

Addressing Legal Implications of Outdated Bankruptcy Law

BACKGROUND

House Bill 90, is a bill jointly developed by the Georgia Forestry Association (GFA) and the Georgia Bankers Association (GBA) to clarify that the Uniform Commercial Code (UCC) supersedes an outdated 1939 law governing timber transactions.

DIGGING DEEPER

TIMBER TRANSACTIONS COMMON IN 1939



Real Estate Purchase, Buyer in Ordinary Course Protection Doesn't Apply



Mill Purchases Stumpage Directly from Landowner

TIMBER TRANSACTIONS COMMON TODAY



A Wood Dealer Purchases Standing Timber from landowner, sometimes using the standing timber as Collateral for a loan

A Wood Dealer Severs Timber from Stump, Converting Real Estate into Personal Property that is a Commodity Good



Mills Purchasing This Timber as "Gatewood" are Purchasing Commodity Goods and are Buyers in the Ordinary Course of Business

Gatewood: Timber purchased at the mill's gates that it has no interest in until it crosses the scales, meets the mill specifications, and is unloaded from the log truck.

While in 1939, the forest industry was vertically integrated with mills primarily purchasing timber directly from forest landowners, today, mills primarily purchase already cut timber as a commodity good at their mill gates from loggers/wood dealers. Just as for purchasers of any other commodity goods or inventory goods, the UCC provides purchasers of cut timber protections as "buyers in the ordinary course of business" to purchase commodity logs free and clear of a security interest so long as they meet certain conditions set forth by the UCC such as the transaction being in good faith.

The purpose of this UCC protection is to facilitate transactions of commodity goods where a requirement to conduct a lien search on every commodity purchase would be extremely impractical and encumber business transactions. Unfortunately, the 1939 statute in question—whose drafters could have never conceived of timber being transacted as a pre-cut commodity as it is today—is overly broad and denies otherwise qualified buyers in the ordinary course of business this much needed protection to carry out business. House Bill 90 corrects this and ensures the UCC is what reins supreme.