2010 LEGISLATIVE SESSION REPORT

AUGUST 2010
Dear LBA Members:

The Louisiana Bankers Association was established 110 years ago for the purpose of government relations and education. Since then our mission has expanded in meeting the growing and changing needs of bankers. But the core purpose of government relations and education remains the same, as confirmed by the LBA Board of Directors at strategic planning sessions in recent years.

Our objective remains unchanged each session: first, protect the banking industry from negative legislation; and second, pass an affirmative agenda of banking legislation as approved through our Government Relations Council and Board of Directors. A very open and consistent line of communication is maintained between the LBA staff and bankers throughout the process.

Even with an especially intense focus on federal issues during the last year, the LBA government relations team came together to produce another outstanding result at the state capitol this session. Joe Gendron, Director of Government Relations, David Boneno, General Counsel, Ginger Laurent, Chief Operating Officer and I brought experience and expertise that resulted in success. On pages twenty through twenty-two of this report find the bad legislation introduced this year that did not pass. As always, this list took much of our time. Additionally, the LBA introduced and passed an aggressive agenda of ten bills and two resolutions, including three bills helping bankers deal with increased costs of doing business by giving bankers flexibility to negotiate certain lender fees and loan charges under the Louisiana Consumer Credit Law and Motor Vehicle Sales Finance Act. See pages four through eight of this report for a summary of all LBA passed legislation.

The LBA was also successful in favorably amending numerous bills of concern, including an important measure to ensure that certificates of insurance that are provided to lenders, in advance of the actual insurance policies themselves, are reliable representations of insurance coverage. This amendment was critical for the continued use of certificates of insurance by the lending community in Louisiana. See the summary of HB 447 on page twelve for more information.

To print any bill in this report go to www.legis.state.la.us; click on “Session Info;” click on “2010 Regular Legislative Session;” type information in “Bill Search for 2010 Regular Session.”

Thanks to the bankers and bank counsel around Louisiana who helped us in our work.

Sincerely,

Robert T. Taylor
Chief Executive Officer
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BANKING & OFI REGULATED ACTIVITY

Financial Industry Regulatory Authority  
Act 7;  Effective 5/19/2010  
HB 54 by Rep. Jeff Arnold (OFI sponsored) renames the National Association of Securities Dealers as the Financial Industry Regulatory Authority.

Transfer of Small Deposits  
Act 26; Effective 8/15/2010  
HB 115 by Rep. Jeff Arnold (LBA sponsored) increases the maximum dollar amount of small deposits that may be legally transferred by financial institutions to the surviving spouse (non-joint account) or heirs of a deceased account owner that died intestate. Prior law provided that a financial institution could transfer deposits up to $1,000 to the surviving spouse or heirs upon submission of an affidavit by the heirs providing certain information required by law. This limit had not been increased in twenty years and we were successful in increasing the amount to $5,000. This increase will be beneficial to both banks and heirs attempting to close out small accounts, as banks will not have to turn away heirs seeking to collect small deposits, and heirs may obtain deposits (up to $5,000) without having to go through the time and expense of opening a succession. See La. R.S. 6:315.1(A).

Payment of Licensing Fees  
Act 33; Effective 5/26/2010  
HB 209 by Rep. Jeff Arnold (OFI sponsored) allows for payment of fees for a license to make consumer loans under the Louisiana Consumer Credit Law in any form acceptable to the Commissioner of OFI when the application is filed. Prior law required payment of applicable license fees by cashier’s check, certified check, or money order. See La. R.S. 9:3561.1(A).

Mortgage Loan Originator Licensing  
Act 36; Effective 8/15/2010  
HB 335 by Rep. Jeff Arnold (OFI sponsored) amends the minimum licensing requirements for mortgage loan originators to provide that the Commissioner of OFI may not issue a license if the applicant has pled guilty or no contest to any felony during the seven-year period preceding the date of the licensing application, and that the commissioner may not issue a license to an applicant who has pled guilty or no contest to a felony that occurred at any time preceding the date of application if the felony involved an act of fraud, dishonesty, or breach of trust or money laundering. Prior law stated that an applicant that pled guilty or no contest to a felony must have been adjudicated guilty of the offense in a court of law. HB 335 removes the requirement that the applicant must have been adjudicated guilty of the offense. The bill also reduces the amount of pre-licensing education requirements from twenty-four to twenty hours of approved education in order to engage in residential mortgage lending activities. Further, the bill repeals numerous provisions concerning certification and continuing education for mortgage brokers, lenders, and originators. Finally, the bill repeals provisions allowing for licensure by reciprocity when an applicant for licensure has fulfilled certification or education requirements in another state that are equivalent to or higher than the requirements provided for under Louisiana law. See La. R.S. 6:1083(E)(3), 1094(A)(1) and (B)(1). Repeals R.S. 6:1094(A)(1)(d), (B)(1)(d), (C), (D), (E), and (G).

Self-Help Repossession Disclosure  
Act 519; Effective 8/15/2010  
HB 345 by Rep. Jeff Arnold (LBA sponsored) removes the legal requirement that secured parties seeking to use self-help repossession measures must include a disclosure statement in their security agreements specifically stating that “Louisiana law permits the repossession of motor vehicles without judicial process.” Secured parties must continue to provide the disclosure statement to debtors prior to actually
using self-help procedures. However, failure to provide such notice in the security agreement will no longer be a fatal flaw that prohibits use of the self-help procedure by a secured party. Requiring the disclosure statement in the security agreement was problematic as Louisiana lenders that made loans in bordering states often did not include the disclosure statement in the security agreement. Also, out-of-state lenders that made loans into Louisiana often did not include the disclosure statement in the security agreement. In such cases, prior law prohibited these lenders from using self-help when the collateral ended up in Louisiana. Repeals La. R.S. 6:965(D). See La. R.S. 6:966(A)(2).

**Flood Zone Determination and Monitoring Fees**

*Act 366; Effective 8/15/2010*

HB 368 by Rep. Jeff Arnold (LBA sponsored) makes clear that lender costs associated with flood determinations and flood zone monitoring as required under federal law are costs that can be recouped from the borrower in connection with the financing of a manufactured home under the Louisiana Motor Vehicle Sales Finance Act (LMVSFA). It is already clear that lenders can charge for this cost with respect to traditional home loans made under the Residential Mortgage Lending Act (RMLA). However, charging for this cost was not specifically authorized under the LMVSFA until now. See La. R.S. 6:969.18(A)(5).

**LCCL Loan Documentation and Origination Fees**

*Act 96; Effective 8/15/2010*

HB 547 by Rep. Jeff Arnold (LBA sponsored) removes the loan charge caps on origination and documentation fees applicable to federally insured institutions that are provided for in the Louisiana Consumer Credit Law (LCCL). The current caps (until 8/15/2010) are twenty dollars for documentation charges and fifty dollars for origination charges. With the new law Louisiana banks and thrifts will be able to negotiate documentation and origination charges in any amount agreed to in a writing signed by the customer. This change will put banks and thrifts on equal footing with credit unions with respect to such loan charges and allow competition and the free market to determine fee amounts. Credit unions have always been able to negotiate documentation and origination fees as they are exempt from the provisions of the LCCL. Allowing banks and thrifts to negotiate these types of charges is already the practice with respect to mortgage loans, and we have found that most other states do not subject federally insured depository institutions to statutory ceilings on these types of consumer loan charges. See La. R.S. 9:3530(G).

