



2015 April LBA Legal Bulletin

LBA Files Friend of the Court Brief in UCC 4A Matter

Earlier this month the LBA filed an amicus curiae, meaning a friend of the court, brief with the Louisiana Fifth Circuit Court of Appeal in support of Whitney Bank in the matter of *Ducote, et al. v. Whitney Bank, et al.*, 2015-CA-256 (La. App. 5 Cir.). The brief supports the bank's position that the rules of UCC 4A should be applied to disputes involving funds transfers. Plaintiffs in the case have sought to apply general law remedies instead of the specialized rules of the UCC. The underlying facts involve assertions of, among other things, unauthorized funds transfers by the bank customer's employee. An adverse opinion on this issue could undermine the clarity and efficiency that the rules of the UCC are intended to provide. [Read the LBA Amicus Curiae brief.](#)

LBA Works on Potential Problem Legislation Involving Certificates of Insurance

The LBA staff has devoted a considerable amount of time working to address potential problems for banks with House Bill 160. HB 160, as originally filed, proposed to amend the certificate of insurance law to provide that there could be no cause of action against an insurance producer for the completion or issuance of a certificate of insurance, unless the insurance producer willfully completes the certificate of insurance in a manner which misrepresents the underlying insurance policy or otherwise violates Section 890. The LBA had concerns that if the bill were to pass it could undermine the reliability of certificates of insurance for banks.

We are aware that the certificate of insurance or evidence of property insurance is a common document banks rely upon to verify that an insurance policy has been issued when a secured loan is made. Thus, the LBA was opposed to the bill as written and worked to stop the bill or amend the bill so as to not hurt lenders. We met with the author and suggested language to help address his concerns. The concerns described to us involved the use of lengthy and confusing supplements attached to certificates of insurance. We could not reach a compromise through our discussions with the author and the bill was scheduled for hearing. HB 160 was heard by the House Insurance Committee this week. We opposed the bill in committee expressing concerns about how the bill could hurt lenders and borrowers. Three bankers participated in the committee hearing, Gary Littlefield with Gulf Coast Bank and Trust, Craig Livingston with Business First Bank, and Tory

Johnson with Whitney Bank. They were able to speak directly about the importance of certificates of insurance for lenders. We really appreciate these gentlemen taking time out of their busy schedules to speak at the hearing. Their testimony added credibility to our arguments and helped us to reach a favorable outcome.

We were able to effectively make our point during the hearing that HB 160 could hurt lenders, and members of the committee responded by voting to amend the bill to add language to help lenders. The amendment language was language that we originally had proposed to Representative Huval during the week before the hearing. The amendments narrow the restrictions on causes of action against insurance producers for preparing supplements to certificates of insurance. The restrictions in the amended bill do not apply to a policyholder or a lender in a lending transaction involving a mortgage, lien, or other security interest in or on any real or personal property. In addition, the language now excludes an insurance producer's protection from their own gross negligence and willful acts in preparing certificates. The bill will go to the House floor next for consideration.

[Read HB 160.](#)

Court Decision Addressing Sufficiency of Evidence for Default Judgment

A decision was issued earlier this month by the Louisiana Fifth Circuit Court of Appeal in an appeal challenging the sufficiency of the evidence supporting a default judgment. The debtors asserted that there was not sufficient evidence to hold the guarantors liable. Apparently, the contract of guaranty contained the signature of only one of the two guarantors and the signature was illegible and there was not printed name under the signature to indicate exactly who signed the document. The court held that the document, by itself, did not sufficiently prove that the debtors expressly agreed to be personal guarantors for the creditor. The Court concluded that the trial court erroneously granted default judgment against the appellants, finding that there was insufficient evidence presented to support the default judgment.

The underlying facts involve a suit on an open account against a company, Cathay Inn International, Inc. and its owners as personal guarantors. The creditor, N&F Logistic, Inc., alleged that the personal guarantors were liable in solido for an unpaid balance for supplies sold to the business. The trial court had granted a default judgment against the alleged guarantors, which was subsequently appealed.

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

N & F Logistic, Inc. v. Cathay Inn International, Inc., et al., 14-835 (La. App 5 Cir. 4/15/15) 2015 WL 1786986.

Preparing for the New TILA-RESPA Combined Disclosures

The CFPB's new regulation regarding the TILA-RESPA integrated disclosures is scheduled to take effect on August 1, 2015. Bankers and title attorneys are making changes to their software and forms as well as undergoing training to learn how to comply with the new requirements. One helpful resource is the CFPB's [TILA-RESPA Integrated Disclosure Rule-Small Entity Compliance Guide](#), which was updated in March 2015. The updated version 2.0 of CFPB's small entity compliance guide reflects two changes made by the CFPB in January 2015. First, Section 8.7 explains that a creditor may use a revised Loan Estimate if the rate is locked after the initial Loan Estimate is provided. According to Section 8.7 of the small entity compliance guide, the creditor is required to provide a revised Loan Estimate no later than three business days after the date the interest rate is locked (instead of on the date the rate is locked), and may use the revised Loan Estimate to compare to points and lender credit charges.

The second change reflected in the updated CFPB small entity compliance guide is found in Section 5.6. It explains that certain language is permitted related to construction loans for transactions involving new construction on the Loan Estimate. Specifically, the original rule prohibited the inclusion of the construction disclosure on the Loan Estimate. On January 20, 2015, the Bureau amended the rule to permit creditors to make this disclosure on page 3 under the "Other Considerations" heading. In transactions involving new construction, the "Additional Information About this Loan" page may include a clear and conspicuous statement that the creditor may issue a revised disclosure any time prior to 60 days before consummation, pursuant to §1026.19(e)(3)(iv)(F) if the creditor reasonably expects that settlement will occur more than 60 days after the provision of the initial Loan Estimate.

