, 2021 Ga. App. LEXIS 547 (2021).

Prima facie case. — *Unpublished decision:* Affidavits of three African-Americans, and plaintiff African-American homeowner's own testimony, that defendant mortgage loan servicer treated them unfairly by adding inappropriate fees, refusing requests for information, and improperly foreclosing, but that revealed nothing about the proportion of loans serviced for those of other races did not establish a prima facie case of discrimination based on race under 42 U.S.C. § 3605 and O.C.G.A. § 8-3-204. Steed v. Everhome Mortg. Co., 477 Fed. Appx. 722, 2012 U.S. App. LEXIS 14150 (11th Cir. 2012).

RESEARCH REFERENCES

ALR.

Assistance animals qualifying as reasonable accommodation under Fair Housing Act, 42 U.S.C.A. § 3604(f), 66 A.L.R. Fed. 2d 209.

Application of Clayton Act or Sherman Act to Merger or Acquisition of Television, Radio, News, or Internet Media Company, 38 A.L.R. Fed. 3d Art. 7.

Contempt and Arrest Proceedings Resulting from Statutory Turnover Obligations in Bankruptcy — 21st Century Cases, 38 A.L.R. Fed. 3d Art. 10.

Housing Subsidy as Reasonable Accommodation Under Fair Housing Act, 42 U.S.C.A. § 3604(f), 38 A.L.R. Fed. 3d Art. 12.

Whether Alleged Violation of Section 10(b) of Securities Exchange Act Was Primarily Omission or Misrepresentation of Fact for Purposes of Presumption of Investor's Reliance Under Affiliated Ute Citizens of Utah v. United States, 43 A.L.R. Fed. 3d Art. 3.

Relief from Zoning or Other Land Use Restrictions as Reasonable Accommodation Under Fair Housing Act, 42 U.S.C.A. § 3604(f), 43 A.L.R. Fed. 3d Art. 5.

Actions under Fair Housing Act (42 U.S.C.A. §§ 3604, 3617), Based on Harassment or Creation of Hostile Environment with Respect to Race or National Origin, 47 A.L.R. Fed. 3d Art. 3.

Protected Activity under Retaliation Provision of Fair Housing Act (42 U.S.C.A. § 3617), 47 A.L.R. Fed. 3d Art. 4.

U.S. Supreme Court's Federal Rules of Civil Procedure Decisions and Holdings, 48 A.L.R. Fed. 3d Art. 4.

8-3-205. Permissible limitations in sale, rental, or occupancy of dwellings by religious organizations or private clubs; housing for older persons.

(a) Nothing in this article shall prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to such persons unless membership in such religion is restricted on account of race, color, sex, handicap, familial status, or national origin. Nothing in this article shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(b)(1) As used in this subsection, the term "housing for older persons" means housing:

(A) Provided under any state or federal program that the secretary of housing and urban development determines is specifically designed and operated to assist elderly persons as defined in the state or federal program;

(B) Intended for, and solely occupied by, persons 62 years of age or older; or

(C) Intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the administrator shall develop regulations which require at least the following factors:

(i) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or, if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons;

(ii) That at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and

(iii) The publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(2) Nothing in this article limits the applicability of any reasonable local, state, or federal restrictions regarding the maximum

number of occupants permitted to occupy a dwelling. The provisions in this article regarding familial status shall not apply with respect to housing for older persons.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of:

(A) Persons residing in such housing as of March 12, 1989, who do not meet the age requirements of subparagraph (B) or (C) of paragraph (1) of this subsection; provided, however, that new occupants of such housing meet the age requirements of subparagraph (B) or (C) of paragraph (1) of this subsection; or

(B) Unoccupied units; provided, however, that such units are reserved for occupancy by persons who meet the age requirements of subparagraph (B) or (C) of paragraph (1) of this subsection.

(4) Nothing in this article prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance.

History. Code 1981, § 8-3-205, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, § 5; Ga. L. 2020, p. 603, § 2/HB 969.

8-3-206. Powers and duties of administrator; housing and urban development programs of other agencies.

(a) The authority and responsibility for administering this article shall be vested in the administrator of the Commission on Equal Opportunity.

(b) The administrator may delegate any of the administrator's functions, duties, and powers to employees of the Commission on Equal Opportunity or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this article. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred.

(c) All departments and agencies of state government shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this article and shall cooperate with the administrator to further such purposes.

(d) The administrator shall:

(1) Make studies with respect to the nature and extent of dis-

criminatory housing practices in representative communities, urban, suburban, and rural, throughout the state;

(2) Publish in print or electronically and disseminate reports, recommendations, and information derived from such studies;

(3) Cooperate with and render technical assistance to local and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) Administer the programs and activities relating to housing in a manner affirmatively to further the policies of this article;

(5) Adopt, promulgate, amend, and rescind, subject to the approval of the Governor after giving proper notice and hearing to all interested parties pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," such rules and regulations as may be necessary to carry out the provisions of this article;

(6) Cooperate with the United States Department of Housing and Urban Development created by Section 10(b) of the Department of Housing and Urban Development Act of 1965 (79 Stat. 667) and with other federal and local agencies in order to achieve the purposes of Title VIII of the Civil Rights Act of 1968 (82 Stat. 81), as amended by the Fair Housing Amendments Act of 1988 (102 Stat. 1619), and to cooperate with other federal and local agencies in order to achieve the purposes of this article;

(7) Accept gifts, bequests, grants, or other public or private payments on behalf of the state and pay such moneys into the state treasury;

(8) Accept on behalf of the state reimbursement pursuant to Section 810 of the Civil Rights Act of 1968 (82 Stat. 85), as amended by the Fair Housing Amendments Act of 1988 (102 Stat. 1625), for services rendered to assist the United States Department of Housing and Urban Development; and

(9) Maintain with the United States Department of Housing and Urban Development status as a "certified agency" under Section 810 of the Civil Rights Act of 1968 (82 Stat. 85), as amended by the Fair Housing Act of 1988 (102 Stat. 1625), and as provided by the rules and regulations of said department.

(e) To avoid any duplicate investigation, civil action, or administrative enforcement by the administrator, in any case where the United States Department of Housing and Urban Development has initiated an investigation or any action or proceedings against any person relative to any acts or omissions by such person which may be in

violation of this article, the administrator shall have no authority to initiate or pursue against such person any investigation, civil action, or administrative enforcement covered by the provisions of this article with regard to the same acts or omissions or facts or circumstances to which the federal investigation or proceedings are applicable. Nothing in this subsection is intended to prevent the dual filing of complaints of discriminatory housing practices with the United States Department of Housing and Urban Development and the administrator.

History.
Code 1981, § 8-3-206, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, § 6; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2020, p. 603, § 3/HB 969.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1990, "provisions" was substituted for "provision" in paragraph (d)(5).

8-3-207. Educational and conciliatory activities; conferences; consultation as to extent of discrimination; reports.

The administrator shall commence such educational and conciliatory activities as in the administrator's judgment will further the purposes of this article. The administrator shall call conferences of persons in the housing industry and other interested parties to acquaint them with this article and the administrator's suggested means of implementing this article and shall endeavor with their advice to work out programs of voluntary compliance and of enforcement. The administrator shall consult with state and local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in this state, and whether and how enforcement programs might be utilized to combat such discrimination in connection with the administrator's enforcement of this article. The administrator shall issue reports on such conferences and consultations as the administrator deems appropriate.

History.
Code 1981, § 8-3-207, enacted by Ga. L. 1990, p. 1284, § 1.

8-3-208. Discriminatory housing practice complaint procedures.

(a) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the administrator alleging such discriminatory housing practice. The administrator, on the administrator's own initiative, may also file such a complaint. Complaints shall be in writing and under oath and shall contain such information and be in such form as the administrator requires. Upon the filing of a complaint under this subsection, the administrator shall serve notice upon the aggrieved person acknowledging the filing and advising the aggrieved person of

procedural time limits and the choice of forums provided under this article.

(b) The administrator shall, not later than ten days after the filing of a complaint or the identification of an additional respondent under subsection (d) of this Code section, serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations under this article, together with a copy of the original complaint. Each respondent may file, not later than ten days after receipt of notice from the administrator, an answer to the complaint.

(c) Complaints and answers shall be verified and may be reasonably and fairly amended at any time.

(d) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of an investigation, may be joined as an additional or substitute respondent upon written notice to such person from the administrator as provided in subsection (b) of this Code section. In addition to meeting the requirements of subsection (b) of this Code section, the notice shall explain the basis for the administrator's belief that such person is properly joined as a respondent.

History.
Code 1981, § 8-3-208, enacted by Ga. L. 1990, p. 1284, § 1.

RESEARCH REFERENCES

ALR.
Actions under Fair Housing Act (42 USCS § 3601 et seq.), based on sexual harassment or creation of hostile environment, 144 A.L.R. Fed. 595.

8-3-209. Investigations; conciliation agreements; final report; breach of conciliation agreement; disclosure; action for temporary relief; transmittal of information.

(a) The administrator shall investigate an alleged discriminatory housing practice and complete such investigation within 100 days after the filing of a complaint unless it is impracticable to do so. If the administrator is unable to complete the investigation within 100 days after the filing of a complaint, the administrator shall notify the complainant and respondent of the reasons for the failure to complete the investigation.

(b) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the administrator, the administrator shall, to the extent feasible, engage in conciliation with respect to such complaint. A conciliation agreement arising out of

such conciliation shall be an agreement between the respondent and the complainant and shall be subject to approval by the administrator. A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief. Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the administrator determines that disclosure is not required to further the purposes of this article.

(c) At the end of each investigation under this Code section, the administrator shall prepare a final investigative report containing the following:

(1) The names and dates of contacts with witnesses;

(2) A summary and the dates of correspondence and other contacts with the aggrieved person and the respondent;

(3) A summary description of other pertinent records;

(4) A summary of witness statements; and

(5) Answers to interrogatories.

A final report under this subsection may be amended if additional evidence is later discovered.

(d) Whenever the administrator has reasonable cause to believe that a respondent has breached a conciliation agreement, the administrator shall refer the matter to the Attorney General with a recommendation that a civil action be filed for the enforcement of such agreement.