**Child Support Enforcement - Financial Institutions**

*Act 272; Effective 8/15/2010*

HB 741 by Rep. Robert Johnson allows Title IV-D agencies in other states to enforce child support matters, which includes the enforcement of liens for child support payments against noncustodial parents in Louisiana. A Title IV-D agency means any agency that administers child support programs pursuant to Title IV-D of the Social Security Act of 1975. The legislation allows Title IV-D agencies to enforce a lien in this state by attaching and seizing the assets of the delinquent obligor held in a financial institution operating in Louisiana if the financial institution is presented with a properly documented request. The request must be sent certified mail to the financial institution and to the obligor against whom the lien is sought to be enforced. The request must include a certified copy of the judgment or administrative order establishing the lien and a letter or notice of lien or levy. The letter or notice of levy must include: (1) name of the Title IV-D agency responsible for making the request; (2) name of the Title IV-D agency representative responsible for making the request; (3) name of the financial institution to whom the request for attachment and seizure is directed; (4) name and social security number of the obligor against whom the lien is sought to be enforced; and (5) statement confirming that a copy of the request for attachment and seizure of assets or deposits was sent to the obligor by certified mail with return receipt requested. There is a fifteen day waiting period once the financial institution receives the request, and if the financial institution has not received written notice from the obligor that he or she has taken legal action to enjoin or otherwise restrain compliance with the request, then the financial institution may remit funds to the Title IV-D agency. The legislation also provides that no financial institution or its agents
shall incur liability as a result of remitting deposits or other assets to a Title IV-D agency in compliance with a conforming request. See La. R.S. 46:236.1.4(B).

**Mortgage Cancellation Procedures**

**Act 284; Effective 1/01/2011**

HB 857 by Rep. Tim Burns (LBA supported) transfers the mortgage cancellation procedures contained in Title 44 of the Louisiana Revised Statutes to Title 9. This was a Louisiana Law Institute sponsored bill brought as a result of a legislative study resolution that was requested by the LBA in 2009. The objective of the legislation is to put all of the mortgage cancellation procedures in one place where they can be easily referenced. The specific statutes being moved to Title 9 are R.S. 44:104 through 113. The bill has a delayed effective date of January 1, 2011 in order to give time to revise cancellation forms.

**Energy Financing Districts**

**Act 611; Effective 8/15/2010**

HB 973 by Rep. Franklin Foil (LBA sponsored bill) corrects issues associated with legislation passed last year (Act 348 of 2009 Session) that allows local governments to create Sustainable Energy Financing Districts (SEFD’s), whose purpose is to issue bonds in order to make loans to property owners for energy efficiency enhancement projects. Act 348 gave these SEFD’s a super-priority lien position over mortgage holders upon default by a borrower on an SEFD loan. This super-priority lien position could prevent a mortgage holder with a previously filed mortgage from being fully repaid if the borrower does not have sufficient equity in their home. Act 348 also created a “hidden lien” issue as there was no requirement that the SEFD file anything in the public records to put interested parties on notice, nor was notice of the potential lien required to be given to a mortgage holder.

HB 973 addresses the above stated issues by clarifying that liens created under the program in favor of SEFD’s are required to be recorded in the public mortgage records, and establishes specific limitations on who is eligible for SEFD loans, as well as restrictions on loan amounts. The bill will help ensure that these energy loans are being made to credit worthy borrowers who have the ability to repay both their outstanding mortgage obligation, if any, and the loan from a SEFD. The bill, among other things, establishes the following requirements to be followed by SEFD’s when making loans: (1) requires the property owner to be current on all mortgage payments and have equity in their home; (2) limits loans that can be made to an amount that does not exceed ten percent of the reasonable expected fair market value of the property and stipulates that the dollar amount of loans for a particular property shall not exceed the equity value in the property; (3) stipulates that the total loan-to-value ratio for all loans secured by the immovable property shall not exceed one hundred percent; (4) requires borrower to demonstrate an ability to repay; (5) for commercial loans in an amount of one hundred thousand dollars or more made by a SEFD on property subject to a mortgage, the SEFD must give a mortgage holder prior written notice by certified mail of the proposed loan, and the mortgage holder shall have thirty days to approve or deny the proposed loan; and (6) stipulates that if a default on the SEFD loan occurs, the entire loan amount may not be accelerated, but instead the SEFD can only collect the assessment amount due for that year.

The final language included in HB 973 was the culmination of much work and dialogue throughout the session with proponents of the SEFD program. The proponents maintained that if their super-priority lien position was taken away, SEFD bond ratings would be lowered and the programs would not be able to raise sufficient capital to be viable. LBA believes that SEFD’s are not practical or fair if they must be granted a super-priority to be viable. Although this legislation falls short of removing the SEFD super-priority status, we believe the final language greatly lessens lender risk of being under-collateralized and addresses other major lender concerns. To our knowledge there are no SEFD’s that are functional and making loans in Louisiana at this time. See La. R.S. 33:130.811 et seq.

**Agriculture Lender /Grain Elevator Communication**

**Act 860; Effective 8/15/2010**

HB 1463 by Rep. Harold Ritchie (LBA sponsored) attempts to address agriculture issues experienced in the aftermath of Hurricane Gustav where severe crop destruction and rising commodities prices resulted
in some grain elevators ignoring the UCC security interests in proceeds of crops held by agriculture lenders. This bill permits, during a presidentially or gubernatorially declared disaster, grain elevators and lenders to communicate relevant information concerning a producer that can be helpful to both parties. By relaxing the confidentiality laws, an elevator would be permitted to disclose information concerning how much a producer has booked or if there was a shortage in delivery, as well as their related carrying costs and hedging expenses. The lender would be able to communicate with the elevator concerning crop loans made to the producer and outstanding crop loan balances. The expectation is that this ability to communicate will give lenders and elevators more information that they can use to effectively manage risks related to production contract shortages. Giving lenders and elevators additional tools to mitigate their exposure will help ensure that credit remains available to the state’s producers. See La. R.S. 3:3419.1 and R.S. 6:333(F)(17).

**Collateralization of Public Funds**  
*Act 957; Effective 8/15/2010*  
SB 88 by Sen. J.P. Morrell (LBA sponsored) amends special provisions contained in the public funds law to clarify that financial institutions do not have to pledge assets to secure (collateralize) public funds placed in deposit accounts that are government insured or otherwise guaranteed. The general provisions of the public funds law are clear on this issue, but special provisions pertaining to large cities over 150,000 in population (Baton Rouge, New Orleans, and Shreveport) were silent on this subject. SB 88 makes Louisiana law consistent by clarifying that, for large cities, public funds deposits that are government insured or otherwise guaranteed do not need to be collateralized by financial institutions. The rationale is simple: if public funds are placed in government insured accounts, either all or a portion of those funds are protected with FDIC insurance coverage and financial institutions should not have to pledge additional assets to protect or secure those funds from loss. See La. R.S. 39:1225 and 1242(C).

**Electronic Lien and Title Program**  
*Act 65; Effective 6/01/2010*  
SB 198 by Sen. Ann Duplessis (LBA sponsored) provides that under the new Electronic Lien and Title (ELT) program for automobile titles that became effective January 1, 2010, fees paid by banks to public tag agents for use of this program are pass-through costs that can be charged by lenders under the Louisiana Motor Vehicle Sales Finance Act (LMVSFA). Previously, the LMVSFA did not specifically provide for this pass-through cost and bankers were incurring this cost on every automobile loan made. SB 198 clearly makes the fee a permissible customer loan charge. LBA’s position on this issue has consistently been that banks are simply following a state mandate to use the ELT program and should be able to pass-on costs associated with that mandate. Additionally, the new law makes the ELT program optional for lenders that originate less than 250 automobile loans per year. This exclusion will help those banks that either like the current paper system or want more time to move to the electronic system. See La. R.S. 6:969.18(A)(5) and R.S. 32:707.2(C)(2) and (3) and 707.2(H).

