

# The Lender's Source

## Reminder: Upcoming MCDR Banking Law Seminars in Albany, Valdosta, and Savannah

After a two year pause, the law firm of Moore, Clarke, DuVall & Rodgers will once again offer its summer banking law seminars. Seminars will be held on July 21 at the Hilton Garden Inn in downtown Albany; on August 25 at the James H. Rainwater Conference Center in Valdosta; and on September 22 at The Savannah Quarters Golf Club in Pooler. Attendance is free of charge to all financial institution officers and employees.

Lunch will be provided, as well as written materials addressing the various topics discussed by the firm's attorneys during the seminars. Each event will begin at 12:30 p.m. and will last for approximately three hours.

If you would like to confirm your attendance, or if you have any questions regarding the seminars, please contact Kimberly Shirley via telephone at 229-888-3338 or via email at [kshirley@mcdcr-law.com](mailto:kshirley@mcdcr-law.com). We hope you will make plans to attend your choice of one of these informative events.

## Changes on the Way for Georgia Security Deed Requirements

On May 2, 2022, Governor Kemp signed House Bill 974 into law. The bill requires that, beginning on July 1, 2023, all deeds to secure debt must contain the following information in order to be recorded in any county's deed records:

- the date of the deed
- the names of all parties to the deed
- the lender's mailing address
- the tax map and parcel number for the collateral property
- the original loan amount, or if the deed is a modification of a prior loan, the amount of outstanding principal and the amount of any new money advanced
- the maturity date of the loan
- the amount of intangibles tax imposed on the deed, if any
- if the deed is a modification of a prior loan, the amount of intangibles tax imposed on any additional advance given
- if no intangibles tax is owing, a citation to the statute or regulation making the deed exempt from taxation.

All of this information must be printed on the first page of the deed. The law does not require that the mandatory information be set apart within a distinct section or part of the deed, or in bold or other distinguishing type, but doing so may help deed room staff quickly confirm the deed complies with the new law.

After July 1, 2023, county clerks should refuse to record a security deed that is missing any of these mandatory elements. Rejection could mean costly delays in assuring the secured loan is properly perfected. Lenders and real estate closing staff should devote attention to this new law well in advance of next year's deadline in order to assure their loan documents are updated and ready for the upcoming legal change.

The new law also requires all Superior Court clerks to offer online filing for deeds and other real property instruments. Presently, many counties do not offer this service and instead require submission of original paper documents via mail or hand delivery. Like the other components of the bill, the requirement for statewide availability of online filing does not take effect until July 1, 2023.

## **New Law Increases Eligibility for Small Business and Consumer Bankruptcy Protections**

The federal *Bankruptcy Threshold Adjustment and Technical Corrections Act* was signed into law by President Biden on June 21, 2022 and took effect immediately. The Act substantially increases the number of debtors who are eligible for relief under Chapter 13 of the Bankruptcy Code, which is designed as a simplified bankruptcy process for debt restructure by individuals with modest debts.

Under the new Act, an individual with aggregate debts less than \$2.75 million can qualify for Chapter 13 filing. Previously, an individual could qualify for Chapter 13 protection only if he or she had unsecured debts totaling less than \$465,275, and had secured debts totaling less than \$1,395,875. The new Act thus allows for both an overall increase in the total debt ceiling, and greater flexibility to accommodate varying proportions of secured and unsecured debts. A regular income is still a requirement for Chapter 13 eligibility. The Act did not modify the type or degree of income required.

The new Act also increases eligibility for filing under the relatively-new small business reorganization provisions of Chapter 11 of the Bankruptcy Code, which are intended to offer a simplified reorganization process for small businesses. The small business reorganization provisions were amended shortly after they first took effect in order to temporarily increase the debt ceiling for eligibility during the COVID-19 pandemic. As a result of a two-year sunset provision in that temporary amendment, small business reorganization eligibility decreased beginning March 27, 2022 to include only businesses with less than \$3,024,725 in aggregate debts. The new Act increases that eligibility limit substantially to include businesses with up to \$7.5 million in aggregate debt, and acts retroactively to apply to cases filed on or after March 27, 2020.

At least for now, these increased eligibility limits are not permanent. They are set to expire in June of 2024, two years after passage of the Act. At that time, the eligibility limitations will revert to the lower levels in effect before the Act's passage unless Congress again extends the more generous eligibility limits.

---

## **Appeals Court: “Love and Affection” Not Sufficient Value to Protect a Fraudulent Property Transfer to Spouse**

In the April 2022 decision of *Tuggle v. Ameris Bank*, the Court of Appeals of Georgia held for the first time that a wife's “love and affection” for her husband, given in exchange for transfers of real property to the wife, are not sufficient value to protect the transfers from being voided under Georgia's fraudulent conveyance laws.

The husband had given a personal guaranty for a loan made by a bank to the husband's business. After the business failed to repay the loan, the husband conveyed real property worth approximately \$1 million to his wife in exchange for her “love and affection.” The transfers left the husband with no significant assets. The bank sued the husband upon the

guaranty, and then sued both the husband and wife asking the court to set aside the property transfers as fraudulent conveyances.