(e)(1) Nothing said or done in the course of conciliation under this article may be made public or used as evidence in a subsequent proceeding under this article without the written consent of the parties concerned.

(2) Notwithstanding paragraph (1) of this subsection, the administrator shall make available to the aggrieved person and the respondent at any time upon request following completion of the administrator's investigation information derived from an investigation and any final investigative report relating to that investigation.

(f)(1) If the administrator concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the provisions of this article, the administrator may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this Code section. Upon such authorization, the Attorney General may commence and maintain such an action. Any temporary restraining order or other order

granting preliminary or temporary relief shall be issued in accordance with Chapter 11 of Title 9, the "Georgia Civil Practice Act." The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this Code section and Code Sections 8-3-213 and 8-3-214.

(2) Whenever the administrator has reason to believe that a basis may exist for the commencement of proceedings against any respondent under subsection (a) of Code Section 8-3-218 or for proceedings by any governmental licensing or supervisory authorities, the administrator shall transmit the information upon which such belief is based to the Attorney General, or to such authorities, as the case may be.

History.
Code 1981, § 8-3-209, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1991, p. 94, § 8.

8-3-210. Procedure where local fair housing law applicable.

Wherever a local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent, as certified by the Secretary of Housing and Urban Development as provided in Section 810 of the federal Fair Housing Amendments Act of 1988, to the rights and remedies provided under this article, the administrator shall notify the appropriate local agency of any complaint filed which appears to constitute a violation of the local fair housing law, and the administrator shall take no further action with respect to such complaint if the local law enforcement official has, within 30 days from the date the alleged offense was brought to his attention, commenced proceedings in the matter. In no event shall the administrator take further action unless the administrator certifies that, in the administrator's judgment under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

History.
Code 1981, § 8-3-210, enacted by Ga. L. 1990, p. 1284, § 1.

8-3-211. Procedure on filing of discriminatory housing practice complaint.

(a) The administrator shall, within 100 days after the filing of the complaint, determine based on the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so or unless the administrator has approved a conciliation agreement with respect to the complaint. If the administrator is unable to make the determination

within 100 days after the filing of the complaint, the administrator shall notify the complainant and respondent in writing of the reasons for not doing so.

(b)(1) If the administrator determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the administrator shall, except as provided in paragraph (3) of this subsection, immediately issue a charge on behalf of the aggrieved person.

(2) The charge shall consist of a short and plain statement of the facts upon which the administrator has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur, shall be based on the final investigative report, and need not be limited to the facts or grounds alleged in the complaint.

(3) If, after investigation, the administrator determines that the matter involves the legality of any state or local zoning or other land use law or ordinance, the administrator shall immediately refer the matter to the Attorney General for appropriate action instead of issuing such charge.

(c) If the administrator determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the administrator shall promptly dismiss the complaint. The administrator shall make public disclosure of each such dismissal. The administrator may not issue a charge under this Code section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an act of Congress or a state law, seeking relief with respect to that discriminatory housing practice. After the administrator issues a charge under this Code section, the administrator shall cause a copy thereof to be served on each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, and on each aggrieved person on whose behalf the complaint was filed.

History.
Code 1981, § 8-3-211, enacted by Ga. L. 1990, p. 1284, § 1.

8-3-212. Subpoenas and discovery; penalties for violations.

(a) The administrator may issue subpoenas and order discovery in aid of investigations and hearings under this article. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in superior court in which the investigation is taking place.

(b) Witnesses summoned by a subpoena under this Code section

shall be entitled to the same witness and mileage fees as witnesses in proceedings in superior courts. Fees payable to a witness summoned by a subpoena issued at the request of a party shall be paid by the party.

(c)(1) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under subsection (a) of this Code section, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000.00.

(2) Any person who, with intent thereby to mislead another person in any proceeding under this article:

(A) Makes or causes to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to subpoena or other lawful order under subsection (a) of this Code section;

(B) Willfully neglects or fails to make or to cause to be made full, true, and correct entries in such reports, accounts, records, or other documents; or

(C) Willfully mutilates, alters, or by any other means falsifies any documentary evidence

shall be guilty of a misdemeanor and shall be fined not more than $1,000.00.

History.
Code 1981, § 8-3-212, enacted by Ga. L. 1990, p. 1284, § 1.

8-3-213. State action for enforcement; fines; damages; civil action by local agency; administrative proceeding.

(a)(1) When a charge is issued to initiate an administrative complaint under Code Section 8-3-211, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed may elect to have the claims asserted in that charge decided in a civil action brought by the Attorney General on behalf of the aggrieved person as provided under paragraph (2) of this subsection in lieu of a hearing under subsection (e) of this Code section. The election must be made not later than 20 days after the receipt by the electing person of service under Code Section 8-3-211 or, in the case of the administrator, not later than 20 days after such service. The person making such election shall give notice of doing so to the administrator and to all other complainants and respondents to whom the charge relates.

(2) If the administrator has been unable to obtain voluntary

compliance or as a result of an investigation under Code Section 8-3-209 finds that there is reasonable cause to believe that a discriminatory housing practice has occurred, at the recommendation of the administrator, the Attorney General shall bring an action in the name of the state on behalf of the aggrieved person to enforce the provisions of this article.

(3) If an election is made under this subsection, the administrator shall authorize and, not later than 30 days after the election is made, the Attorney General shall commence a civil action in the name of the state on behalf of the aggrieved person seeking relief under this Code section in a superior court.

(b) Whenever an action filed in court pursuant to paragraph (2) of subsection (a) of this Code section or Code Section 8-3-217 or 8-3-218 comes to trial, the administrator shall immediately terminate all efforts to obtain voluntary compliance.

(c)(1) The court may impose the following fines if the respondent has been adjudged to have committed a discriminatory housing practice:

(A) Up to $10,000.00, if the respondent has not previously been found guilty of committing a discriminatory housing practice;

(B) Up to $25,000.00, if the respondent has been found guilty of committing one prior discriminatory housing practice within the preceding five years; or

(C) Up to $50,000.00, if the respondent has been found guilty of committing two or more discriminatory housing practices within the preceding seven years.

(2) The court in its discretion may award the prevailing party reasonable attorney's fees and court costs; provided, however, that a respondent may be awarded reasonable attorney's fees and court costs only if the respondent prevails on all alleged violations of this article and upon a showing that the action is frivolous, unreasonable, or without foundation.

(3) In addition to the remedies set forth in paragraphs (1) and (2) of this subsection, the court may award actual damages and punitive damages to the aggrieved person. Punitive damages awarded under this subsection may be awarded only when the evidence shows that the respondent's actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences or to the rights of the aggrieved party.

(d) Any local agency certified as substantially equivalent by the secretary of housing and urban development pursuant to Section 810 of

the federal Fair Housing Amendments Act of 1988 may institute a civil action in any appropriate court, including superior court, if it is unable to obtain voluntary compliance with the local fair housing law. The agency need not have petitioned for an administrative hearing or exhausted its administrative remedies prior to bringing a civil action. The court may impose fines as provided in the local fair housing law.

(e)(1) Where an election is not made under paragraph (1) of subsection (a) of this Code section, the administrator shall refer the complaint to an administrative law judge of the Office of State Administrative Hearings. An administrative hearing shall be conducted as provided for under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(2) Not more than seven working days after the case has been referred to the administrative law judge, the administrator shall serve on the respondent and the person aggrieved or the aggrieved person's attorney by registered or certified mail or statutory overnight delivery a written notice together with a copy of the complaint requiring the respondent to answer the charges contained therein at a hearing before the administrative law judge at a time and place specified in the notice. Such notice must contain all general and specific charges against the respondent.

(3) The respondent shall serve an answer with the administrative law judge by registered or certified mail or statutory overnight delivery not more than 20 working days after receipt of the notice of hearing, which 20 working days may be extended by the administrative law judge in the administrative law judge's discretion for an additional time not to exceed ten working days. The respondent's answer must show by a certificate of service that the respondent has served a copy of the answer on the administrator and complainant or the complainant's attorney at the last known address of the complainant or the complainant's attorney where the complainant is represented by an attorney. Upon leave of the administrative law judge, the complainant may amend the charges contained in the notice of hearing. The respondent may amend an answer at any time prior to the hearing or, upon leave of the administrative law judge, may amend thereafter. No order shall be issued unless the respondent has had the opportunity of a hearing on the charges contained in the notice of hearing or amendment on which the final order is based. If the respondent fails to answer the complaint, the administrative law judge may enter the respondent's default. Unless the default is set aside for good cause shown, the hearing may proceed under the available evidence.

(4) A respondent who has filed an answer or whose default in answering has been set aside for good cause shown may appear at the

hearing, may examine and cross-examine witnesses and the complainant, and may offer evidence. The complainant and, at the discretion of the administrative law judge, any other person may intervene, examine and cross-examine witnesses, and present evidence.

(5) Efforts at conference, conciliation, and persuasion shall not be received in evidence.

(6) Testimony taken at the hearing shall be under oath and shall be stenographically or otherwise recorded by a certified court reporter. After the hearing, the administrative law judge at the administrative law judge's discretion may take further evidence or hear arguments upon notice to all parties with an opportunity to be present.

(7) Except as otherwise specifically provided for in this article, all proceedings of the administrative law judge shall be conducted as provided for with respect to contested cases in Chapter 13 of Title 50.

History.
Code 1981, § 8-3-213, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, § 7; Ga. L. 2000, p. 1589, § 3; Ga. L. 2020, p. 603, § 4/HB 969.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1992, "secretary of housing and urban development" was substituted for "Secretary of Housing and Urban Development" in subsection (d).

JUDICIAL DECISIONS

Summary judgment as to claims for punitive damages and attorney fees improper. — Trial court erred in granting summary judgment in favor of a condominium association and the members of the association's board of directors as to a condominium owner's claims for punitive damages and attorney fees under the Georgia Fair Housing Act, O.C.G.A. § 8-3-200 et seq., because genuine issues of material fact existed as to whether the association and members violated the Act and breached their fiduciary duties. Bailey v. Stonecrest Condo. Ass'n, 304 Ga. App. 484, 696 S.E.2d 462, 2010 Ga. App. LEXIS 554 (2010).