**Credit Report Security**  
*Act 998; Effective 8/15/2010*  
SB 228 by Sen. Ann Duplessis and Rep. Jeff Arnold (LBA sponsored) amends the Louisiana law with respect to credit report security freezes that allows consumers to restrict creditor access to their credit report and score. Credit freezes can be especially helpful to consumers in mitigating the impact of financial loss related to identity theft by preventing a fraudster from being able to finance further fraudulent transactions in the name of the identity theft victim. Specifically, SB 228 shortens the time period (from 10 business days to 5 business days upon receiving a written, mailed request) that credit reporting agencies have to institute freezes on consumer files. The bill also specifically provides that requests for credit freezes, lifts, and removals may be done via telephone and through secure website, in which case such requests must be complied with by a credit reporting agency within twenty-four hours of receiving such request. This updates our law to make it consistent with the laws of other states and current practices in the industry. See La. R.S. 9:3571.1.
Payment of Dividends  
**Act 77; Effective 8/15/2010**  
SB 484 by Sen. Ann Duplessis (OFI sponsored) revises state banking code provisions pertaining to when a state bank may pay dividends. The bill provides that dividends may be paid in cash or property, and allows, under certain circumstances, a state bank to purchase or redeem shares of its capital stock. Prior law provided that dividends be paid in cash only. The bill also more clearly describes when the OFI Commissioner’s prior approval is necessary for a bank to pay dividends. Prior approval of the Commissioner is required if the total of all year-to-date cash or property dividends declared by the state bank and amounts used to redeem or purchase shares of its capital stock would exceed the state bank’s year-to-date net income combined with its net income from the immediately preceding year. See La. R.S. 6:263.

Continuing Education for Mortgage Lenders  
**Act 743; Effective 7/01/2010**  
HB 1226 by Rep. Mert Smiley provides for the abolition of certain boards and commissions, including the Financial Literacy and Education Commission and the Louisiana Infrastructure Bank. An amendment was added to the bill on the Senate floor dealing with continuing education requirements of licensed mortgage brokers, mortgage lenders, and originators. The amendment provides that continuing education shall be from a recognized professional education institution approved by the Commissioner of OFI. Previous law provided continuing education courses were to be approved by the Commissioner in consultation with the Residential Mortgage Lending Board. See La. R.S. 6:1094(C)(1).

Deferments  
HR 171 by Rep. Damon Baldone urges and requests OFI to study the use of notices of deferment options given by lending institutions to borrowers during gubernatorial declared emergencies. The resolution recognizes that loan deferments granted by lenders are voluntary and granted at the discretion of the lender, but provides that borrowers should receive clear notice of terms of the deferment, including when payments are to be resumed and if lump sum payments are payable when regular mortgage payments resume.

Consumer Financial Protection Bureau  
SR 147 by Sen. Ann Duplessis (LBA sponsored) memorializes the United States Congress to oppose the creation of a new consumer regulatory agency for FDIC insured institutions. The resolution was in response to the proposal by Congress to create a Consumer Financial Protection Bureaus (CFPB) as part of the regulatory restructuring legislation. Such an agency will have overly broad authority to regulate financial services and products and may be one-sided in its focus without balancing the safety and soundness of the financial institution. Since this resolution was adopted, the Dodd-Frank Act has passed Congress with the CFPB included.

Credit Unions  
SR 157 by Sen. Ann Duplessis (LBA Sponsored) memorializes the United States Congress to oppose current efforts to expand the business lending authority of credit unions.

LENDING & COLLATERAL

Agricultural Registry and UCC  
**Act 378; Parts effective 8/15/2010 and 1/1/2011**  
HB 484 by Rep. John Bel Edwards was filed on recommendation of the Louisiana State Law Institute as a result of a legislative study request. The legislation amends some UCC-9 provisions, some Title 3 central agricultural registry laws, and some Title 9 provisions. The bill seeks to harmonize the central agricultural registry law with the Uniform Commercial Code and at the same time eliminate deficiencies.
in Louisiana's crop ranking law. For the most part, the existing ranking scheme is retained. The few substantive changes that are made to existing law are relatively minor. They include the following: (1) The bill continues the existing rule that the liens of agricultural laborers (essentially field hands) continue to have preferred ranking over all other interests, except that the requirement that they make a filing in the central agricultural registry to enjoy this ranking is dropped (however, buyers will still take free of their claims if unfiled); (2) Liens in favor of suppliers of goods will take their rank by the time of filing similar to banks and other secured parties. Old law ranked liens in favor of suppliers last by the nature of their claims, regardless of their order of filing. They will continue to rank behind agricultural laborers’ liens and behind the lien of a lessor who files (regardless of order of filing); (3) As is the case under the law with regard to all other types of collateral, unfiled security interests and liens upon crops will not be deprived of all effect, but will have a specified effect against each other and general creditors of the producer as provided in the Uniform Commercial Code (buyers will, of course, continue to take free and clear of unfiled interests).

**Bond Forfeiture Judgments - Identity of Debtors**

Act 710; Effective 8/15/2010

HB 624 by Rep. Mert Smiley requires that bond forfeiture judgments recorded in the public mortgage records be required to contain the address and last four digits of the social security number of the judgment debtor and sureties. This will help with title examinations to distinguish bond forfeiture judgment debtors from parties to a real estate transaction. See La. Code of Criminal Procedure Article 322 and La. R.S. 15:85(1), (2), (4) and (7).

**Mortgages - Effect of Recordation**

Act 385; Effective 8/15/2010

HB 802 by Rep. Tim Burns clarifies current law by providing that mortgages to secure future advances are subject to the same inscription rules as other types of mortgages. Specifically, the effect of recordation of the mortgage ceases ten years after the date of the instrument unless otherwise provided by law. If the mortgage describes the maturity of any obligation secured by the mortgage and if any part of the described obligation matures nine years or more after the date of the instrument, the effect of recordation ceases six years after the latest maturity date described in the instrument. See Civil Code Articles 3298(E), 3357, and 3358.

**Bond for Deed Contracts**

Act 386; Effective 8/15/2010

HB 803 by Rep. Tim Burns clarifies that upon a bond for deed contract being recorded in the mortgage and conveyance records, any lien, privilege, or judgment affecting the immovable property that has not been previously recorded in the mortgage records shall be subject to the rights created by the bond for deed contract affecting the immovable property. See La. R.S. 9:2941.1(A).

**Recordation of Liens and Privileges**

Act 279; Effective 8/15/2010

HB 808 by Rep. Tim Burns provides that liens and privileges held by parishes or municipalities against property for assessments for public improvements or for reasonable charges imposed by law are not effective against third parties until filed in the mortgage records. The bill further provides that if liens or privileges are placed on the ad valorem property tax bill, the sheriff shall remove them upon request of an interested party whose interest in the property was acquired prior to the recording of the lien in the mortgage records. See La. R.S. 9:5504.

**Limitation of Private Transfer Fees**

Act 938; Effective 7/2/2010

HB 1133 by Reps. Jeff Arnold and Damon Baldone provides for legislative intent that certain private transfer fee obligations shall not create real rights and shall not be binding on subsequent owners of immovables or to other third parties, whether or not evidenced by a recorded instrument. The legislation enacts Chapter 4A. Corporate Immovable’s of the Civil Code Ancillaries (La. R.S. 9:3131 through 3136). Section 3132 defines a “private transfer fee” to mean a fee or charge required by a private transfer fee obligation and payable upon the transfer of an interest in an immovable, or payable for the right to make
or accept such transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the immovable, the purchase price, or other consideration given for the transfer, with several listed exceptions. In general, some of the exceptions include: (1) consideration paid by the buyer to the seller for the interest in the immovable being transferred; (2) real estate commissions; (3) interest, charges, and fees payable by a borrower to a lender pursuant to a loan secured by a mortgage against an immovable; (4) any rent, charge or fee paid by lessee to a lessor under a lease; (5) consideration payable to the holder of an option to purchase an interest in an immovable or payable to the holder of a right of first refusal or first offer; (6) taxes and fees payable to a government agency; and (7) fees, charges, assessments, fines or other amounts authorized under the La. Condominium Act, R.S. 9:1121.101 et seq., the La. Timesharing Act, R.S. 9:1131.1 et seq., or the La. Homeowners Association Act, R.S. 9:1141.1 et seq.

