

Preface

The Law and Regulation of Financial Institutions examines the area of commercial activity that, at an earlier time, was called commercial banking. The expansion in the types and nature of the activities and transactions conducted by institutions called banks continues to be remarkable. This development has occurred against an overlay of concern about the safety and soundness of depository institutions, the accountability of individuals who manage these institutions, the adequacy of the deposit insurance system, and the rationality of longstanding national policies that have guided banking regulation. As never before, this area of economic activity is characterized by what at times appears to be a bewildering maze of statutes, cases, rules, and administrative policies, most of which are but one stage in a continuing process of revision as major developments occur regularly in the form of new state and federal legislation, regulatory initiatives, and significant judicial decisions.

This book covers both regulatory and transactional areas of banking law. Part One covers the regulation of banking; this portion explains the structure of laws and regulations applicable to the organization and powers of banks and other depository institutions. The following subjects are examined in depth: bank and savings and loan holding company regulation; expansion through branching and interstate banking; supervision of bank safety and soundness; securities activities of banks and bank holding companies; capital adequacy and prompt corrective action standards; regulatory enforcement powers; civil liability of institution-affiliated parties; federal deposit insurance; insolvency and reorganization of depository institutions; privacy issues, and the network of laws designed to deter money laundering and terrorist financing. This part of the book is designed to provide a general understanding of the complex network of regulatory law that affects the activities of commercial banks and similar depository institutions.

Part Two focuses on the major bodies of law that govern the types of payment and credit transactions (other than real estate financing) in which commercial banks and other depository institutions engage. In this area of the law, profound changes have occurred, stimulated by technological advances that have encouraged the use of electronic systems in place of paper-based transactions in the handling of checks and other payment instruments, as well as in other commercial transactions. The basic law in many of these areas has been significantly revised, as new versions of the key articles of the Uniform Commercial Code dealing with secured transactions, negotiable instruments, bank collection of items, fund transfers, and letters of credit have been adopted. The Board of Governors of the Federal Reserve System has established a significant regulatory impact on many of these transactions by promulgating comprehensive rules dealing with funds availability, check collection, funds transfers, electronic banking, and other areas.

Part Two, therefore, covers the major bodies of law that control transactions involving checks, drafts, notes, cashier's checks, teller's checks, traveler's checks, letters of credit, documents of title, and other commercial instruments. It explains in detail the law and regulations, state and federal, that affect the electronic transfer of funds and credit, the bank-customer relationship, customer privacy rights, and the process by which banks collect and pay items. It also examines secured transactions involving goods, accounts, instruments, investment securities, intangibles, and other personal property, including the law governing debtor default and enforcement of security agreements. An overview of the various laws and regulations dealing with consumer credit, credit discrimination, and interest rate regulation is provided. Part Two also reviews the basics of the federal bankruptcy laws and how the bankruptcy laws interact with state commercial law in secured financing and other banking transactions. The requirements of the Community Reinvestment Act are discussed.

The book is designed to provide general information for bankers and commercial lawyers. It is written to be easily understood both by lawyers and by persons in business who have not had formal legal training. Given the broad scope of this book, it cannot provide complete, in-depth coverage of all issues. The footnotes are not intended to be a comprehensive statement of all legal authorities on any particular issue, but rather refer to cases and other authorities to illustrate the principles being discussed in the text. For those who are interested in obtaining more detailed information, there are references to supplemental texts, articles, and other authorities. The major cases, statues, and sources of regulatory action have been identified. As a result, the book should be useful both as an introductory text for those who seek a general understanding of these areas of commercial banking law and as a general reference and research tool for those with more specific interests. It should assist the banker in understanding the legal framework that supports the activities of commercial banking, alert the banker to areas in which legal problems may exist, give notice of areas in which the law is in the process of change, and help the banker to discuss and raise questions about issues with legal counsel in an informed manner. The book also should assist bank lawyers and law students to gain a general understanding of the extensive and often exceedingly technical body of state and federal law that is relevant to commercial banking transactions, to identify the principal sources of statutory and other law bearing on particular problems, and to obtain additional information on numerous subjects through the various reference and other research aids provided.

This book is not a substitute for consultation with legal counsel, but it should assist bankers and others to become sensitive to situations in which consultation with legal counsel may be helpful. Such consultation is important for several reasons. This book cannot provide a complete analysis or discussion of each subject covered. The applicability of the law to particular situations depends on both the investigation of specific facts and a complete research and analysis of the particular

law of the relevant jurisdiction applicable to the situation. In the commercial banking law area, actions by regulatory agencies are frequent and extensive. In addition, Congress and the state legislatures are engaged in consideration of new laws on many aspects of commercial banking, and state and federal courts are constantly issuing significant decisions. Proper interpretation of the law is complex, and the advice of a competent attorney should always be sought.

This book benefited from the outstanding assistance of many persons. Over the years, many students and staff members of the Sandra Day O'Connor College of Law, Arizona State University contributed to the preparation and updating of this publication.

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