RESEARCH REFERENCES

ALR.
Actions under Fair Housing Act (42 USCS § 3601 et seq.), based on sexual harassment or creation of hostile environment, 144 A.L.R. Fed. 595.

8-3-214. Orders of administrative law judge.

(a) If the administrative law judge determines that the respondent has not engaged in a discriminatory housing practice, the administrative law judge shall state the administrative law judge's findings of fact and conclusions of law and shall issue a final order within 30 days after

the hearing unless, for good cause shown, such time is extended by the administrative law judge, dismissing the complaint.

(b) If the administrative law judge determines that the respondent has engaged in a discriminatory housing practice, the administrative law judge shall state the administrative law judge's findings of fact and conclusions of law and shall issue an order within 30 days after the hearing unless, for good cause shown, such time is extended by the administrative law judge, granting such relief as may be appropriate, which may include actual compensatory damages suffered by the aggrieved person and injunctive or other equitable relief. The prevailing party may, in the discretion of the administrative law judge, be awarded reasonable attorney's fees and costs; provided, however, that a respondent may only be awarded reasonable attorney's fees and costs against a party if the respondent prevails on all alleged violations of this article and upon a showing that the proceeding is frivolous, unreasonable, or without foundation.

(c) No order of the administrative law judge or final order of the administrator shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge filed under this article. In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to licensing or regulation by a governmental agency, the administrator shall, not later than 30 days after the date the order becomes final, or, if such order is judicially reviewed, 30 days after such order is in substance affirmed upon review, send copies of the findings of fact, conclusions of law, and the order to that governmental agency and recommend to that governmental agency appropriate disciplinary action. In the case of an order against a respondent against whom another order was issued within the preceding five years under this Code section, the administrator shall send a copy of each such order to the Attorney General.

(d) If the administrative law judge finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, the administrative law judge shall enter an order dismissing the charge. The administrator shall make public disclosure of each such dismissal when it becomes final.

(e) The administrator may review and reject or modify any finding, conclusion, or order issued by the administrative law judge. In the absence of an appeal by any of the parties to the administrator or any action taken by the administrator within 30 days after the finding, conclusion, or order is so issued, such finding, conclusion, or order shall become the final order of the Commission on Equal Opportunity.

History.

Code 1981, § 8-3-214, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, § 8; Ga. L. 1993, p. 91, § 8; Ga. L. 2020, p. 603, § 5/HB 969.

Code Commission notes.

Pursuant to Code Section 28-9-5, in 1990, "attorney's" was substituted for "attorney" in the first sentence of subsection (b).

Pursuant to Code Section 28-9-5, in 1992, in both subsections (a) and (b), "commissioners'" was substituted for "commissioner's" and a comma was deleted following "order", and "a" was deleted preceding "licensing" in the second sentence of subsection (c).

8-3-215. Appeal from order of administrative law judge; attorney's fees and costs.

(a) Any party to a hearing before the administrative law judge may appeal any adverse final order of the administrative law judge by filing a petition for review in the Superior Court of Fulton County within 30 days of the issuance of the final order. The administrative law judge shall not be a named party. The administrator must be served with a copy of the petition for review. Within 30 days after the petition is served on the administrator, the administrator shall forward to the court a certified copy of the record of the hearing before the administrative law judge, including the transcript of the hearing before the administrative law judge and all evidence, administrative pleadings, and orders, or the entire record if no hearing has been held. For good cause shown, the court may require or permit subsequent corrections or additions to the record. All appeals for judicial review shall be in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; provided, however, that, if any provisions of Chapter 13 of Title 50 conflict with any provision of this article, this article controls.

(b) The court shall not substitute its judgment for that of the administrative law judge as to the weight of the evidence on questions of fact. The court may affirm a final order of the administrative law judge or remand the case for further proceedings. The court may reverse or modify the final order if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the agency;

(3) Made upon unlawful procedures;

(4) Affected by other error of law;

(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(c) Upon judicial review of any order of the administrator or in a proceeding in which a complainant seeks enforcement of a conciliation agreement, the court in its discretion may award the prevailing party reasonable attorney's fees and costs; provided, however, that a respondent may be awarded reasonable attorney's fees and court costs only if the respondent prevails on all alleged violations in the order or of the conciliation agreement and upon a showing that the action is frivolous, unreasonable, or without foundation.

History.
Code 1981, § 8-3-215, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, § 9; Ga. L. 2020, p. 603, § 6/HB 969; Ga. L. 2024, p. 1052, § 1(b)(10)/SB 448, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (a).

8-3-216. Filing order of administrator in superior court and judgment thereon.

Any person affected by a final order of the administrator may file in the superior court of the county of the residence of the respondent a certified copy of a final order of the administrator unappealed from or of a final order of the administrator affirmed upon appeal, whereupon said court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though the judgment had been rendered in an action duly heard and determined by the court.

History.
Code 1981, § 8-3-216, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, § 10; Ga. L. 2020, p. 603, § 7/HB 969.

8-3-217. Civil actions by aggrieved persons.

(a)(1) An aggrieved person may commence a civil action in an appropriate superior court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice or the breach of a conciliation agreement entered into under this article, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach of a conciliation agreement.

(2) The computation of such two-year period shall not include any time during which an administrative proceeding under this article was pending with respect to a complaint or charge under this article based upon such discriminatory housing practice. This paragraph does not apply to actions arising from a breach of a conciliation agreement.

(3) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under Code

Section 8-3-208 and without regard to the status of any such complaint, but if the administrator has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such conciliation agreement.

(4) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the administrator if an administrative law judge has commenced a hearing on the record under this article with respect to such charge.

(b)(1) The court may grant as relief, as it deems appropriate, any permanent or temporary injunction, temporary restraining order, or other order and may award to the plaintiff reasonable attorney's fees, court costs, actual damages, and punitive damages. Punitive damages may be awarded under this article only when the evidence shows that the respondent's actions showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care which would raise the presumption of conscious indifference to consequences or to the rights of the aggrieved party.

(2) Where it is proved that the aggrieved party took an active part in the initiation, continuation, or procurement of civil proceedings against a respondent, the aggrieved party may be liable for abusive litigation as provided for in Article 5 of Chapter 7 of Title 51.

(c) Relief granted under this Code section shall not affect any contract, sale, encumbrance, or lease consummated before the granting of such relief and involving a bona fide purchaser, lessee, or tenant without actual notice of a complaint filed with the administrator or civil action under this Code section.

(d) Upon timely application, the Attorney General may intervene in such civil action if the Attorney General certifies that the case is of general public importance. Upon such intervention, the Attorney General may obtain such relief as would be available to the Attorney General under Code Section 8-3-218 in a civil action to which such Code section applies.

History.
Code 1981, § 8-3-217, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1992, p. 1840, § 11; Ga. L. 2020, p. 603, § 8/HB 969.

JUDICIAL DECISIONS

Continuing violation. — Because the plaintiff's complaint alleged a continuation of a violation of the Georgia Fair Housing Act, O.C.G.A. § 8-3-200 et seq., as the defendants' refusal to allow the plaintiff's counsel to negotiate the

plaintiff's loan modification was not a one-time event but was the application of a policy that persisted until November 2017, the plaintiff's action filed on September 27, 2019, was not barred by the two-year limitation period. Renasant Corporation v. Korst, 361 Ga. App. 794, 865 S.E.2d 606, 2021 Ga. App. LEXIS 547 (2021).

RESEARCH REFERENCES

ALR.

Actions under Fair Housing Act (42 USCS § 3601 et seq.), based on sexual harassment or creation of hostile environment, 144 A.L.R. Fed. 595.

Award of attorney's fees to prevailing parties in actions under Fair Housing Act, 42 USCA § 3613(c)(2), 159 A.L.R. Fed. 279.

8-3-218. Civil actions by Attorney General.

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this article or that any group of persons has been denied any of the rights granted by this article and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate superior court.

(b)(1) The Attorney General may commence a civil action in any appropriate superior court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the administrator under paragraph (3) of subsection (b) of Code Section 8-3-211. A civil action brought under this paragraph may be commenced not later than 180 days from the date a reasonable cause determination is issued by the administrator.

(2) The Attorney General may commence a civil action in any appropriate superior court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the administrator under subsection (d) of Code Section 8-3-209. A civil action brought under this paragraph may be commenced not later than the expiration of 90 days after the referral of the alleged breach under subsection (d) of Code Section 8-3-209.

(c) The Attorney General, on behalf of the administrator or other party at whose request a subpoena is issued under this article, may enforce such subpoena in appropriate proceedings in the superior court for the county in which the person to whom the subpoena was addressed resides, was served, or transacts business.

(d)(1) In a civil action brought under subsection (a) or (b) of this Code section, the court:

(A) May award such preventive relief, including a permanent or temporary injunction, restraining order, or other order against

the persons responsible for a violation of this article as is necessary to assure the full enjoyment of the rights granted by this article;

(B) May award such other relief as the court deems appropriate, including actual damages to persons aggrieved; and

(C) May, to vindicate the public interest, assess a civil penalty against the respondent:

(i) In an amount not exceeding $50,000.00 for a first violation; or

(ii) In an amount not exceeding $100,000.00 for any subsequent violation.

(2) In a civil action brought under subsection (a) or (b) of this Code section, the court in its discretion may allow the prevailing party reasonable attorney's fees and court costs; provided, however, that a respondent may be awarded reasonable attorney's fees and court costs if the respondent prevails on all alleged violations of this article and upon a showing that the action is frivolous, unreasonable, or without foundation.

(e) Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) of this Code section which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a plaintiff in a civil action under Code Section 8-3-217.

(f) Nothing in this article shall be interpreted to limit or alter the Attorney General's authority to determine whether to file or otherwise maintain a civil action.

History.
Code 1981, § 8-3-218, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 2020, p. 603, § 9/HB 969.

8-3-219. Expediting civil actions.

Any court in which a proceeding is instituted under Code Section 8-3-217 or 8-3-218 shall assign the case for hearing at the earliest practicable date and cause the case to be expedited.

History.
Code 1981, § 8-3-219, enacted by Ga. L. 1990, p. 1284, § 1.