Section 3133 provides for a prohibition by stating that a private transfer fee obligation does not create a real right and is not effective or enforceable against third parties, whether or not the declaration or agreement under which it arises is recorded. Section 3134 provides for liability for persons who record or enter into agreements imposing a transfer fee obligation in their favor after the effective date of this Act. Section 3135 requires the written disclosure by the seller to the purchaser of the existence of any private transfer fee obligation. Section 3136 provides for public notice recording requirements for private transfer fee obligations imposed prior to the effective date of this Act.

The bill amends La. Civil Code Article 651 to provide that a servitude may not impose upon the owner of the servient estate or his successors the obligation to pay a fee or other charge on the occasion of an alienation, lease, or encumbrance of the servient estate. In addition, Article 778 was amended to provide that building restrictions may not impose upon the owner of an immovable or his successors the obligation to pay a fee or other charge on the occasion of an alienation, lease or encumbrance of the immovable.

Reverse Mortgages

Act 418; Effective 8/15/2010

HB 1468 by Rep. Cedric Richmond creates state legislation governing reverse mortgage lending. Federal regulation already exists with respect to reverse mortgage loans, and we were very concerned about provisions in the bill as originally filed that imposed a fiduciary duty, and liability for breach of that duty, upon reverse mortgage lenders with respect to loans made to the elderly. The fiduciary duty included a very vague standard to act in the best interest of the elder. Presumably, a court of law would have determined whether a fiduciary duty was breached according to very subjective standards, and breach of the duty would have made a lender liable for any damages including attorney’s fee and costs proximately caused by the breach of the fiduciary duty. Such a determination by a court of law could have occurred years after the reverse mortgage loan was contracted for. The original bill also contained concerning provisions allowing borrowers to rescind any reverse mortgage loan within thirty days of execution by providing written notice to the reverse mortgage lender.

After discussions with Rep. Richmond, he agreed to substantial amendments to the bill submitted by the National Reverse Mortgage Lenders Association (NRMLA). Most importantly, the amendments removed the fiduciary duty provisions as well as the thirty day rescission period requirement. The thirty day rescission period provisions were replaced with language requiring a reverse mortgage lender to provide a borrower with a loan term sheet at least seven calendar days prior to closing on the loan. The loan term sheet shall outline the proposed terms of the loan and inform the borrower that they are not obligated to proceed with the loan transaction. We are told by NRMLA that the legislation, as amended and signed into law, is similar to laws of other states and federal regulations. See La. R.S 6:1083(24)-(26) and 6:1101-1104.
Tax Refund Anticipation Loans
Act 975; Effective 1/01/11
SB 805 by Sen. Yvonne Dorsey creates the “Louisiana Tax Refund Anticipation Loan Act” that will govern tax refund anticipation loans made in the state. Federally insured financial institutions are exempt from the provisions of this Act. See La. R.S. 9:3579.1 et seq.

LCCL Small Loan Fees
Act 668; Effective 8/15/2010
SB 725 by Sen. Ann Duplessis amends the Louisiana Consumer Credit Law (LCCL) fee provisions (non-finance charge) to increase the documentation fee pay-day lenders may charge, in connection with a non-real estate consumer loan transaction, from an amount not to exceed five dollars to an amount not to exceed ten dollars. The bill also provides that if a pay-day loan remains unpaid at maturity, the lender may charge a one-time delinquency charge of five percent of the unpaid amount, or ten dollars, whichever is greater. Such a one-time delinquency charge would be charged in lieu of the current law provision that allows for charging an amount equal to the rate of thirty-six percent per year for a period not to exceed one year, and beginning one year after contractual maturity; the rate shall not exceed eighteen percent per year. See La. R.S. 9:3530(C)(1) and 3578.4(A).

PAYMENT CARDS

Convenience Fees
Act 559; Effective 6/25/2010
HB 5 by Rep. Walt Leger provides for convenience fees that can be charged by third-party processors of the Department of Public Safety and the Department of Wildlife and Fisheries in connection with credit and debit card transactions. The amount of the convenience fee must be approved by the House Ways and Means and Senate Revenue Committees. Further, the fee shall be disclosed to the payor before the transaction is complete and the payor shall have the ability to cancel the transaction at that time. See La. R.S. 49:316.1(A)(2).

Convenience Fees
Act 191; Effective 8/15/2010
HB 324 by Rep. Page Cortez provides for convenience fees that can be charged by third-party processors of the Department of Insurance in connection with credit and debit card transactions. The amount of the convenience fee must be approved by the House Ways and Means and Senate Revenue Committees. Further, the fee shall be disclosed to the payor before the transaction is complete and the payor shall have the ability to cancel the transaction at that time. See La. R.S. 49:316.1(A)(2).

Gift Cards
Act 174; Effective 8/15/2010
SB 342 by Sen. Rob Marionneaux deals with state restrictions on gift certificates and gift cards. As initially introduced the bill would have required retailers that issue gift cards to redeem for cash balances of less than five dollars on such cards. However, the bill was amended on the Senate Floor to create new restrictions on gift certificates usable at multiple retailers. LBA’s concern was that this amendment could encompass the “general use prepaid debit cards” that banks issue (often in lieu of traveler’s checks), and create additional state standards with respect to these bank products that differ from the new federal regulations that take effect August 22, 2010 as part of the sweeping “Credit Card Reform Act of 2009” passed by Congress. LBA was successful in getting an amendment added on the House floor that removes “general use prepaid debit cards” issued by banks from the provisions of the bill. See La. R.S. 51:1423(F).
Assignees to Life Insurance Contracts

Act 1016; Effective 8/15/2010

HB 282 by Rep. Chris Roy became part of the LBA adopt-a-bill program as we were successful in getting an amendment included on the bill to address an issue that was brought to our attention in recent months. The amendment provides that, upon default of payment of premiums by an owner of a life insurance policy, a life insurance company must send notice of the default to an assignee on the policy before taking any action to cancel the policy. Life insurance policies may be used as a form of collateral by lenders (assignees) and this amendment will give lenders the ability to take action to preserve such collateral when the owner of the policy fails to pay the premium. See La. R.S. 22:905(2).

Other provisions of the bill provide for certain notices by insurers to insurance premium finance companies related to commercial policies, and notice to interested parties by insurance premium finance companies when default of an insurance premium finance agreement by the debtor is timely cured. Additionally, the bill requires automobile insurers who reinstate cancelled policies to issue a notice of reinstatement to every policyholder, insurance producer, mortgagee, or other person who received a notice of cancellation of the automobile insurance policy. See La. R.S 9:3550(D)(2) and (G)(2) and R.S. 22:905(2).

Motor Vehicle Sales Finance Act

Act 374; Effective 8/15/2010

HB 452 by Rep. Jeff Arnold amends provisions of the Louisiana Motor Vehicle Sales Finance Act to provide for regulation of GAP insurance coverage, including debt waiver or debt forgiveness agreements that are offered to consumers in the state. The bill provides that debt waiver or debt forgiveness agreements shall be sold for a single premium, and that any costs charged to a consumer for a debt waiver or debt forgiveness agreement shall be separately stated and shall not be considered a finance charge or interest. Lenders, other than sellers of motor vehicles, may insure their debt waiver or debt forgiveness agreement obligations under a contractual liability policy or other such policy issued by an insurer. Such insurance policies shall state the obligation of the insurer to reimburse or pay to the creditor any sums the lender is legally obligated to waive under the debt waiver or debt forgiveness agreement issued by the seller or lender and purchased or held by the consumer. Coverage under polices insuring debt waiver or debt forgiveness agreements shall also cover any subsequent assignee upon the assignment, sale, or transfer of the contract. The bill also provides for required disclosures and procedures for cancelling debt waiver or debt forgiveness agreements. See La. R.S. 6:969.6(23) and (29), 969.35(A)(2), 969.42, 969.51, 969.6(34) and (35), 969.52, 969.53, and 969.54.