Under Georgia law in effect at the time, a transfer could be set aside as constructively fraudulent where the transfer was made for less than reasonably equivalent value, the transferor was either insolvent when the transfer was made or was rendered insolvent by the transfer, and the person seeking to set aside the transfer was a creditor of the transferor at the time the transfer was made. The trial court found that these requirements were met, and ordered that the transfers be set aside.

The husband and wife appealed, arguing the transfers were not fraudulent because the wife's love and affection were very valuable to the husband. The couple argued that this value was magnified because the husband was suf-

fering increased dementia and impairment. The Court of Appeals examined available legal precedent from within Georgia and found no appellate court had ever decided whether love and affection could serve as “reasonably equivalent value” sufficient to keep an otherwise-fraudulent conveyance from being set aside. Courts in several other states had addressed the issue, and most often ruled that love and affection are not recognizable “value” in assessing whether a conveyance is fraudulent.

The Court of Appeals held that in Georgia value must be viewed as monetary value measured from the perspective of the creditor, not the perspective of the debtor. This concept is

consistent with the purpose of the fraudulent conveyance laws, which is to prevent a debtor from dissipating assets that creditors can use to satisfy their claims. So, the fact that the wife’s love and affection were very valuable to the husband was irrelevant. The question was only whether the love and affection had a roughly equivalent monetary value, from a creditor’s perspective, to the value of the properties transferred. They did not, as the wife’s love and affection for her husband had no monetary value to the bank. The Court thus upheld the trial court’s decision to set aside the transfers, placing the properties back within the husband’s ownership and the bank’s reach.

---

### **Understanding the UCC1: Security Deeds as Financing Statements**

When collateral consists of irrigation equipment, large appliances, industrial machinery, or other valuable goods that are to be attached to or installed on real property for a long period of time, it is important to remember that Georgia law allows security deeds to serve as financing statements in certain instances. So, a preliminary priority search cannot be limited only to stand-alone UCC1-type fixture filings.

A security deed filed either before January 1, 1995, or after July 1, 2013, may be effective as a financing statement covering fixtures, timber to be cut, or as-extracted minerals that are described in the deed. To serve as a financing statement, the security deed needs only to state the names of the debtor and secured party, describe the collateral covered (e.g., fixtures), describe the underlying real property, and be filed in the deed records of the county where the property is located.

Most security deeds will feature a collateral description that expressly includes fixtures attached to the described real property. Particularly in the commercial context, security deeds also frequently include machinery, appliances, furnishings, and equipment attached to or used in connection with the property. The effect of these clauses is to give the mortgage

lender a perfected security interest in a broad range of goods that are installed in or on the collateral realty, without any separate financing statement being filed.

For priority purposes, the security deed is treated like any other fixture filing: priority is largely a function of the time of filing, but a purchase-money creditor with respect to the fixtures can obtain “superpriority” in the fixtures by filing its fixture filing within 20 days after the goods are first installed on or affixed to the real property.

A key difference between security deeds functioning as financing statements, and ordinary UCC1 fixture filings, is that a security deed can remain effective as a financing statement for a much longer period of time. An ordinary fixture filing is only valid for five years unless a continuation statement is timely filed. In contrast, a security deed remains effective as a financing statement for as long as the deed remains effective under real property law. For many deeds, this will mean 20 years from the date of the deed, or seven years from the date of the loan’s stated maturity date. Thus, when conducting a record search to assess priority for a contemplated loan to be secured by fixtures, the searcher must include a much longer time frame than the five years immediately preceding the search.

**Have Questions? Contact Us.**

Albany

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

Valdosta

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

Atlanta

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

Savannah

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

Tifton

3300 Fulwood Road  
Tifton, Georgia 31794  
Tel. 229-382-0037

E-mail

[businesslaw@mcd-r-law.com](mailto:businesslaw@mcd-r-law.com)

Visit us on the internet at:

[www.mcd-r-law.com](http://www.mcd-r-law.com)

**New Email Address?  
Not on Our Contact List?**

If you wish to continue to receive future issues of the quarterly *Lender's Source* newsletter, please let us know if your email address should change. Additionally, if you do not currently receive the newsletter directly via email but would like to do so in the future, we will be happy to add you to our contact list. At your convenience, please send an email message to [businesslaw@mcd-r-law.com](mailto:businesslaw@mcd-r-law.com) with your email contact information.

**Visit our Firm's Website.**

You can find this issue and previous issues of *The Lender's Source* newsletter, as well as useful information and commentary on a variety of other legal topics, on our firm's website located at [www.mcd-r-law.com](http://www.mcd-r-law.com). Future editions of this newsletter will be added to the website as they are prepared.

This newsletter is a publication and product of the law firm of Moore, Clarke, DuVall & Rodgers, P.C. The information contained in this newsletter is not intended to be, nor does it constitute, legal advice. Further, nothing in this newsletter creates or imposes an attorney-client relationship between the firm and any recipient or reader.

Selection of a law firm for your institution is an important decision that should be based upon a thorough assessment of the firm members' levels of skill, competence, and experience. Before you decide, ask us to send you free written information regarding our firm's qualifications.