8-3-220. Adoption of provisions in local ordinance.

A political subdivision of this state may adopt verbatim the laws against discriminatory housing practices cited in Code Section 8-3-202, 8-3-203, 8-3-204, 8-3-205, or 8-3-222 of this article as a local ordinance but may not expand or reduce the rights granted by this article.

History.
Code 1981, § 8-3-220, enacted by Ga. L. 1990, p. 1284, § 1.

8-3-221. Cooperation with federal and local agencies.

The administrator may cooperate with federal and local agencies charged with the administration of federal and local fair housing laws or ordinances and, with the consent of such agencies, utilize the services of such agencies and their employees. In furtherance of such cooperative efforts, the administrator may enter into written agreements with such federal or local agencies. All agreements and terminations thereof shall be published in the Official Compilation of the Rules and Regulations of the State of Georgia.

History.
Code 1981, § 8-3-221, enacted by Ga. L. 1990, p. 1284, § 1.

8-3-222. Coercion, intimidation, threats, or interference.

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of such person's having exercised or enjoyed, or on account of such person's having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this article.

History.
Code 1981, § 8-3-222, enacted by Ga. L. 1990, p. 1284, § 1.

JUDICIAL DECISIONS

No violation. — Trial court properly granted summary judgment to a former landlord in an action by a tenant, alleging that the landlord's late husband repeatedly made sexual advances towards the tenant, in violation of O.C.G.A. § 8-3-202(a)(2) of the Georgia Fair Housing Act, and that the husband violated O.C.G.A. § 8-3-222 by these actions as under principles of principal/agent liability, there was no evidence that the landlord authorized the husband to commit the sexual harassment, the landlord did not ratify the conduct, and it was outside the scope of the husband's employment as the property manager for the rental home. Stewart v. Storch, 274 Ga. App. 242, 617 S.E.2d 218, 2005 Ga. App. LEXIS 719 (2005).

Summary judgment on the claim under O.C.G.A. § 8-3-222 was appropriate as the evidence cited by the condominium owner did not show unequal treatment

based on race and the owner pointed to no other evidence of the discriminatory animus. Grant v. Phoenix on Peachtree Condo. Ass'n, 331 Ga. App. 306, 771 S.E.2d 15, 2015 Ga. App. LEXIS 166 (2015).

8-3-223. Compliance with federal law.

Compliance with the provisions of the Fair Housing Amendments Act of 1988 (Pub. L. No. 100-430) shall be deemed compliance with the provisions of paragraph (7) of Code Section 8-3-201 and subparagraph (a)(7)(B) of Code Section 8-3-202. In addition, should any provision of this article relating to the treatment of persons with disabilities be in conflict with any provision of the Fair Housing Amendments Act of 1988, then the provisions of the latter shall prevail.

History.
Code 1981, § 8-3-223, enacted by Ga. L. 1990, p. 1284, § 1; Ga. L. 1995, p. 1302, § 3.

ARTICLE 5

HOUSING TRUST FUND FOR THE HOMELESS

Administrative rules and regulations.
Organization and Definitions, Official Compilation of the Rules and Regulations of the State of Georgia, State Housing Trust Fund for the Homeless, Rule 286-1-.01 et seq.

Application and Financial Assistance, Official Compilation of the Rules and Regulations of the State of Georgia, State Housing Trust Fund for the Homeless, Rule 286-2-.01 et seq.

8-3-300. Short title.

This article shall be known and may be cited as the "State Housing Trust Fund for the Homeless Act."

History.
Code 1981, § 8-3-300, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 2024, p. 168, § 1/HB 1410, effective July 1, 2024; Ga. L. 2024, p. 1052, § 1(b)(11)/SB 448, effective July 1, 2024.

Amendments.
The first 2024 amendment, effective July 1, 2024, inserted "may be" in this Code section.

The second 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, made an identical change.

8-3-301. Definitions.

As used in this article, the term:

(1) "Commission" means the State Housing Trust Fund for the Homeless Commission created in Code Section 8-3-306.

(2) "Homeless" means persons and families who have no access to or can reasonably be expected not to have access to either traditional

or permanent housing which can be considered safe, sanitary, decent, and affordable.

(3) "Low-income persons" means persons or families who lack the income necessary, as determined solely by the commission, to enable them, without financial assistance, to secure safe, sanitary, decent, and affordable housing.

(4) "Member" means a member appointed to serve on the State Housing Trust Fund for the Homeless Commission.

(5) "Qualified sponsor" means a nonprofit, for profit, or governmental sponsor of a residential housing project or stable housing accountability program that meets the conditions of this article. Such term shall specifically include, but shall not be limited to, local housing authorities established under Article 1 of this chapter and urban residential finance authorities established under Chapter 41 of Title 36.

(6) "Residential housing project" means a program designed to enhance residential housing opportunities for low-income persons. Such projects shall include, but shall not be limited to, financing in whole or in part the acquisition, rehabilitation, improvement, or construction of residential rental housing and interest rate or down payment assistance programs designed to enhance home ownership opportunities.

(7) "Stable housing accountability program" means a program for housing stable housing accountability program participants that is certified by the commission as meeting the terms and conditions established under Code Section 8-3-311.

(8) "Stable housing accountability program participants" means each individual together with his or her immediate family, if any, provided that:

(A) Their primary nighttime residence is in a public or private place that is not designed for or ordinarily used as a long-term or medium-term sleeping accommodation for natural persons, and such nighttime residences shall include, but shall not be limited to, a car, park, abandoned building, bus or train station, airport, or campground;

(B) Their primary nighttime residence is in a public or private charitable shelter for unhoused individuals that is not designed as a permanent or semipermanent dwelling place and they are leaving an institution where he or she has temporarily resided; or

(C) They:

(i) Will imminently lose their housing, including housing he or she owns, rents, lives in without paying rent, or is sharing

with others, and rooms in hotels or motels not paid for by a governmental program for low-income persons or by charitable organizations, as evidenced by:

(I) A court order resulting from an eviction action that notifies the individual that he or she must leave within 30 days;

(II) Such individual having a primary nighttime residence that is a room in a hotel or motel and lacking the resources necessary to reside there for more than 14 days;

(III) Credible indications that the owner or renter of such housing will not allow such individual to stay for more than 30 days; or

(IV) Any oral statement from an individual seeking homeless assistance that is found to be credible;

(ii) Have no subsequent residence identified; and

(iii) Lack the resources or support networks needed to obtain other permanent housing.

(9) "Trust fund" means the State Housing Trust Fund for the Homeless created in Code Section 8-3-302.

History.
Code 1981, § 8-3-301, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 1990, p. 8, § 8; Ga. L. 1991, p. 1653, § 2-1; Ga. L. 1996, p. 872, § 1; Ga. L. 2024, p. 168, § 1/HB 1410, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, added "or stable housing accountability program that meets the conditions of this article. Such term shall specifically include, but shall not be limited to, local housing authorities established under Article 1 of this chapter and urban residential finance authorities established under Chapter 41 of Title 36" to the end of paragraph (5); substituted "shall include, but shall not be limited to" for "include, but are not limited to" in paragraph (6); added paragraphs (7) and (8); and redesignated former paragraph (7) as paragraph (9).

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1993, "low-income" was substituted for "low income" in paragraph (6).

8-3-302. Fund created.

The State Housing Trust Fund for the Homeless is created as a separate fund in the state treasury. The fund shall be expended only as provided in this article.

History.
Code 1981, § 8-3-302, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 2024, p. 168, § 1/HB 1410, effective July 1, 2024.

Editor's notes.
Ga. L. 2024, p. 168, § 1/HB 1410, effective July 1, 2024, reenacted this Code section without change.

8-3-303. Amounts credited to trust fund.

The state treasurer shall credit to the trust fund all amounts appropriated or otherwise donated to such trust fund. All funds appropriated to or otherwise paid or credited to the trust fund shall be presumptively concluded to have been committed to the purpose for which they have been appropriated or paid and shall not lapse. All funds appropriated, donated, or otherwise received for the specific purpose of the stable housing accountability programs shall be used exclusively for such programs.

History.
Code 1981, § 8-3-303, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296; Ga. L. 2024, p. 168, § 1/HB 1410, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, added the last sentence in this Code section.

8-3-304. Investments.

The state treasurer shall invest trust fund money in the same manner in which state funds are invested as authorized by the State Depository Board pursuant to Article 3 of Chapter 17 of Title 50.

History.
Code 1981, § 8-3-304, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296; Ga. L. 2024, p. 168, § 1/HB 1410, effective July 1, 2024.

Editor's notes.
Ga. L. 2024, p. 168, § 1/HB 1410, effective July 1, 2024, reenacted this Code section without change.

8-3-305. Payments from fund.

The Office of the State Treasurer shall be authorized to draw a warrant or warrants upon the trust fund upon receipt of an order for payment of the State Housing Trust Fund for the Homeless Commission, which order for payment has been approved by the Governor.

History.
Code 1981, § 8-3-305, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296; Ga. L. 2024, p. 168, § 1/HB 1410, effective July 1, 2024.

Editor's notes.
Ga. L. 2024, p. 168, § 1/HB 1410, effective July 1, 2024, reenacted this Code section without change.

8-3-306. Commission established; membership.

(a)(1) There is established the State Housing Trust Fund for the Homeless Commission which shall consist of nine members. Two of the nine members shall be the commissioner of community affairs, or his or her designee, and either the chairperson of the Board of

Community Affairs or a member of the Board of Community Affairs designated by the chairperson. The Governor shall appoint three of the public members and the Lieutenant Governor and the Speaker of the House of Representatives shall each appoint two of the public members. The public members shall be knowledgeable in the area of housing and, to the extent practicable, shall represent diverse housing concerns.

(2) Public members shall serve for a term of four years except that initial appointments shall be staggered as follows: three of the appointees shall serve an initial term of four years and four of the appointees shall serve an initial term of two years. Public members shall continue in office until their successors have been appointed and qualified. In the event of a vacancy in the office of a public member by death, resignation, or otherwise, the Governor shall appoint a successor to serve the balance of the unexpired term.

(3) Membership on the commission does not constitute public office, and no member shall be disqualified from holding public office by reason of his or her membership.