Certificates of Insurance

Act 1017; Parts effective 8/15/2010 and 1/01/11

HB 447 by Rep. Kevin Pearson was introduced on behalf of insurance agents and deals with the important issue of the reliability of certificates of insurance that lenders are provided by insurance agents, absent the policy itself, to show the existence of insurance coverage on collateral. The bill as filed would have had a major impact on banks and secured lending by requiring all certificates of insurance to contain the following or similar statement: “This certificate of insurance is issued as a matter of information only and confers no rights upon the certificate holder.”

LBA was strongly opposed to such language as we recognize that lenders often rely upon certificates of insurance as verification that insurance is in place on their collateral and that the lender is named as an additional loss payee. Often it’s not practical or possible for a lender to require delivery of the actual insurance policy prior to closing a loan without causing significant delay, as many times the policy is issued by an out-of-state insurer or by Lloyd’s. We are told that it’s also common for lenders to never
receive a copy of the actual policy, but instead to only receive the certificate of insurance, or a temporary insurance binder that is only effective until the actual policy is issued. Due to these facts, it’s critical for lenders to be able to rely upon a certificate of insurance to verify the existence and amount of coverage in place on their collateral. The original language contained in the bill would have made certificates of insurance wholly unreliable as evidence of insurance coverage.

LBA, working with a coalition of lenders, was successful in getting an amendment added to the bill in the House Insurance Committee, over the opposition of the insurance agents and insurance companies, that helps maintain the reliability of certificates of insurance as proof of the existence of insurance coverage. LBA agreed to a slight modification of this amendment language in the Senate Insurance Committee after lengthy negotiations with the insurance agents. The amendment language specifically provides that the Commissioner of Insurance may approve a certificate of insurance form that does not contain the “for information only” or similar disclaimer language. It is expected that lenders will submit certificate of insurance forms to the commissioner for approval without the “for information only” limiting language. If such forms are filed and approved, lenders may request that the insurance agent preparing the certificate use such a form. However, it is uncertain as to whether the agent will honor this request. This concern was addressed by including a definitive statement in the legislation that provides that a certificate of insurance issued using a form approved by the commissioner shall constitute a confirmation that the referenced insurance policy has been issued or that coverage has been bound, notwithstanding the inclusion of “for information only” or similar language on the face of the certificate. See La. R.S. 22:881.1(J). HB 447 requires that only certificate of insurance forms approved by the commissioner may be used. Further, no person may alter or modify an approved certificate of insurance form unless the modification or alteration is approved by the commissioner. See La. R.S. 22:881.1(C).

The insurance industry raised concerns during the legislative process that insurance producers are being asked by large industrial insureds/customers to sign additional documents or to alter forms, and that such alterations could potentially exceed or differ from the actual coverage provided for in the insurance policy. This legislation seeks to protect producers/agents from this risk by prohibiting persons from requesting that an insurer, producer, or policyholder issue a certificate that contains any false or misleading information concerning the policy of insurance to which the certificate makes reference. See La. R.S. 22:881.1(G).

LBA vigorously lobbied the House and Senate membership on this issue to educate them on the importance to the lending community of preserving the reliability of certificates of insurance. This issue took much of LBA’s time this session, but we believe the final language contained in the bill protects lenders by helping maintain certificates of insurance as reliable representations and confirmations of the existence of coverage, while addressing the main concern of insurance agents that certificates do not confer any rights other than those conveyed by the policy. See La. R.S. 22:881.1.

**Title Insurance**

**Act 1028; Effective 8/15/2010**

HB 807 by Rep. Tim Burns amends the insurance code (La. R.S. 22:512(17)) by increasing the title search requirements by a title insurer or its agent in conjunction with the issuance of a title insurance report or policy. The additional requirements include a twenty year search of the mortgage records for federal judgments. A minimum thirty year search must be conducted if the proposed transaction is a sale. If the title insurance is only insuring a mortgage (i.e. a refinance transaction) a minimum search of ten years or two links in the chain of title, whichever is greater, must be conducted. The provisions of the Act shall apply to all transactions occurring on or after September 1, 2010, except the requirements shall not apply to transactions made prior to January 1, 2013 by the Road Home Corporation, the Louisiana Land Trust, or any political subdivision, of property originally acquired in connection with the Road Home Program. See La. R.S. 22:512(17)(b)(vi)(bb) and (gg).
Internet Publication of Delinquent Tax Notices  
Act 817; Effective 8/15/2010
HB 508 by Rep. Chris Roy allows tax collectors to publish on the Internet the portion of the notice to property tax debtors that details the names of the delinquent tax debtors, the amount of statutory impositions due, and the description of each specific piece of immovable property to be offered for tax sale. Such notice published on the Internet must be in addition to notice required to be published in the official journal of the political subdivision. If the Internet is used for publishing the detailed listing of properties offered for tax sale, the tax collector shall provide, within the original printed notification, the web address where the comprehensive list of debtors and properties offered for sale can be viewed. See La. R.S. 47:2153(B)(1).

Delinquent Tax Notice Procedure  
Act 823; Effective 8/15/2010
HB 602 by Rep. Gary Smith provides that tax collectors shall send notices of delinquency and tax sale no later than the first Monday of February of each year, or as soon thereafter as possible, and such notice shall be sent by certified mail, return receipt requested. Prior law required notices to be sent on the second day after the deadline for payment of taxes each year, and required notices to be sent by U.S. mail postage prepaid. See La. R.S. 47:2153(A).

Tax Collectors  
Act 929; Effective 7/02/2010
HB 666 by Rep. Rick Nowlin amends provisions dealing with the collection of sales and use tax by local collectors. Specifically, the bill provides that attorney’s fees and other legal expenses incurred by local collectors for the employment of private counsel shall be reimbursed to the local collector by the local taxing authorities and recoverable as a deduction from current collections, unless such attorney’s fees and legal expenses are recoverable as a reimbursement from the taxpayer. However, taxpayers shall not be subject to the payment of attorney’s fees unless the local collector is the prevailing party. Prevailing parties shall be entitled to reimbursement of attorney’s fees and costs, not to exceed ten percent of the taxes, penalties, and interest at issue, unless the position of the non-prevailing party is substantially justified. A position is substantially justified if it has reasonable basis in law and fact. These provisions of law shall not apply to amounts timely paid under protest by the taxpayer with a return that is not delinquent, or paid under protest to a vendor in accordance with law. A local collector may waive the attorney’s fees award and such waiver shall be considered timely if the notice of the waiver is mailed to a taxpayer by certified mail, return receipt requested, within thirty days of the service of process. If a local collector timely waives attorney’s fees awarded, a taxpayer may not recover attorney’s fees. See La. R.S. 47:337.13.1.

Assessed Value - Unoccupied Residential Property  
Act 1044; Effective 8/15/2010
HB 1471 by Rep. Hunter Greene provides that an assessor, when performing a valuation of unoccupied residential immovable property held for sale by a juridical person prior to the initial occupancy of such property, may consider factors such as the estimated sales price, the estimated holding period needed to sell the property, expenses, and the capitalization rate when considering the income approach to value. See La. R.S. 47:2323(D).
TRUSTS

Seizure of Trust Income
HB 40 by Rep. Franklin Foil provides that a court, in summary proceedings to which the trustee, beneficiary, and beneficiary’s creditor are parties, may permit seizure of any portion of a beneficiary’s interest in trust income and principal based upon damages arising from a felony criminal offense committed by a beneficiary, which results in a conviction or a plea of guilty. See La. R.S. 9:2005(3).

Trusts - Delegation of Authority
HB 58 by Rep. Tim Burns amends the trust code to provide that a trustee may delegate the performance of ministerial duties and acts that he could not reasonably be required to perform personally by power of attorney. See La. R.S. 9:2087(B).

