Georgia has traditionally been hawkish with regard to ensuring that real estate closings are conducted by Georgia licensed attorneys. This was made clear by the Supreme Court of Georgia's 2014 adoption of the Formal Advisory Opinion No. 13-1 (FAO), which attacked "witness-only" closings. These "witness-only" closings occur when an attorney is mailed loan documents, advised not to review or provide legal advice regarding the documents, and then instructed to oversee the execution of the documents and mail them back to the lender.

The Supreme Court of Georgia found that "**WHEN A CLOSING LAWYER PURPORTS TO ACT MERELY AS A WITNESS" THEY ARE IN VIOLATION OF GEORGIA'S ETHICAL RULES GOVERNING ATTORNEYS**. This FAO also suggests that only Georgia attorneys can prepare deeds for other people. Perhaps this is because for almost 90 years it has been the law in Georgia that only Georgia attorneys can provide an opinion as to the status of the title to real property. (See O.C.G.A. § 15-19-53.)

Shortly after this FAO was published, Georgia's legislature proposed a revision of Georgia's code to provide "regulation of the practice of law, so as to authorize certain activities involving real estate transaction [and] to provide for a civil action for damages" stemming therefrom. [See 2015 Georgia Laws Act 76 (H.B. 153).] The most relevant portion of this law was codified as O.C.G.A. § 15-19-60. It provides that **any consumer damaged by a violation of Georgia's laws regarding the unauthorized practice of law can seek damages caused by the violation.** There are several important parts of this code that require the attention of anyone authorizing or conducting mail-away closings.

First, **if the consumer is damaged as a result of the unlicensed practice of law, it can "recover damages, treble damages, reasonable attorney's fees, and expenses of litigation."** Second, it provides that this right can be enforced by "a trustee of a consumer debtor in a bankruptcy case ..." Through a series of cases, **Georgia's Chapter 7 Trustees have made clear that if a security deed is not executed as required by Georgia law, it can be set aside by the Trustee and sold for the benefit of the bankruptcy estate**. This, in turn, would cause the debtor to lose its home. In other words, it would damage the debtor.

Notably, the average home loan in Georgia has a balance of $169,990. In a September 2018 article entitled "Bankruptcy Watchdogs Push Congress for a Raise," the *Wall Street Journal* explained that the "low pay [for Chapter 7 Trustees] and drop in [bankruptcy] filings have driven trustees to be more aggressive in an attempt to boost their compensation." Thus, there is a large incentive for a Chapter 7 Trustee to pursue these types of claims. Let's assume, hypothetically, that a lender completes a home loan transaction through a mail-away process that involves a Georgia attorney who is only acting as a witness as to the execution and the security deed is not properly executed, as required by Georgia law. The borrower then files a Chapter 7 bankruptcy.

The Chapter 7 Trustee could file an adversary proceeding to set aside the security deed, making the lenders claim unsecured and reducing the payout received on the loan. If this is not bad enough, the Chapter 7 Trustee could then bring an action under O.C.G.A. § 15-1960 against the lender, seeking damages, treble damages, and attorneys' fees and costs. The one saving grace here is that **there is, at most, a four-year window from origination during which this claim can be brought.** [*Williams v. Wells Fargo Bank, National Association*, 2017 WL 1807601, *5, No. 4:16-CV-0005-HLM-WEJ (N.D. Ga. Jan., 6, 2017)]. In any event, a lender conducting mail-away or witness-only closings in Georgia may want to explore their potential liability under this code section, or possibly risk substantial losses.