(b) The commission shall elect a chairperson who shall serve in that position for a term of two years. The commission shall elect such other officers and appoint committees as it deems appropriate.

(c) The commission shall hire no staff but shall contract with the Department of Community Affairs for professional, technical, and clerical support from the Department of Community Affairs as required. In the event that the Department of Community Affairs is unable to provide the professional, technical, or clerical services required, the commission may hire outside consultants on a specified project basis.

(d) Any and all appropriations made to the trust fund pursuant to the general appropriations Act or the supplemental appropriations Act shall be directed through the Department of Community Affairs. The commission shall submit its budget to and through the Department of Community Affairs.

History.

Code 1981, § 8-3-306, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 1991, p. 1653, § 2-3; Ga. L. 1993, p. 311, § 1; Ga. L. 1996, p. 872, § 2; Ga. L. 2024, p. 168, § 1/HB 1410, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, designated the existing provisions of subsection (a) as paragraphs (a)(1) through (a)(3) and substituted the present provisions of the third sentence in paragraph (a)(1) for the former provisions, which read: "The Governor shall appoint the remaining seven public members.".

OPINIONS OF THE ATTORNEY GENERAL

Conflict of interest. — Housing Trust Fund for the Homeless Commission's policy of having a member disclose the member's involvement and abstain from voting when the member is involved with an organization that applies to the Commission for funding is insufficient to relieve the conflict of interest. 1992 Op. Att'y Gen. No. 92-15.

8-3-307. Expense allowance and travel reimbursement for members of commission.

Members of the commission shall serve without compensation but shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member is in physical attendance at a commission meeting, plus either reimbursement for actual transportation costs while traveling by public carrier or the same mileage allowance for use of a personal car in connection with such attendance as members of the General Assembly receive. Notwithstanding the foregoing, no member shall receive said expense allowance or travel reimbursement if said member is entitled to receive an expense allowance or travel reimbursement or salary for performance of duties on some other state board, commission, or entity, by whatever name called, for work performed on that day in the same location. Expense allowances and travel reimbursement shall be paid from moneys appropriated or otherwise available to the trust fund.

History.
Code 1981, § 8-3-307, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 2024, p. 168, § 1/HB 1410, effective July 1, 2024.

Editor's notes.
Ga. L. 2024, p. 168, § 1/HB 1410, effective July 1, 2024, reenacted this Code section without change.

8-3-308. Duties of commission.

The commission shall:

(1) Meet at such times and places as it shall determine necessary or convenient to perform its duties;

(2) Maintain minutes of its meetings;

(3) Adopt rules and regulations for the transaction of its business;

(4) Accept applications for disbursements of available moneys from the trust fund for residential housing projects and stable housing accountability programs in accordance with Code Sections 8-3-310 and 8-3-311; and

(5) Maintain or cause to be maintained records of all expenditures of the commission, all funds received, and all disbursements made.

History.
Code 1981, § 8-3-308, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 1993, p. 91, § 8; Ga. L. 1996, p. 872, § 3; Ga. L. 2024, p. 168, § 1/HB 1410, effective July 1, 2024.
Amendments.
The 2024 amendment, effective July 1, 2024, inserted "and stable housing accountability programs in accordance with Code Sections 8-3-310 and 8-3-311" in paragraph (4).

8-3-309. Acceptance of federal funds; disposition.

The commission may accept federal funds granted by Congress or executive order, appropriations from the General Assembly, and gifts, grants, and donations from individuals, private organizations, or foundations for the purposes of residential housing projects. The commission may also accept appropriations from the General Assembly, federal funds granted by Congress or executive order, and gifts, grants, and donations from individuals, private organizations, or foundations for the stable housing accountability programs; provided, however, that in no event shall any such funds be accepted if there are conditions for the use of such funds in a manner inconsistent with the provisions of this article. All funds received in this manner shall be transmitted to the state treasurer for deposit in the trust fund to be disbursed as other moneys in the trust fund.

History.
Code 1981, § 8-3-309, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 3/SB 296; Ga. L. 2024, p. 168, § 1/HB 1410, effective July 1, 2024.
Amendments.
The 2024 amendment, effective July 1, 2024, substituted the present provisions of this Code section for the former provisions, which read: "The commission may accept federal funds granted by Congress or executive order for the purposes of residential housing projects and gifts, grants, and donations from individuals, private organizations, or foundations. All funds received in this manner shall be transmitted to the state treasurer for deposit in the trust fund to be disbursed as other moneys in the trust fund.".

8-3-310. Authorized disbursements for residential housing projects.

With respect to residential housing projects, the commission may authorize the disbursement of available money from the trust fund for residential housing projects sponsored by a qualified sponsor. The commission may consult, as appropriate, with persons with varied and diverse interests in housing in order to acquaint them with the trust fund and to solicit information relating to housing needs, residential housing projects, and criteria for selection of residential housing projects. The criteria for making such disbursement decisions shall include, but shall not be limited to:

(1) The number of persons assisted;

(2) The leveraging of money or in-kind services by a qualified sponsor;

(3) The geographic distribution of residential housing projects;

(4) The availability of other forms of assistance; and

(5) Any and all other factors bearing upon the advisability and necessity of the residential housing project.

History.
Code 1981, § 8-3-310, enacted by Ga. L. 1988, p. 717, § 1; Ga. L. 1991, p. 1653, § 2-3; Ga. L. 1996, p. 872, § 4; Ga. L. 2024, p. 168, § 1/HB 1410, effective July 1, 2024.

Amendments.
The 2024 amendment, effective July 1, 2024, removed the (a) designation; in the introductory language, substituted "With respect to residential housing projects, the" for "The" at the beginning and substituted "but shall not be limited to:" for "but not be limited to, the following:" at the end and deleted former subsection (b), which read: "Funds may also be disbursed from the trust fund to pay expenses of the commission, to pay any and all operating expenses, and to pay for professional, technical, and clerical services provided the commission by the Department of Community Affairs or by other outside sources."

8-3-311. Creation of stable housing accountability programs; application process; minimum standards; approval criteria; funding.

(a) With respect to stable housing accountability programs, the commission may authorize the disbursement of available money from the trust fund for any stable housing accountability program sponsored by a qualified sponsor under the terms and conditions of this article.

(b) The commission may consult, as appropriate, with persons with varied and diverse interests in housing in order to acquaint them with the trust fund and to solicit information relating to housing needs, potential stable housing accountability programs, and criteria for selection of stable housing accountability programs.

(c) On or before January 1, 2025, the commission shall develop an application process for qualified sponsors to apply for funding to operate a stable housing accountability program.

(d) On or before January 1, 2025, the commission shall publish uniform state-wide minimum standards for a stable housing accountability program. At minimum, to be certified as a stable housing accountability program, the program shall:

(1) Provide voluntary, immediate, and stable housing to stable housing accountability program participants;

(2) Limit the length of total residence for any person to 18 months or whenever the tenant who was the qualifying resident is able to obtain or is offered affordable housing, whichever is earlier;

(3) Provide ongoing assistance to each resident for obtaining long-term affordable housing;

(4) Require residents to be removed from the program if they fail to meet specified accountability measures, including sustaining an honest, good-faith effort to achieve or maintain sobriety from drugs and alcohol;

(5) Conduct regular inspections of common areas and residential units; and

(6) Require qualifying residents:

(A) To show proof of U.S. citizenship and execute an affidavit verifying continuous residency in this state for the previous 12 months;

(B) To participate in free and relevant job training and educational opportunities until such resident obtains stable employment;

(C) To engage in an active search and apply for stable employment;

(D) Who obtain stable employment to maintain such employment status as long as stable employment is available to them;

(E) To participate in counseling, mental heath care, and substance abuse treatment programs, as necessary;

(F) To submit to regular drug and alcohol testing;

(G) To abstain from criminal activity;

(H) Who have minor children to ensure that such children receive adequate nutrition, health care, and education; and

(I) To submit to regular review of compliance with applicable terms and conditions provided for in this Code section for stable housing accountability programs.

(e) The criteria for approving an application shall include, but shall not be limited to:

(1) The total number of stable housing accountability program participants who are likely to receive assistance from the proposed stable housing accountability program;

(2) The ability of the applicant to leverage their own or other available money or in-kind services for the benefit of the proposed stable housing accountability program;

(3) The geographic distribution of existing stable housing accountability programs;

(4) The quality of the various forms of assistance to be offered to residents of the proposed stable housing accountability program;

(5) The likelihood that the qualified sponsor will successfully fulfill the terms and conditions set forth in this article and the contract between the commission and the qualified sponsor; and

(6) Any and all other factors bearing upon the advisability and necessity of the proposed stable housing accountability program.

(f) On or before January 1, 2025, the application process, minimum standards, approval criteria, and available funding for transitional housing projects shall be published and maintained on the website of the commission, which shall be hosted on the public website of the Department of Community Affairs.

(g) No funds shall be disbursed to a qualified sponsor until a contract is signed for the provision of the approved stable housing accountability program. Each contract shall require financial assurance from the qualified sponsor for full compliance with the contract.

History.
Code 1981, § 8-3-311, enacted by Ga. L. 2024, p. 168, § 1/HB 1410, effective July 1, 2024.
Effective date.
This Code section became effective July 1, 2024.
Editor's notes.
Ga. L. 2024, p. 168, § 1/HB 1410, effective July 1, 2024, redesignated former Code Section 8-3-311 as present Code Section 8-3-313; the former Code section pertained to powers of commission to hold title, foreclose, commence action to protect or enforce rights, and exercise other rights for its benefit or protection.

8-3-312. Disbursements for operating expenses.

Funds may be disbursed from the trust fund to pay expenses of the commission, to pay any and all operating expenses, and to pay for professional, technical, and clerical services provided the commission by the Department of Community Affairs or by other outside sources.

History.
Code 1981, § 8-3-312, enacted by Ga. L. 2024, p. 168, § 1/HB 1410, effective July 1, 2024.
Effective date.
This Code section became effective July 1, 2024.

8-3-313. Powers of commission.

(a) The commission shall have the power to hold title to any residential housing project or stable housing accountability program financed by it, but it shall not be required to do so.