Trust Code Revisions
HB 856 by Rep. Tim Burns is legislation recommended by the Louisiana State Law Institute to revise the Louisiana Trust Code. R.S. 9:1725 amends the definition of “proper court” by enacting R.S. 9:2235. Section 1893 of the code is amended to allow more flexibility with establishing a class trust with all or a portion of the income or principal. Section 1895 entitled “Effect of death of class member during the term of the trust” is amended to provide that the trust may provide that, except as to the legitime in trust, the interest of a member of the class who dies leaving one or more descendants vests in the beneficiary’s descendant heirs. Section 1973 is amended to provide that the trust instrument may provide that the interest of a designated principal beneficiary of a revocable trust shifts to another person or persons, if the substitution occurs no later than the date when the trust becomes irrevocable. Section 2004 is amended to provide that a beneficiary will not be deemed to have donated property to a trust merely because he fails to exercise a right of withdrawal from the trust. Section 2031 is added to provide that a trust instrument may authorize a person other than the settlor to modify the provisions of the trust instrument in order to add or remove beneficiaries, or modify their rights, if all of the affected beneficiaries are descendents of the person given the power to modify. The legislation provides that the changes apply to all trusts, whether created before or after the effective date of the Act, but R.S. 9:1895(A)(3) shall only apply to substitutions occurring after the effective date of this Act.

OTHER BILLS OF INTEREST

Donation of Immovable
HB 66 by Rep. Tim Burns provides that a subsequent alienation or encumbrance of an immovable by a donee shall be considered an acceptance of a donation of immovable property by the donee in accordance with the Civil Code. Prior law provided that a subsequent alienation or encumbrance of an immovable by a donee was an act of corporeal possession in accordance with the Civil Code. See La. R.S. 9:2371.

Contracts of Exchange
Residential Sprinkler Systems  

HB 206 by Rep. Jim Fannin prohibits municipalities, parishes, and the Louisiana State Uniform Construction Code Council from adopting or enforcing any part of the statewide residential code (International Residential Code) or any other regulation that requires a fire protection sprinkler system in one- or two-family dwellings. The bill further provides that factory built homes shall be inspected in accordance with codes in effect for the locality where the home will ultimately be sited, as of the date construction begins in the factory. See La. R.S. 40:1730.28 (A)(3)(f) and (g).

Storage of Documents by Clerk of Court  

HB 214 by Rep. Chuck Kleckley amends the Louisiana Code of Civil Procedure to authorize clerks of court to establish electronic filing systems for the filing and storage of pleadings, exhibits, and other documents. Clerks of court establishing electronic systems shall implement procedures for electronic filing and storage, and the official record shall be the electronic record. Documents filed electronically shall be deemed filed on the date and time stated on the confirmation of electronic filing sent from the clerk of court. Further, public access to electronically filed pleadings and documents shall be in accordance with the rules governing access to written filings. See La. C.C.P. Art. 253(B).

Condominiums  

HB 340 by Rep. Jeff Arnold amends provisions of the Louisiana Condominium Act to provide that as part of the initial sale of condominium units, the seller (developer or successor-in-interest) shall collect at least two months of assessments from each unit purchaser, and such funds are to be dedicated to the condominium association’s reserve escrow account. Those funds may be used only for the exclusive benefit of the unit owner’s association and shall be turned over to the unit owner’s association along with the other condominium assets in accordance with the association’s declaration or bylaws. The bill also provides that the association shall have a privilege on a condominium parcel for any fines or late fees in excess of two hundred dollars if the privilege is evidenced by a proper claim of privilege filed for registry in the mortgage records in the parish where the condominium is located. See La. R.S. 9:1121.111 and 1123.115(A)(1) and (2).

Real Estate Transactions - Agency Relationship  

HB 370 by Rep. Jeff Arnold amends the definitions of “designated agency” and “designated agent”, and adds a definition of “substantive contact.” A “designated agency” means the agency relationship that shall be presumed to exist when a licensee engaged in any real estate transaction is working with a client, unless there is a written agreement providing for a different relationship. Former law did not provide for a presumption of an agency relationship but simply defined a “designated agency” as a contractual relationship between a broker and a client. The term “designated agent” was amended to mean a licensee who is the agent of the client. Prior law referred to a “designated agent” as a licensee named by a broker. “Substantive contact” means that point in any conversation where confidential information is solicited or received. This includes any specific financial qualifications of the consumer or the motives or objectives in which the consumer may divulge any confidential, personal, or financial information, which, if disclosed to the other party to the transaction, could harm the party’s bargaining position. This includes electronic contacts, electronic mail, or any form of electronic transmission. See La. R.S. 9:3891(8), (9), and (14).

Open Accounts - Post Judgment Attorney Fees  

HB 398 by Rep. Nancy Landry amends the law relative to suits on open accounts. The legislation provides a definition of “reasonable attorney fees” to mean fees incurred before judgment and after judgment if the judgment creditor is required to enforce judgment through a writ of fieri facias, writ of seizure and sale, judgment debtor examination, garnishment, or other post-judgment judicial process. Subsection F provides that if a judgment creditor does incur attorney fees after judgment that the judgment creditor may file a rule to show cause along with an affidavit from the counsel for the judgment
creditor setting forth the attorney fees incurred. The judgment debtor has eight days to file a memorandum in opposition prior to a judicial hearing on the matter. If no opposition is filed, the court may award the attorney fees and court costs as prayed for without necessity of an appearance in court by the judgment creditor. The rule to show cause shall include notice to the debtor of the consequences of failing to file a timely opposition. The amount of any post-judgment award of attorney’s fees and costs shall be added to the total to be recovered on the principal demand through any existing writ or garnishment proceedings. See La. R.S. 9:2781(E) and (F).

**Home Inspectors/Real Estate Agents**

Act 195; Effective 8/15/2010

HB 614 by Rep. Erich Ponti prohibits a licensed home inspector from acting in the dual role of home inspector and real estate agent in connection with a real estate transaction if that person received a fee, commission, or other valuable consideration acting as a real estate agent in connection with such transaction. See La. R.S. 37:1490.

**Powers of Attorney - Prescription Period**

Act 196; Effective 8/15/2010

HB 645 by Reps. Neil Abramson and Tim Burns clarifies existing law relative to the prescriptive period for certain actions to invalidate documents executed prior to August 15, 2008 pursuant to a power of attorney. The prescriptive period established in R.S. 9:5647(A) shall become final and complete ten years from the date the document was recorded or August 15, 2013, whichever occurs first. See La. R.S. 9:5647.

**Private Works Act - Notice of Termination of Work**

Act 601; Effective 8/15/2010

HB 805 by Rep. Tim Burns amends the Private Works Act relative to notice of termination of work by adding language providing that a notice of termination of work may be signed by the new owner or his representative if the owner has conveyed the immovable property. See La. R.S. 9:4822(E)(2) and (4).

**Marshal Security for Costs**

Act 528; Effective 8/15/2010


**Money Laundering**

Act 608; Effective 8/15/2010

HB 917 by Rep. Bodi White expands the definition of “funds” in the money laundering criminal statute to include: (1) electronic or written checks, drafts, money orders, traveler’s checks, or other electronic or written instruments or orders for the transmission or payment of money; and (2) investment securities or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery. See La. R.S. 14:230(A)(2)(d) and (e).

**Acts of Sale - Orleans Parish**

Act 537; Effective 1/01/2010


**Escrow of Contractor Funds**

Act 638; Effective 8/15/2010

SB 218 by Senator Conrad Appel provides procedures for creating owner-contractor interest bearing escrow accounts for construction contracts in the amount of fifty thousand dollars or more if, according to the terms of the contract, funds earned by the contractor are withheld as retainage by the owner from periodic payments due to the contractor. The provisions of the bill do not apply to single- or double-family residences, and do not apply to industrial facilities. The bill provides that such escrow accounts shall be located at a qualified financial institution and shall be under the control of an escrow agent. The escrow account and escrow agent shall be selected by mutual agreement between the owner and the contractor. The bill does not specify that the escrow agent shall be a financial institution.
The bill specifies that, upon completion of the work, the whole amount in escrow shall be paid to the contractor within 3 business days upon receipt by the escrow agent of a written release signed by the contractor and owner. If there is a dispute between the owner and contractor, the undisputed amounts shall be released by the escrow agent within three business days of receipt of notarized request of the contractor. Disputed amounts subject to a judicial proceeding or arbitration shall be released by the escrow agent within three business days of the receipt of the final court or arbitration order, according to the terms of such order. The bill also specifically limits escrow agents and qualified financial institutions in which the escrow account is maintained from all liability to an owner, contractor, or any other person when funds are released based upon what purports to be a written release signed by the contractor and owner, or an order by a court or arbitrator. See La. R.S. 9:4815.

