

## Georgia Legislative Update: Small Business Borrower Protection Act

We have been following SB 448, the “Small Business Borrower Protection Act” passed by the Georgia Senate on February 27, 2012, with great interest. The bill was revised by the House Committee on Banks and Banking. Despite reports that the House Rules Committee was to submit the revised bill for vote by the Georgia House, the General Assembly’s legislative session ended yesterday without a vote.

As originally enacted, SB 448 would have greatly limited the ability of a third party loan purchaser to recover against a guarantor. The bill would have limited a loan purchaser’s recovery against a guarantor to the lesser of (i) the actual amount paid for the debt obligation, plus non-default interest at the time of purchase, or (ii) the maximum amount permitted to be collected under the guaranty. In any collection action, the successor creditor would be required to prove the amount it paid for the debt obligation. The Senate version of the bill was to have applied retroactively to loan sales and judgment transfers but would not have applied to federally insured institutions.

The House version of the bill adopted the Senate’s limitations on a successor creditor’s ability to recover against a guarantor. This version, however, only applied to loan obligations or judgments acquired directly from a federal bank regulatory agency by a person other than federally insured institutions. This bill was silent as to whether it applied to transactions which occurred before its enactment, but the chairman of the banking committee, State Representative Greg Morris, R-Vidalia, had noted that it was not retroactive.

Those in favor of the bill asserted that creditors often do not work with troubled borrowers, which has been refuted by opponents of the bill. Proponents of the bill also alleged that creditors do not give borrowers and guarantors credit for the value of any foreclosed collateral. Opponents suggested that there were constitutional concerns with the bill and that it would have crushed the market for the purchase and sale of certain troubled loans. The bill, however, is now dead, at least for this session.

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