(b) The commission shall have the power to foreclose on any mortgage or security interest in default and to commence any action to protect or enforce any right conferred upon it by any law, mortgage,

security agreement, deed of trust, deed to secure debt, contract, or other agreement; to bid for and purchase property which was the subject of such mortgage or security interest at any foreclosure or at any other sale; to accept a deed in lieu of foreclosure; to acquire or take possession of such property; and to exercise any and all rights as provided by law or contract for the benefit or protection of the commission.

History.
Code 1981, § 8-3-311, enacted by Ga. L. 1993, p. 311, § 2; Code 1981, § 8-3-313, as redesignated by Ga. L. 2024, p. 168, § 1/HB 1410, effective July 1, 2024.
Amendments.
The 2024 amendment, effective July 1, 2024, redesignated former Code Section 8-3-311 as this Code section and inserted "or stable housing accountability program" in subsection (a).

ARTICLE 6

DOCUMENTATION BY HOME INSPECTORS

8-3-330. Home inspector.

As used in this article, the term "home inspector" means any person, except an employee of a county, municipality, or political subdivision while engaged in the performance of the duties of his or her employment, who, for consideration, inspects and reports on the condition of any home or single-family dwelling or the grounds, roof, exterior surface, garage or carport, structure, attic, basement or crawl space, electrical system, heating system, air-conditioning system, plumbing, on-site sewerage disposal, pool or hot tub, fireplace, kitchen, appliances, or any combination thereof for a prospective purchaser or seller.

History.
Code 1981, § 8-3-330, enacted by Ga. L. 1994, p. 471, § 1.

8-3-331. Documentation required.

Every home inspector shall provide to the person on whose behalf a home or single-family dwelling is being inspected a written document specifying:

(1) The scope of the inspection, including those structural elements, systems, and subsystems to be inspected;

(2) That the inspection is a visual inspection; and

(3) That the home inspector will notify in writing the person on whose behalf such inspection is being made of any defects noted during the inspection, along with any recommendation that certain experts be retained to determine the extent and corrective action necessary for such defects.

History.
Code 1981, § 8-3-331, enacted by Ga. L. 1994, p. 471, § 1.

8-3-331.1. Licensing authority of political subdivision.

Nothing in this article shall preempt a political subdivision from prescribing licensing requirements for home inspectors.

History.
Code 1981, § 8-3-331.1, enacted by Ga. L. 1997, p. 550, § 2.

Editor's notes.
Ga. L. 1997, p. 550, § 3, not codified by the General Assembly, provides that no county or municipality shall be required to implement the requirements of that Act until such time as the county or municipality has consumed all building permit forms on hand as of January 1, 1998.

8-3-332. Criminal penalty.

Any person violating any of the provisions of this article shall be guilty of a misdemeanor.

History.
Code 1981, § 8-3-332, enacted by Ga. L. 1994, p. 471, § 1.

CHAPTER 4

CLEARANCE AND REHABILITATION OF BLIGHTED AREAS

Sec.		Sec.	
8-4-1.	Short title.	8-4-7.	Taxation of leased property.
8-4-2.	Legislative findings and declaration of necessity.	8-4-8.	Acquisition and development of lands not within blighted areas.
8-4-3.	Definitions.	8-4-9.	Cooperation by state public bodies in aid of redevelopment projects.
8-4-4.	Power of authorities to prepare redevelopment plans and to undertake redevelopment projects; scope of authorities' powers, privileges, and immunities.	8-4-10.	Financial aid from federal government; security for aid.
8-4-5.	Approval of redevelopment projects by cities.	8-4-11.	Bonds and other obligations as legal investments and security.
8-4-6.	Power of authorities to make property available for use by private enterprise or public agencies; manner of valuation of property; obligations of purchasers and lessees.	8-4-12.	Investment in projects; acquisition, development, and sale of lands and improvements in project areas.

Cross references.

Urban redevelopment plans generally, § 36-61-1 et seq.

Development authorities of counties and municipalities, § 36-62-1 et seq.

RESEARCH REFERENCES

Am. Jur. Proof of Facts.

Blighted Area, 1 POF2d 401.

8-4-1. Short title.

This chapter shall be known and may be cited as the "Redevelopment Law."

History.

Ga. L. 1946, p. 157, § 1; Ga. L. 2024, p. 1052, § 1(b)(12)/SB 448, effective July 1, 2024.

Amendments.

The 2024 amendment, effective July 1, 2024, part of an Act to revise, modernize, and correct the Code, substituted "shall be known and may be cited" for "may be referred to" in this Code section.

Law reviews.

For survey of developments in Georgia real property law from mid-1980 through mid-1981, see 33 Mercer L. Rev. 219 (1981).

8-4-2. Legislative findings and declaration of necessity.

It is found and declared:

(1) That there exist in many communities within this state blighted areas, as defined in Code Section 8-4-3, or areas in the process of becoming blighted;

(2) That such areas impair economic values and tax revenues; that such areas cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals, and welfare of the residents of the state; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities;

(3) That the clearance, replanning, and preparation for rebuilding of these areas and the prevention of the reduction of blight and its causes are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state concern;

(4) That there are also certain areas where the condition of the title, the diverse ownership of the land to be assembled, the street or lot layouts, or other conditions prevent a proper development of the land; that it is in the public interest that such areas, as well as blighted areas, be acquired by eminent domain and made available for sound and wholesome development in accordance with a redevelopment plan; and that the exercise of the power of eminent domain and the financing of the acquisition and preparation of land by a public agency for such redevelopment is likewise a public use and purpose;

(5) That redevelopment activities will stimulate residential construction which is closely correlated with general economic activity; and that such undertakings authorized by this chapter will aid the production of better housing and more desirable neighborhood and community development at lower costs and will make possible a more stable and larger volume of residential construction, which will assist materially in achieving and maintaining full employment;

(6) That there exists an emergency housing shortage of decent, safe, and sanitary dwellings for families of low income; and

(7) That it is in the public interest that advance preparation for such projects and activities be made now; and that the necessity in the public interest for the provisions enacted by this chapter is declared as a matter of legislative determination.

History.
Ga. L. 1946, p. 157, § 2.

RESEARCH REFERENCES

Am. Jur. 2d.
40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 17 et seq.

8-4-3. Definitions.

As used in this chapter, the term:

(1) "Blighted areas" means:

(A) Areas in which there is a predominance of buildings or improvements, or which are predominantly residential in character, and which, by reason of:

(i) Dilapidation, deterioration, age, or obsolescence;

(ii) Inadequate provision for ventilation, light, air, sanitation, or open spaces;

(iii) High density of population and overcrowding;

(iv) The existence of conditions which endanger life or property by fire and other causes; or

(v) Any combination of such factors,

are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime and are detrimental to the public health, safety, morals, or welfare; and

(B) Areas which, by reason of:

(i) The predominance of defective or inadequate street layout;

(ii) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(iii) Insanitary or unsafe conditions;

(iv) Deterioration of site improvements;

(v) Diversity of ownership;

(vi) Tax or special assessment delinquency exceeding the fair value of the land;

(vii) Defective or unusual conditions of title;

(viii) Improper subdivision or obsolete platting;

(ix) The existence of conditions which endanger life or property by fire or other causes; or

(x) Any combination of such factors,

substantially impair or arrest the sound growth of the community, retard the provision of housing accommodations, or constitute an economic or social liability and are a menace to the public health, safety, morals, or welfare in their present condition and use.

(2) "Redevelopment plan" means a plan, other than a preliminary or tentative plan, for the acquisition, clearance, reconstruction, rehabilitation, or future use of a redevelopment project area. Such plan shall be sufficiently complete to indicate its relationship to definite local objectives as to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements and to indicate the proposed land uses and building requirements in the redevelopment project area.

(3) "Redevelopment project" means:

(A) Any work or undertaking to acquire blighted areas or portions thereof, including lands, structures, or improvements, the acquisition of which is necessary or incidental to the proper clearance, development, or redevelopment of such blighted areas or to the prevention of the spread or recurrence of slum conditions or conditions of blight;

(B) Any work or undertaking to clear any such areas by demolition or removal of existing buildings, structures, streets, utilities, or other improvements thereon and to install, construct, or reconstruct streets, utilities, and site improvements essential to the preparation of sites for uses in accordance with the redevelopment plan;

(C) Any work or undertaking to sell, lease, or otherwise make available land in such areas for residential, recreational, commercial, industrial, or other use, or for public use or to retain such land for public use, in accordance with the redevelopment plan; and

(D) The preparation of a redevelopment plan; the planning, survey, and other work incident to a redevelopment project; and the preparation of all plans and arrangements for carrying out a redevelopment project.

History.
Ga. L. 1946, p. 157, § 3; Ga. L. 1951, p. 683, § 1.

JUDICIAL DECISIONS

Blighted areas and redevelopment project does not include forest land. — Terms "blighted areas" and "redevelopment project" as defined in Ga. L. 1951, p. 683, § 1 (see now O.C.G.A. § 8-4-3) cannot be construed to include the property of a condemnee when such property was only forest land, and to construe such terms as applying to the property was contrary to former Ga. Const. 1945, Art. XVI (see now Ga. Const. 1983, Art. IX, Sec. II, Para. VII). Howard v. Housing Auth., 220 Ga. 640, 140 S.E.2d 880, 1965 Ga. LEXIS 589 (1965).

RESEARCH REFERENCES

Am. Jur. 2d.
40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 17 et seq.

8-4-4. Power of authorities to prepare redevelopment plans and to undertake redevelopment projects; scope of authorities' powers, privileges, and immunities.

Any housing authority established pursuant to Article 1 of Chapter 3 of this title, the "Housing Authorities Law," is authorized to prepare or cause to be prepared redevelopment plans and to undertake redevelopment projects within its area of operation, in accordance with this chapter. In undertaking such redevelopment projects, a housing authority shall have all the rights, powers, privileges, and immunities that such authority has under Article 1 of Chapter 3 of this title, the "Housing Authorities Law," and any other provision of law relating to slum clearance and housing projects for persons of low income, including, without limiting the generality of the foregoing, the power to make and execute contracts, to issue bonds and other obligations and give security therefor, to acquire real property by eminent domain or purchase, and to do any and all things necessary to carry out projects in the same manner as though all of the provisions of law applicable to slum clearance and housing projects were applicable to redevelopment projects undertaken under this chapter, provided that nothing contained in Code Sections 8-3-11 and 8-3-12 shall be construed as limiting the power of an authority, in the event of a default by a purchaser or lessee of land in a redevelopment plan, to acquire property and operate it free from the restrictions contained in said Code sections.

