

## **FINANCIAL INSTITUTIONS COMMITTEE**

### **Report Prepared for the May 4, 2012 Council Meeting**

#### **1. Next Scheduled Meeting of the Committee**

The next meeting is not yet scheduled.

#### **2. Council Approval**

None.

#### **3. Membership**

The Committee has approximately 65 members. A detailed agenda for each meeting is sent to each member of the Committee.

We regularly request that Committee members identify women or minority attorneys who might be interested in joining the Committee.

#### **4. Accomplishments Toward Committee Objectives**

The primary Committee objective is to provide to members information on statutory, regulatory and judicial developments that affect financial institutions. This objective is accomplished primarily by periodic Committee meetings.

The most recent meeting was held on March 12, 2012, at the State Bar offices. Nine members attended, in addition to the following representatives of the Michigan Office of Financial and Regulatory Affairs:

- Steve Hilker, Senior Deputy Commissioner
- Karen Lawson, Deputy Commissioner, Bank and Trust Division
- John J. Kolhoff, Deputy Commissioner, Credit Union Division

The OFIR representatives reported on a number of items in which OFIR is involved. They include:

- Safety and soundness examinations are in progress
- Licensing for mortgage lenders, brokers and others will be combined.
- Mr. Hilker indicated that the Fed and the FDIC have said that those agencies plan to be more sensitive to community banks.
- Mr. Hilker also reported that foreclosures are leveling out and trending down.
- Ms. Lawson described two legal issues that OFIR is considering.

They are:

- Whether a state bank is authorized to pledge collateral in a swap transaction.
- Whether the prohibition of balloon loans contained in the Consumer Mortgage Protection Act is preempted by Dodd-Frank.

- Mr. Hilker reported on anticipated changes in the federal rules governing credit cards and student loans. Among other things, the RESPA and TIL disclosures will be combined.
- Mr. Kolhoff reported that OFIR's Rules 3, 4, 7 and 8 will be repealed.

## **Diversity**

Rodney Martin of Warner Norcross & Judd LLP reported on the State Bar Initiative for Diversity and Inclusion and distributed a handout describing the Initiative.

## **Michigan Bankers Association**

John Llewellyn, Vice President, Government Relations, of the Michigan Bankers Association, described MBA's position on a number of recently-enacted statutes and proposed legislation.

Mr. Llewellyn also described three legal issues that the MBA is addressing:

- The decision of the Michigan Court of Appeals in the *Cherryland Mall* case has led to the introduction and probable enactment of Senate Bill 992, which would do the following:
  - Enact a "Nonrecourse Mortgage Loan Act."
  - Prohibit a post closing solvency covenant from being used as a nonrecourse carveout or as a basis for a claim against a borrower, guarantor, or other surety on a nonrecourse loan.
  - Specify that a noncompliant provision in a loan document would be invalid.
  - Specify that the Act would not prohibit a loan secured by a mortgage from being fully recourse to the borrower or guarantor, if the loan documents did not contain nonrecourse provisions.
- Commercial lenders have concerns about the enforceability of a security interest in a liquor license. The Liquor Control Commission has said that it cannot divulge the name of the holder of a security interest.
- The significant costs of overdraft protection.

## **Other**

Jim Breay distributed a summary of pending litigation around the country involving issues of potential significance to the banking industry, prepared by the Office of General Counsel of the American Bankers Association.

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