**Louisiana Exchange Sale of Receivables Act**

**Act 958; Effective 7/6/2010**

SB 256 by Sen. Joel Chaisson enacts the Louisiana Exchange Sale of Receivables Act. The legislative intent is to encourage and promote businesses to offer the ability to sell their receivables to qualified buyers over electronic and other exchanges in Louisiana, thereby availing themselves of Louisiana civil law principles and the true sale provisions of R.S. 10:9-109(e). The legislation provides that sales of receivables over exchanges located in Louisiana shall be subject to Louisiana law and specifically subject to this Act and R.S. 10:9-109(e). Further, such sales shall result in true sales, and shall not be subject to recharacterization as a simulated sale or as a loan, extension of credit, or other credit accommodation by the buyer to the seller, notwithstanding certain specified circumstances. SB 256 specifically rejects common law legal theories under which recourse sales of receivables have been recharacterized as loans. See La. Civil Code article 3131.2. Article 3131.3 provides for applicable definitions. Article 3131.4 sets forth the scope of the Act as applying to all sales of receivables over exchanges located in this state irrespective of whether the buyer or the seller of the receivable is a Louisiana resident, business organization or other entity, provided that the buyer and the seller contractually agree that such sale be deemed to be consummated in Louisiana subject to Louisiana law, and contractually agree that the sales of receivables result in true sales for all purposes. Further, the bill provides for when an exchange shall be conclusively deemed to be located in this state. Article 3131.5 provides sales of receivables, as true sales, are not subject to recharacterization, and that certain sales of receivables shall not be construed to be a simulated sale under the simulation articles of the Civil Code. Article 3131.5(C)(2) provides that any person attempting to recharacterize a sale of a receivable over an exchange located in this state as anything other than a true sale under Louisiana law, shall be personally liable and obligated to reimburse the buyer and the buyer’s agent for attorney’s fees, court costs, arbitration costs, expert fees, and out-of-pocket expenses, including but not limited to travel expenses, expended in defense of the status of such sale as a true sale under Louisiana law. Article 3131.6 provides for when the Act and R.S. 10:9-109(e) are applicable to sales of receivables. Article 3131.7 provides for the rights of a buyer of an accounts receivable purchased over an exchange located in this state. Article 3131.8 provides that the Act supplements UCC 9-109(e). Article 3131.9 limits the seller’s rights to maintain an action or a claim against an owner or operator of an exchange located in this state, or against the buyer of the receivables, unless there is a signed written agreement setting forth the relevant terms and conditions. See. La. Civil Code Articles 3131.1 through 3131.9.

**Clerks of Court**

**Act 448; Effective 8/15/2010**

SB 572 by Sen. Dan Claitor specifies that after a clerk of court receives a copy of an order authorizing disbursement of funds deposited in the registry of the court, the clerk must disburse such funds within fifteen business days to persons entitled to the funds. Failure to disburse the funds within the stated time period shall entitle persons due the funds to receive all interest earned on such funds while in the registry of the court. See La. R.S. 13:918.
Real Estate Appraisals  
SB 648 by Sen. Troy Hebert provides that energy efficiency of a property shall be a factor considered by a real estate appraiser when analyzing and assigning value to real estate. See La. R.S. 37:3392(1) and (3).

Automatic Renewal of Contracts  
SB 802 by Sen. Joe McPherson as originally filed placed limits on automatic renewal clauses in all contracts with a term of one year or longer. The bill provided that for an automatic renewal clause to be effective, the obligee would be required to provide written notice to the obligor, at least ninety days prior to the expiration of the contract, of the automatic renewal and the right of the obligor to cancel the contract. If the requirement was not complied with the contract would become null and void. LBA was very concerned with the broad applicability of this bill to all contracts, and how such legislation would affect certificates of deposit, loans and other financial products and services. We approached Sen. McPherson early in the session with our concerns, and during debate of the bill in the Senate Judiciary A Committee, he introduced an amendment that was adopted by the committee that excludes banks from the provisions of the legislation. This amendment adequately addressed our concerns. The bill was also amended to provide that if notice of the automatic renewal was not properly provided, the contract can still be automatically renewed on a month-to-month basis, as opposed to automatically making the contract null and void. As the bill moved through the legislative process it was further amended and became less onerous to businesses that remain subject to its provisions. See La. R.S. 9:2716.

Arbitration Law  
SB 457 by Sen. Conrad Appel provides that failure to pay, within ten days, fees required under the Louisiana Binding Arbitration Law shall constitute a default, and parties aggrieved by the default shall be entitled to remove the matter under arbitration to a court of competent jurisdiction and also entitled to attorney’s fees and costs. The bill also provides that parties to the arbitration may offer evidence as is relevant and material to the dispute, but that strict conformity to the Code of Evidence is not required. The arbitrator shall also determine the admissibility, relevance, and materiality of the evidence offered, including the admissibility of expert evidence, and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant. See La. R.S. 9:4203 and 4206.

Investments by Political Subdivisions  
SB 306 by Sen. Danny Martiny authorizes municipalities, parishes, and other political subdivisions to invest in bonds issued by other states, or the political subdivisions of other states, provided that: (1) the indebtedness has a minimum rating of A3 or higher by Moody’s Investors Service, or a rating of A- or higher by the S&P Corporation, or a rating of A- or higher by Fitch, Inc.; (2) the indebtedness has a final maturity date of no more than three years (except such limitation shall not apply to funds held by a trustee, escrow agent, paying agent, or other third-party custodian in connection with a bond issue nor to investment of funds held by either a hospital service district, a governmental 501(c)(3) organization, or a public trust authority; and (3) the purchasing Louisiana political subdivision retains the services of an investment advisor registered with the SEC. See La. R.S. 33:2955(A)(1)(k).

Usufructs  
SB 361 by Sen. John Smith is legislation recommended by the Louisiana State Law Institute to revise Louisiana Civil Code Articles regarding usufructs. Civil Code Article 568 provides that the right of a usufructuary to dispose of a non-consumable thing includes the rights to lease, alienate, and encumber the thing, but does not include the right to alienate by donation inter vivos, unless that right is expressly granted. Article 568.1 is enacted to provide that if a thing subject to the usufruct is donated inter vivos by the usufructuary, he is obligated to pay the naked owner at the termination of the usufruct, or upon alienation of the thing subject to usufruct, the value of thing as of the time of the donation. Article 568.2 is enacted to provide that the right to dispose of a non-consumable thing includes the right to lease the thing for a term that extends beyond the termination of the usufruct. However, in such case, the
usufructuary is accountable to the naked owner for any diminution in the value of the thing at that time attributable to the lease. Article 568.3 provides that at termination of the usufruct the usufructuary is bound to remove any encumbrances it established, if any, on the thing subject to the usufruct. Article 586 provides that when a usufruct is established inter vivos, the usufructuary is not liable for debts of the grantor. Article 587 provides that when the usufruct is established mortis causa, the usufructuary is not liable for estate debts, but the property subject to the usufruct may be sold for the payment of estate debts. Article 591 provides that if the property subject to the usufruct is sold to pay an estate debt, or a debt of the grantor, the usufruct attaches to any proceeds of the sale of the property that remain after payment of the debt. Article 592 provides that if more than one usufructuary exists on the same property, each contributes to estate debts in proportion to their enjoyment of the property. Article 608 provides that a usufruct established in favor of a juridical person terminates if the juridical person is dissolved or liquidated, but not if merged or consolidated into a successor juridical person. However, in all cases a usufruct established in favor of a juridical person terminates upon lapse of thirty years from commencement of the usufruct. Article 616 provides that when property subject to a usufruct is sold or exchanged, the usufruct terminates as to the non-consumable property sold or exchanged, but the usufruct attaches to the money or other property received by the usufructuary, unless the parties agree otherwise. Also, any tax or expense incurred as a result of the sale or exchange shall be paid from proceeds of the sale or exchange, and shall be deducted from the amount due by the usufructuary to the naked owner at termination of the usufruct. The above is just a brief summary of some of the changes made by SB 361. See La. Civil Code Articles 538,549,558, 567-569, 573-575, 577, 580, 583, 586-594, 601, 603, 604, 608, 613, 615, 616, 618-620, and 623-625.

