Garland W. Binns, Jr.
Dover Dixon Horne PLLC
Attorneys at Law
425 West Capitol, Suite 3700
Little Rock, Arkansas 72201
Telephone: (501) 375-9151
Facsimile: (501) 372-7142
Email: gbinns@ddh-ar.com
Web Site: www.GWBinns.com

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U P D A T E

News of Developments in the Financial Sector and Related Areas

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FDIC Report on Banking

The 2006 fall report by the Federal Deposit Insurance Corporation ("FDIC"), entitled *FDIC State Profiles*, reflects that insured institutions continue to experience strong financial performance but clearly points to a downshift in economic growth with residential activity lagging far below levels of last year. Arkansas institutions holding assets of less than $1 billion reported modest growth in quarterly net income of almost 7 percent during the year ended June 30, 2006, compared to a 24 percent increase among large institutions. The FDIC reports that the decrease in home sales was particularly noteworthy in the Fayetteville-Springdale-Rogers metropolitan statistical area. The FDIC also noted that insured institutions in Arkansas were experiencing slowing demand for residential real estate loans. In its report, the ranking of Arkansas institutions was as follows:

- Eighth in the nation with a ratio of non-core funding to total assets of 28.00 percent
- Second in the nation of noncurrent loans to total loans with a ratio of .80 percent
- Fourth in the nation with past-due commercial real estate loans with a ratio of .86 percent
- Third in the nation in past-due residential real estate loans with a ratio of 2.04 percent
- Thirty-first in the nation in job growth with a ratio of 1.21 percent
- Eleventh in the nation in unemployment with a ratio of 5.20 percent.

The 2006 fall report is available on the website of the FDIC at *www.fdic.gov*.

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Subordination, Nondisturbance and Attornment Agreements

Subordination, nondisturbance and attornment agreements are often referred to as *SNDA agreements.* They are generally utilized in connection with real estate leases when there is a mortgage by the landlord to a lender. SNDA agreements provide protection for the lender in that the lessee agrees to subordinate its interest to the lender=s mortgage and in the event of foreclosure by the lender of its mortgage, the lessee agrees to attorn to the new owner and recognize the new owner as the landlord under the lease. SNDA agreements also provide protection for the lessee in that the lease will continue in the event of a foreclosure and a new owner, and the lessee=s use of the premises will not be disturbed or impaired as a result of lessee subordinating its interest under the lease to the mortgage of the lender. For the benefit of the lender, the SNDA agreement will provide that the lease will be subject and subordinate to the mortgage, the lien imposed by the mortgage and all advances under the mortgage. For the benefit of the lessee, the SNDA agreement will provide that a new owner will not terminate or disturb the lessee=s possession of the premises under the lease except in accordance with the terms of the lease, and the new owner will be bound to the lessee under the terms and conditions of the lease. SNDA agreements should also provide that in the event of a default under the lease by the landlord, that the lessee will provide notice to the lender in order to provide the lender an opportunity to cure the default by the landlord. SNDA agreements provide important protections to both a lender and to a lessee and should be utilized in the lease of premises subject to a mortgage.

Summary of Deposits

The 2006 Summary of Deposits data on all insured institutions is available at *www.fdic.gov*. This information is extremely helpful in that it shows the amount of deposits at each location of an insured institution. The data discloses that as the banking industry consolidates into larger and more diverse entities, banking organizations continue to expand their deposit and branching networks.

Cases, Releases and Rulings

Congress recently enacted the Financial Services Regulatory Relief Act of 2006 which extends the examination cycle of well-managed, well-capitalized banks under $500 million in assets from twelve months to eighteen months and contains a provision increasing federal bank regulatory agencies' ability to require directors to use their own assets when a bank gets in trouble. This provision requiring directors to use their own assets when a bank gets in trouble may make it more difficult to attract and retain qualified directors.

In Interpretive Letter No. 1069, the Office of the Comptroller of the Currency ("OCC") permitted a national bank and its operating subsidiaries to charge a service fee to those customers who wish to receive, on an expedited basis, information concerning the amount due if the customer desired to pay off his or her loan in full. Using this service, customers could request that loan payoff calculations be produced while they were on the telephone with a customer service representatives, and the information was then sent to the customer immediately by facsimile or other expedited means. The OCC noted that the bank had provided analysis and supporting documentation that it had complied with each of the factors set forth in its regulation (12 C.F.R. § 7.4002) authorizing a service fee, namely (i) the cost incurred by the bank in providing this service, (ii) the deterrence of misuse by customers of banking services, (iii) the enhancement of the competitive position of the bank in accordance with its business plan and marketing strategy, and (iv) the maintenance of the safety and soundness of the institution.

 Comments, ideas, opinions and questions - email gbinns@ddh-ar.com - telephone (501) 375-9151 - facsimile (501) 372-7142.