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BANKING AND FINANCE

Affiliate Transfers: Amend Definitions to Include Affiliated Banks Authorized to Exercise Trust Powers

CODE SECTION:	O.C.G.A. § 7-1-320 (amended)
BILL NUMBER:	SB 346
ACT NUMBER:	470
SUMMARY:	The Act amends the definitions regarding affiliate transfers between certain financial institutions. The term "affiliate transfer" refers to bank or trust company transfers made to affiliated trust companies or affiliated banks which have received the required approvals from the appropriate regulatory authorities to exercise trust powers. The term "affiliated trust company" means a trust company affiliated with a bank and includes affiliated banks which have received the required approvals from the appropriate regulatory authorities to exercise trust powers.
EFFECTIVE DATE:	July 1, 1993

History

Previously, according to the text of Code section 7-1-320, a bank could not transfer fiduciary capacities to an affiliated bank which had received approval from regulatory authorities to exercise trust powers.[1] Affiliated banks authorized to exercise trust powers were not included in the definition of affiliated trust companies.[2] The exclusion of affiliated banks from this Code section was an oversight with the potential to restrict the ability of banks to transfer their capacities as fiduciaries to affiliated banks, even though they had the regulatory authority to do so.[3]

SB 346

The Act amends Code section 7-1-320 relating to affiliate transfers between banks and trust companies by adding new language to both the definition of "affiliate transfer" and the definition of "affiliated trust

1. 1986 Ga. Laws 1244 (formerly found at O.C.G.A. § 7-1-320 (1989)).
2. *Id.*
3. Telephone Interview with Amelia Baker, Legal Counsel to the Georgia Department of Banking and Finance (June 11, 1993) [hereinafter Baker Interview].

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company."[4] The purpose of the Act is to clarify that which the original Code section intended to provide, namely, that affiliated banks which have received the required approval from the appropriate regulatory authorities to exercise trust powers may do so.[5]

The Act defines "affiliate transfer" as

> [a] transfer by which a bank or trust company delegates, assigns, or transfers to an affiliated trust company or to an affiliated bank which has received the required approvals from the appropriate regulatory authorities to exercise trust powers all of its rights, powers, privileges, accounts, and designations with respect to one or more of its various capacities as fiduciary.[6]

This permits a bank to transfer its fiduciary rights to an affiliated bank having regulatory permission to exercise trust powers and not just to an affiliated trust company.[7]

The Act defines "affiliated trust company" as

> a trust company which is affiliated with a bank. A trust company shall be considered an affiliate with a bank in accordance with the definition of such term set forth in paragraph (1) of Code section 7-1-4. For the purposes of this part, the term affiliated trust company shall also include an affiliated bank which has received the required approvals from the appropriate regulatory authorities to exercise trust powers.[8]

This definition ensures that transfers of fiduciary rights will be permitted between banks and affiliated banks having the requisite regulatory permission to exercise trust powers, as it includes such affiliated banks in the definition of "affiliated trust company"[9] to which such transfers are permitted under the prior law.[10]

The Act secures the right of authorized affiliated banks to exercise trust powers by changing the definition of both "affiliate transfer" and "affiliated trust company" to include affiliated banks having the required regulatory approval to exercise trust powers.[11]

Susan Plath Winston

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4. O.C.G.A. § 7-1-320(1)-(2) (Supp. 1993).
5. *Id.;* Baker Interview, *supra* note 3.
6. O.C.G.A. § 7-1-320(1) (Supp. 1993).
7. *Id.*
8. *Id.* § 7-1-320(2) (Supp. 1993).
9. *Id.*
10. 1986 Ga. Laws 1244 (formerly found at O.C.G.A. § 7-1-320 (1989)).
11. O.C.G.A. § 7-1-320 (Supp. 1993).

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