BAD BILLS THAT DID NOT PASS

HB 154 by Rep. Sam Jones would have prevented a mortgage lender or originator from requiring use of a particular title company or attorney to act as settlement agent for a residential property mortgage. Further, the bill required a lender to provide written disclosure to the consumer that the consumer has the right to choose the title company or real estate attorney that acts as the settlement agent for the mortgage. This could have prevented mortgage lenders from using title companies or attorneys that they know to be competent and with whom they have a proven track record.

HB 293 by Rep. Richard Burford would have amended the ownership of deposited funds statute in the state banking code to add superfluous language concerning the ability of two depositors to establish a joint account, and for a surviving spouse to receive all deposits in the account. The language of the bill also appeared to create a property right in favor of a surviving spouse to all deposits in a joint account, which could have had the effect of conflicting with state succession law. We believe the current law providing for joint deposit accounts is clear, and we were concerned about the ramifications of this legislation with respect to Louisiana succession law. After discussing our concerns with Rep. Burford, he decided to withdraw the bill from the files of the House of Representatives.

HB 432 by Rep. Kevin Pearson would have allowed a broker or securities firm to sell or transfer securities (not to exceed fifty percent of the account value) held in a brokerage account to a surviving account holder, upon the death of the other joint account holder. The bill would have allowed the surviving account holder to withdraw such securities until written notice was received by the broker or securities firm of the appointment of an executor or administrator of the estate of the decedent. The bill provided that a broker or securities firm would not be liable to the estate or any heir of the decedent, nor would they be liable for any estate, inheritance, or succession taxes that may be due to the state. Although the bill provided that it did not prohibit any right of forced heirship or other legal rights of a surviving spouse, heir or creditor, this legislation could have created a hardship for heirs or creditors with
claims against the estate by putting the burden on them to attempt to recover funds paid out to a surviving account holder. The bill failed to obtain final passage on the House floor.

**HB 607 by Rep. Chris Roy** as originally filed would have given the State Office of Elderly Affairs Adult Protection Agency broad access to bank financial records when they suspected crimes against the elderly, which would have conflicted with the state banking code law concerning disclosure of customer information and records (R.S. 6:333). We believe the bill as filed amounted to an unreasonable intrusion of customer privacy and confidentiality as it would have given the office of elderly affairs unfettered access to records without having to obtain a subpoena, and given them express authority under the provisions of the state banking code that no other government or law enforcement agencies currently have. After numerous discussions with Rep. Roy about our concerns, he agreed to compromise language that would have given banks clear permission to report limited information to local and state law enforcement when they suspected abuse against the elderly. This language, which was to be added as an exception to R.S. 6:333 in the state banking code, would have given banks clear authority and limitation of liability when reporting. The compromise language was optional, not mandatory, and did not provide for or allow disclosure of financial records to law enforcement absent a subpoena. We believe the compromise language was a positive step in dealing with the problem of fraud against the elderly. However, after getting additional feedback from the office of elderly affairs and other interested parties, Rep. Roy opted to not advance this amended legislation in order to further study this issue.

**HB 705 by Rep. Michael Jackson** would have required public entities, when contracting or accepting bids for financial services, to give preferences to Louisiana state chartered banks when the services offered by the state bank are equal to services provided by banks which are not state banks. The legislation completely failed to recognize that many Louisiana domiciled banks are federally chartered institutions. LBA strongly opposes any preference bills as we believe all banks operating in the state that are paying taxes, employing Louisiana citizens, and otherwise making contributions to their communities should compete on a level playing field without government intervention. LBA was successful in defeating this legislation in the House Appropriations Committee.

**HB 1064 by Rep. Fred Mills** was legislation brought at the request of the State Department of Revenue (DOR) in order to help collect taxes from delinquent taxpayers. The bill would have created a data match system for the computerized comparison of financial institution account information with DOR’s database of delinquent tax debtors. The original bill provided that financial institutions would periodically submit (not more than every quarter) to DOR a file listing each person maintaining an account at the institution. The file was to contain the name, record address, social security number, taxpayer identification number, and the average daily account balance for the most recent thirty day period. LBA met with DOR multiple times to discuss our concerns with the legislation. Specifically, LBA was concerned that this data match program would be yet another burdensome government mandate for banks and thrifts in Louisiana to comply with. In light of the many drastic changes and new mandates taking place in the banking industry, we felt this was not the time for a new, mandatory statewide program. As an alternative to a mandatory program, we offered to work with DOR to create a voluntary pilot program for financial institutions that were willing to participate. We believed this would provide a test case to evaluate the program’s effectiveness. DOR agreed to this alternative, but later opted to not pursue legislation this session. We thank Rep. Mills for soliciting our input on this legislation and for his pledge from the outset to not move legislation that was not supported by the industry.

**HCR 111 by Rep. Michael Jackson** urged the Office of Financial Institutions and Department of Economic Development to study the advisability and feasibility of creating a state-owned bank and to report any findings or recommendations to the legislature prior to the 2011 Session. The study request was based on the fact that North Dakota has a state owned bank that was created in 1919 due to lack of
available credit to the state’s farmers at the time. We believe mixing government and banking is a very bad idea. The resolution failed to receive final passage on the Senate floor.

SB 477 by Sen. Nick Gautreaux would have required the Commissioner of OFI to provide public disclosure of personal finances. The bill would have subjected the Commissioner and their spouse, along with a few other appointed public officials, to the disclosure requirements currently in law applicable to state department secretaries, as well as the governor and his executive staff members. The disclosure requirements focused on sources of income and business interests. If passed, this bill may have discouraged some qualified candidates from pursuing the commissioner position in the future.

SB 785 by Sen. Julie Quinn would have amended current UCC law relative to accord and satisfaction by use of negotiable instruments. Current law provides that, unless otherwise provided by law, a claim is discharged if the person against whom the claim is asserted proves that the instrument, or an accompanying written communication, contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim. SB 785 would have defined the term “conspicuous statement” as a statement in no less than ten point font directly above the endorsement section of the instrument and in a separate bolded paragraph in an accompanying written communication, containing the statement: “Execution of this instrument fully discharges the related claim against the issuer.”

SB 786 by Sen. Julie Quinn as it passed the Senate Judiciary A Committee would have required financial institutions to endorse insurance claim checks and remit funds to a policyholder within thirty days of receiving payment incident to a claim. Failure to do so would have resulted in the financial institution having to pay an insured a penalty of ten percent of the amount of insurance proceeds or five thousand dollars, whichever was greater. The bill, not only subjected lenders to potential fines, but undermined the ability of lenders to protect their collateral. For instance, it was unclear from the bill as to whether a lender would have been able to place insurance proceeds in an escrow account and remit payments to an insured as the collateral was repaired, or whether a lender would have been able to apply proceeds towards paying off a loan balance. LBA strongly opposed the bill. On the Senate floor, Sen. Quinn put an amendment on the bill that deleted the original language and completely changed the bill by amending provisions dealing with attorney fee contracts. Sen. Quinn’s floor amendment provided that an entity failing to comply with an attorney fee agreement would be required to pay the attorney a money penalty of ten percent of the amount of the proceeds owed to the attorney plus court costs. The bill failed to receive final passage on the Senate floor.