History.
Ga. L. 1946, p. 157, § 4; Ga. L. 1951, p. 683, § 2.
Cross references.
Property-acquisition policies relating to federal-aid public works projects, § 22-4-9 et seq.

8-4-5. Approval of redevelopment projects by cities.

An authority shall not initiate any redevelopment project under this

chapter until the governing body, planning agency, or other legally designated and empowered public agency of each city in which any of the area to be covered by the project is situated has approved the redevelopment plan for the redevelopment project area.

History.
Ga. L. 1946, p. 157, § 5; Ga. L. 1951, p. 683, § 3.

8-4-6. Power of authorities to make property available for use by private enterprise or public agencies; manner of valuation of property; obligations of purchasers and lessees.

(a) An authority may make land in a redevelopment project available for use by private enterprise or public agencies in accordance with the redevelopment plan. Such land may be made available at its fair value, which represents the value, whether expressed in terms of rental or capital price, at which the authority determines such land should be made available in order that it may be developed or redeveloped for the purpose specified in such plan.

(b) To assure that land acquired in a redevelopment project is used in accordance with the redevelopment plan, an authority, upon the sale or lease of such land, shall obligate purchasers or lessees:

(1) To use the land for the purpose designated in the redevelopment plan;

(2) To begin the building of improvements within such period of time as the authority fixes as reasonable; and

(3) To comply with such other conditions as are necessary to carry out the purposes of this chapter.

Any such obligations by the purchaser shall be covenants and conditions running with the land where the authority so stipulates.

History.
Ga. L. 1946, p. 157, § 7.

RESEARCH REFERENCES

Am. Jur. 2d.
40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 10 et seq.

8-4-7. Taxation of leased property.

Any property which the authority leases to private corporations, individuals, or partnerships for development under a redevelopment

plan shall have the same tax status as if such leased property were owned by such private corporations, individuals, or partnerships.

History.
Ga. L. 1946, p. 157, § 8.

RESEARCH REFERENCES

Am. Jur. 2d.
40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 10.

8-4-8. Acquisition and development of lands not within blighted areas.

(a) Upon a determination, by resolution, of the governing body of the city in which such land is located that the acquisition and development of undeveloped vacant land, not within a blighted area, is essential to the proper clearance or redevelopment of blighted areas or a necessary part of the general slum clearance program of the city, the acquisition, planning, preparation for development, or disposal of such land shall constitute a redevelopment project which may be undertaken by the authority in the manner provided in this chapter. The determination by the governing body shall not be made until such body finds that there is a shortage of decent, safe, and sanitary housing in the city; that such undeveloped vacant land will be developed for predominantly residential uses; and that the provision of decent, safe, and sanitary housing on such undeveloped vacant land is necessary to the relocation of families to be displaced from blighted areas in the city which are under redevelopment.

(b) In the undertaking of redevelopment projects on a regional or unified metropolitan basis, which projects involve the acquisition and development of undeveloped vacant land in one city as an adjunct to the redevelopment of blighted areas in another city, each determination or finding required in this Code section shall be made by the governing body of the city with respect to which the determination or finding relates.

History.
Ga. L. 1951, p. 683, § 7.

8-4-9. Cooperation by state public bodies in aid of redevelopment projects.

Any state public body, as defined in Code Section 8-3-152, shall have the same rights and powers to cooperate with and assist housing authorities with respect to redevelopment projects that such state public body has pursuant to Article 2 of Chapter 3 of this title, the

"Housing Cooperation Law," for the purpose of assisting the development or administration of slum clearance and housing projects, in the same manner as though Article 2 of Chapter 3 of this title were applicable to redevelopment projects undertaken under this chapter.

History.
Ga. L. 1946, p. 157, § 6.

8-4-10. Financial aid from federal government; security for aid.

An authority may borrow money or accept contributions from the federal government to assist in its undertakings and redevelopment projects. An authority may do any and all things necessary or desirable to secure such financial aid (including obligating itself, in any contract with the federal government for financial assistance, to convey to the federal government the project to which said contract relates upon the occurrence of a substantial default thereunder), in the same manner as though it were securing such aid in connection with slum clearance and housing projects under Article 1 of Chapter 3 of this title, the "Housing Authorities Law."

History.
Ga. L. 1946, p. 157, § 9; Ga. L. 1951, p. 683, § 4.
Cross references.
Programs for relocation of persons and businesses displaced by federal-aid public works projects, § 22-4-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d.
40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 13 et seq.

8-4-11. Bonds and other obligations as legal investments and security.

Bonds or other obligations issued by a housing authority in connection with a redevelopment project pursuant to this chapter, which bonds or obligations are secured by a contract with the federal government for financial assistance, shall be security for public deposits and legal investments to the same extent and for the same persons, institutions, associations, corporations, and other bodies and officers as bonds or other obligations which are secured by a contract with the federal government for annual contributions issued pursuant to Article 1 of Chapter 3 of this title, the "Housing Authorities Law," in connection with the development of slum clearance or housing projects.

History.
Ga. L. 1946, p. 157, § 10; Ga. L. 1951, p. 683, § 5.

8-4-12. Investment in projects; acquisition, development, and sale of lands and improvements in project areas.

Notwithstanding any restriction or limitation on investments contained in any other laws of this state, any building and loan association, any savings and loan association, any investment company, or any insurance company or association is authorized:

(1) To invest its funds in projects contemplated by this chapter;

(2) To acquire and hold land;

(3) To acquire or erect apartment, tenement, or other dwelling houses, not including hotels but including accommodations for retail stores, shops, offices, and other community services reasonably incidental to such projects; to own, maintain, manage, and collect or receive income from such apartment, tenement, or other dwelling houses; and

(4) To sell or convey such land and the improvements thereon.

History.
Ga. L. 1946, p. 157, § 10; Ga. L. 1951, p. 683, § 6.

CHAPTER 5

ART IN STATE BUILDINGS

Sec.		Sec.	
8-5-1.	Short title.		exempt from bidding requirements.
8-5-2.	Legislative purpose.		
8-5-3.	Definitions.	8-5-7.	Ownership rights; rights of artists.
8-5-4.	Gifts and appropriations.		
8-5-5.	Duties of the art council.	8-5-8.	Annual report.
8-5-6.	Purchases and commissions	8-5-9.	Sale of works of art by state.

8-5-1. Short title.

This chapter shall be known and may be cited as the "Art in State Buildings Program."

History.
Code 1981, § 8-5-1, enacted by Ga. L. 1987, p. 891, § 1.

8-5-2. Legislative purpose.

The General Assembly finds and declares that the State of Georgia has a responsibility for expanding public experience with art. The General Assembly recognizes that other states have enacted legislation requiring the expenditure of 1 percent of funds allocated for the construction of state buildings for works of art for such buildings.

History.
Code 1981, § 8-5-2, enacted by Ga. L. 1987, p. 891, § 1.

8-5-3. Definitions.

As used in this chapter, the term:

(1) "Acquisition" means acquisition by purchase, lease, or commission.

(2) "Council" means the Georgia Council for the Arts.

(3) "State buildings" means state office buildings, hospitals, prisons, buildings of state authorities, and such other state buildings which the Georgia Council for the Arts deems appropriate for the inclusion of art as provided in this chapter but shall not mean either the state capitol or the capitol education center.

(4) "Work of art" means any work of visual art, including, but not limited to, a drawing, painting, mural, fresco, sculpture, mosaic, or photograph; a work of calligraphy; a work of graphic art, including an etching, lithograph, offset print, silk screen, or a work of graphic art

of like nature; crafts, including crafts in clay, textile, fiber, wood, metal, plastic, glass, or like materials; or mixed media, including a collage, assemblage, or any combination of the foregoing art media. The term "work of art" does not include environmental landscaping placed about a state building.

History.
Code 1981, § 8-5-3, enacted by Ga. L. 1987, p. 891, § 1; Ga. L. 2000, p. 1332, § 1.

Cross references.
Georgia Council for the Arts, § 50-12-20 et seq.

8-5-4. Gifts and appropriations.

(a) Financing of works of art in state buildings shall be subject to appropriations by the General Assembly. The Governor shall include a budget item for art in state buildings in the budget of the Office of Planning and Budget in the annual budget submitted to the General Assembly.

(b) The council may accept grants, gifts, donations, bequests, or federal money made in connection with the art in state buildings program and expend such funds for the purposes of this chapter.

History.
Code 1981, § 8-5-4, enacted by Ga. L. 1987, p. 891, § 1.

8-5-5. Duties of the art council.

In order to carry out the purposes of this chapter, the council shall do all of the following:

(1)(A) Determine and implement procedures for the purchase or lease by written contract of existing works of art from an artist or the artist's authorized agent. Works of art to be purchased or leased shall be selected by the council from lists of works prepared and submitted by advisory committees empowered by the council. In making such purchases or in executing such leases, preference may be given to artists who are Georgia residents. No lease obligation shall be incurred under the provisions of this chapter without the prior approval of the Office of Planning and Budget.

(B) Determine and implement procedures, one of which shall provide for competition among artists, for the selection and commissioning of artists by written contract to create works of art. Commissioned artists shall be selected by the council from lists of qualified and available artists prepared and submitted by advisory committees empowered by the council. In making such

contracts, preference may be given to artists who are Georgia residents.