In order to help bankers and bank attorneys prepare, the LBA has put together a series of training webinars and seminars that you might find helpful.

Recordings of recent webinars: [New Integrated Disclosure Rules Part I Webinar Recording](#), and [New Integrated Disclosure Rules Part II Webinar Recording](#).

The LBA has also scheduled two Instructor Led seminars that you might find helpful:

- [Lending Compliance](#) on May 7, 2015,
- [Understanding and Implementing the New Integrated Disclosures](#), on June 18-19, 2015 (Note: the LBA has applied with the La. Dept. of Insurance for 12 hours of title producer CE credit, which would include 2 hours of consumer finance credit).

It is disappointing that an idea to consolidate disclosures under TILA and RESPA has resulted in a lengthier and more complicated set of disclosures and requirements than the original ones.

OCC Issues Bulletin on Extended Service member Protection

The Office of the Comptroller of the Currency issued a bulletin on the temporary extension of certain protections under the Service members Civil Relief Act (SCRA) enacted by the Foreclosure Relief and Extension for Service members Act of 2014. According to the OCC Bulletin, the amendment extended again, on a temporary basis, the duration of coverage applicable to the section 303 protections for certain obligations from nine months to one year after a service member's military service. SCRA section 303 addresses obligations secured by a mortgage, trust deed, or other security similar to a mortgage on real or personal property (immovable or movable property) owned by a service member. As explained in Bulletin 2015-21, the provision applies only to obligations that originated before the service member's military service and for which the service member is still obligated. The amendment extends protections to service members related to the sale, foreclosure or seizure of mortgaged property within one year following the service member's period of military service. The extension expires Dec. 31, 2015.

Read [OCC Bulletin 2015-21](#).

OCC Revises Guidance on Subordinated Debt

The Office of the Comptroller of the Currency (OCC) is revising and reorganizing its current guidance for subordinated debt issued by national banks (at appendix A of the "Subordinated Debt" booklet of the *Comptroller's Licensing Manual*) and replacing it with new "Guidelines for Subordinated Debt." The guidelines are consistent with the regulatory capital rules at 12 CFR 3 and the licensing rules for national banks (at 12 CFR 5.47) and federal savings associations (at 12 CFR 163.80 and 12 CFR 163.81). The new guidelines apply to all subordinated debt issued by national banks and federal savings associations (collectively, bank or banks), regardless of whether the subordinated debt is included in regulatory capital. The OCC also is issuing two sample notes for national banks' subordinated debt: one sample note for a subordinated debt note that will not be included in tier 2 capital, and another sample note for a subordinated debt note to be included in tier 2 capital. The OCC is developing sample notes for federal savings associations and expects to publish the sample notes in the near future.

Read [OCC Bulletin 2015-22](#).

OCC Updates Guidance on RESPA Compliance

The OCC earlier this month updated its Comptroller's Handbook guidance on complying with the Real Estate Settlement Procedures Act and Regulation X. The new booklet covers the transfer of rulemaking authority for Reg. X to the Consumer Financial Protection Bureau, as well as new mortgage servicing requirements, new loss mitigation procedures, new prohibitions related to borrower assertions of error and new servicing-related exam procedures. Read the [Comptroller's](#)

[Handbook booklet, Real Estate Settlement Procedures Act.](#)

New Tactic in Schemes Targeting Lawyers: Wired Funds in Real Estate Transactions

It was recently reported on the Louisiana State Bar Association's website, that the LSBA leadership received information from the North Carolina State Bar about a new tactic from criminals targeting lawyers. This scheme involves wired funds in real estate transactions. According to the article, the LSBA leadership believes it is extremely important that members remain alert, vigilant and aware of these new twists in scams. Read full [LSBA article](#).

Source: La. State Bar Association website, www.lsba.org.

LBA Regulatory Review

The April 2015 edition of the LBA Regulatory Review is available. Click here to read the [LBA Regulatory Review](#).

LBA Banking Laws Book -2015 Edition Available

The LBA's 2015 revised Louisiana Banking Laws Book is now available both in print and electronically through the members section of the LBA website, www.lba.org. The revised edition contains 2014 state legislative changes affecting the Louisiana Banking Code, the Louisiana Consumer Credit Law, the Louisiana Motor Vehicle Sales Finance Act and the La. S.A.F.E. Act (formerly the RMLA). The newly updated edition is presented in a three-ring binder and includes a section on Banks Sale of Insurance which includes state laws and Department of Insurance rules and regulations governing privacy and the sale of insurance by financial institutions. Additionally, this publication contains helpful information such as notes on legislative history, official comments, editor's comments, regulations, rulings and opinions from the Office of Financial Institutions and related Attorney General Opinions.

[2015 LBA Banking Laws Book order form.](#)

Financial Literacy Can Change Lives

This past year the LBA proposed and advocated for a state law, which ultimately passed, making financial literacy an option for fulfilling a math requirement of the career-track high school curriculum. The career-track model curriculum is currently being developed by the state

department of education and is intended for those students that do not plan to attend college. We are told by policymakers that the career-track model curriculum, as well as the regular college-track curriculum, will contain important financial literacy components. Empowering an individual through education to make good financial decisions is powerful and rewarding. [Click here to view](#) LBA financial literacy resources. Please email Robert Taylor at taylor@lba.org for more information or with questions. We can make a difference in people's lives.

Note: The information contained in this LBA Legal Bulletin is not intended to constitute, and should not be received as, legal advice. Please consult with your legal counsel for more detailed information applicable to your institution.