(C) If competition among artists is the procedure for selection of an artist pursuant to subparagraph (B) of this paragraph, a panel of three judges shall be appointed to make such selection. The panel shall consist of the director of the Office of Planning and Budget or a person designated by such director, a member of the council or a person designated by the council, and one person selected by the other two who shall be a visual artist, an architect or designer, a person employed by an art museum, or a collector of visual art. At least one judge on each panel shall be a working visual artist;

(2) Consult with each artist commissioned regarding the design and placement of a work of art;

(3) Ensure that works of art acquired pursuant to this chapter are placed in a manner so that they are within public view;

(4) Ensure that the program for acquisition of works of art pursuant to this chapter results in participation by many different artists and in acquisitions from among many of the different art forms referred to in paragraph (4) of Code Section 8-5-3. A person who is, or is related to, a member of the council or is employed by the council or a person related to or employed in the office of the director of the Office of Planning and Budget may not be selected or commissioned pursuant to this chapter;

(5) Cooperate with other affected state agencies and consult with the artist to ensure that each work of art acquired pursuant to this chapter is properly maintained and is not artistically altered in any manner without the consent of the artist;

(6) Promulgate rules and regulations, as necessary, in consultation with the council and any other person, group, or association in the State of Georgia related to architecture, design, or the arts so as to facilitate the implementation of the council's responsibilities under this chapter; and

(7) Authorize payments to artists for works of art acquired pursuant to this chapter.

History.
Code 1981, § 8-5-5, enacted by Ga. L. 1987, p. 891, § 1.

Cross references.
Powers and duties generally of Georgia Council for the Arts, § 50-12-23.

8-5-6. Purchases and commissions exempt from bidding requirements.

Except as otherwise provided in this chapter, the selection and

commissioning of artists and the purchase and execution of works of art for state buildings shall be exempt from the provisions of law relating to bidding requirements in connection with state buildings.

History.
Code 1981, § 8-5-6, enacted by Ga. L. 1987, p. 891, § 1.

8-5-7. Ownership rights; rights of artists.

(a) The state shall receive sole ownership of each work of art acquired pursuant to this chapter, including all tangible rights and privileges thereof, subject to the following intangible rights retained by the artist:

(1) The right to claim authorship of the work of art;

(2) The right to reproduce such work of art, including all rights to which the work of art may be subject under copyright laws. Such rights may be limited by written contract; and

(3) If provided by written contract, the right to receive a specified percentage of the proceeds if the work of art is subsequently sold by the state to a third party other than as part of the sale of the building in which the work of art is located.

(b) The rights granted to the artist by subsection (a) of this Code section may by written contract be extended to such artist's heirs, assigns, or personal representatives until after the end of the twentieth year following the death of such artist.

(c) Prior to execution of a written contract, the artist shall be informed in writing of the rights specified in subsections (a) and (b) of this Code section which may be granted by contract to the artist or to the artist's heirs, assigns, or personal representatives.

History.
Code 1981, § 8-5-7, enacted by Ga. L. 1987, p. 891, § 1.

Law reviews.
For comment, "Pay What You Like — No, Really: Why Copyright Law Should Make Digital Music Free for Noncommercial Uses," see 58 Emory L.J. 1495 (2009).

For note, "How to Get the Mona Lisa in your Home Without Breaking the Law: Painting a Picture of Copyright Issues with Digitally Accessible Museum Collections," see 18 J. Intell. Prop. L. 567 (2011).

8-5-8. Annual report.

In consultation with the director of the Office of Planning and Budget, the council shall prepare an annual report relative to the art in state buildings program pursuant to this chapter. The council shall not be

required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the annual report in the manner which it deems to be most effective and efficient. Such report may be submitted as part of a report on the activities and programs of the council.

History.
Code 1981, § 8-5-8, enacted by Ga. L. 1987, p. 891, § 1; Ga. L. 2005, p. 1036, § 1/SB 49.

Cross references.
Annual report of Georgia Council for the Arts, § 50-12-24.

8-5-9. Sale of works of art by state.

If a work of art acquired pursuant to this chapter is to be sold by the state, such sale shall be made to the highest bidder, conditioned on the work of art first being offered to the artist at the bid price.

History.
Code 1981, § 8-5-9, enacted by Ga. L. 1987, p. 891, § 1.

CHAPTER 6

CONSTRUCTION ACTIVITY PROHIBITION ON ABANDONED LANDFILLS

Sec.		Sec.	
8-6-1.	Short title.	8-6-4.	Permit required for construction of building or enclosed structure; exception.
8-6-2.	Definitions.		
8-6-3.	Division landfill records; filing notice of existence of landfill.		

8-6-1. Short title.

This chapter shall be known and may be cited as the "Construction Activity Prohibition on Abandoned Landfills Act of 1988."

History.
Code 1981, § 8-6-1, enacted by Ga. L. 1988, p. 821, § 1.

Cross references.
Requirements for deeds conveying interest in real property used as commercial landfill, § 44-5-48.

Code Commission notes.
Pursuant to Code Section 28-9-5, in 1988, "This chapter" was substituted for "This Act" at the beginning of the Code section.

8-6-2. Definitions.

As used in this chapter, the term:

(1) "Construction activity" means to erect or build an enclosed building or structure of any type, kind, or design.

(2) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(3) "Landfill" means any location operated as a commercial venture for profit or operated by a county or municipality for the disposal of solid wastes or any location where a private owner accepts solid wastes for compensation from sources other than his own property for disposal.

(4) "Solid waste" means putrescible and nonputrescible wastes, except water carried body waste, and shall include garbage, rubbish (paper, cartons, boxes, wood, tree branches, yard trimmings, furniture and appliances, metal, tin cans, glass, crockery, or dunnage), ashes, street refuse, dead animals, sewage sludges, animal manures, industrial wastes (waste materials generated in industrial operations), residue from incineration, food processing wastes, demolition wastes, abandoned automobiles, dredging wastes, construction wastes, and any other waste material in a solid or semisolid state not otherwise defined in this article.

History.
Code 1981, § 8-6-2, enacted by Ga. L. 1988, p. 821, § 1.

8-6-3. Division landfill records; filing notice of existence of landfill.

(a) The division shall maintain records on each landfill operated now or in the future in this state, which records shall include an accurate legal description of the boundaries of the landfill and the dates of its operation.

(b) The division shall file notice of the existence of the landfill with the clerk of the superior court of the county or counties within which the landfill is located.

History.
Code 1981, § 8-6-3, enacted by Ga. L. 1988, p. 821, § 1.

8-6-4. Permit required for construction of building or enclosed structure; exception.

(a) No person shall construct any building or enclosed structure of any type, kind, or design on any real property on which a landfill on the public records has been located without first obtaining a permit for such construction from the local governing authority.

(b) This Code section shall not apply to construction activity by public service corporations or to the construction of roads, highways, or bridges.

History.
Code 1981, § 8-6-4, enacted by Ga. L. 1988, p. 821, § 1.

CHAPTER 7

PESTICIDES IN PUBLIC BUILDINGS

Sec.
8-7-1. Use or application of pesticides in public buildings; notice; material safety data sheets; penalty.

8-7-1. Use or application of pesticides in public buildings; notice; material safety data sheets; penalty.

(a) As used in this Code section, the term:

(1) "Agency" means the State of Georgia and any branch, department, agency, division, board, bureau, entity, official, employee, or agent of the state and any county, municipality, school district, consolidated government, or authority created by or pursuant to the Constitution of the State of Georgia or any general or local law of this state and any official, employee, or agent of any such entity.

(2) "Building operator" means the owner, the owner's agent, or the building manager of any public building or, in the case of a public building which is leased to a tenant who is responsible for the operation of the building, the tenant or the tenant's building manager.

(3) "Fumigant" means any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes, or vapors, which gas or gases, fumes, or vapors when liberated and used will destroy vermin, rodents, insects, and other pests, but are usually lethal, poisonous, noxious, or dangerous to human life.

(4) "Insecticides" means substances, not fumigants, under whatever name known, used for the destruction or control of insects and similar pests.

(5) "Pesticide" means attractants, fumigants, fungicides, insecticides, rodenticides, and repellants.

(6) "Public building" means a building owned or leased by an agency, which is open to the public, including but not limited to the following:

(A) Any building which provides facilities or shelter for public use or assembly or which is used for educational, office, or institutional purposes; and

(B) Any library, museum, school, hospital, auditorium, dormitory, or university building.

(7) "Repellants" means substances, not fumigants, under whatever name known, which may be toxic to insects and related pests,

but generally employed because of their capacity for preventing the entrance or attack of pests.

(8) "Rodenticides" means substances, not fumigants, under whatever name known, whether poisonous or otherwise, used for the destruction or control of rodents.

(b) The building operator of any public building who personally applies or uses or who contracts for or orders the application within the interior of any public building of any pesticide requiring the direct supervision of a certified operator as defined in Code Section 43-45-2 or any pesticide which is sold solely for commercial applicator use and is restricted to uses other than household use shall post a conspicuous notice in such public building to notify anyone entering such building that a pesticide is being applied. If such pesticide or pesticides are applied on a regular basis or according to a schedule, such notice may be permanently displayed and shall include the days or dates on which such pesticide or pesticides are usually applied. If the pesticide or pesticides are not applied on a regular basis or according to a schedule or if the pesticides are applied on a day or date other than the day or date contained on a permanently displayed notice, such notice shall be posted before the application of any pesticide and shall remain posted for 24 hours following the application. Such notice shall include a notice of the location and hours during which any person may obtain information concerning the pesticides applied or to be applied and inspect and copy the material safety data sheet. Any such notice shall also include one or more telephone numbers for the building operator at which emergency information concerning the pesticides applied may be obtained at any time during the day or night and on any day of the year. It shall be the duty of the building operator to make available, upon request and within a reasonable period of time of said request, the name of any pesticide used and a copy of the appropriate material safety data sheet. If the pesticide is to be applied by a commercial applicator, a certified operator as defined in Code Section 43-45-2, or a pesticide contractor, it shall be the duty of such applicator or contractor to provide material safety data sheets to the building operator at the time the contract for service is entered or renewed. If any additional pesticides are used after the contract for service is entered, the additional material safety data sheets shall be provided to the building operator. A building operator shall retain for five years all material safety data sheets and other documents furnished pursuant to the preceding sentence. A building operator shall retain statements of information for two years as required by the rules and regulations required by Chapter 45 of Title 43, known as the "Structural Pest Control Act."

(c) Any person violating this Code section shall be guilty of a

misdemeanor, provided that the penalty for a first offense shall be a fine not to exceed $100.00.

History.
Code 1981, § 8-7-1, enacted by Ga. L. 1996, p. 679, § 1.

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