

Banks as Real Estate Brokers?

RISMEDIA, Jan. 31 — A federal bank regulator has set in motion a process that will inevitably lead to national banks becoming actively involved in real estate development and brokerage--activities that will increase banks' exposure to risk and threaten the safety and soundness of America's banking system--the president of the National Association of Realtors® charged.

In a letter to the Comptroller of the Currency, NAR President Tom Stevens said that by approving three recent bank real estate deals—including one that allows Union Bank of California to take a 70 percent equity stake in a windmill farm—the regulator is violating the National Bank Act and the regulator's own past rulings and regulations. The two other projects are a Ritz Carlton Hotel in Charlotte being developed by Bank of America and a mixed used project in Pittsburgh that includes a hotel and four floors of condominiums developed by PNC Bank.

Stevens urged Comptroller John C. Dugan to reconsider the rulings that allowed the banks to proceed with these projects and asked to meet with him to discuss the danger they pose.

“The new rulings represent OCC's continued efforts to dramatically expand the real estate powers of national banks. Despite your statements to the contrary, numerous banking experts see your actions as a significant expansion of real estate powers of national banks,” Stevens said.

In December 2005, the Office of the Comptroller of the Currency (OCC) approved Bank of America's plans to build and own a \$65 million Ritz Carlton Hotel in Charlotte to provide lodging for the bank's out of area visitors. The bank indicated only 37.5 percent of the 150 rooms would be used by persons related to the bank's business. Bank officials expect the hotel to generate profits of as much as \$2.6 million by its third year, according to the Charlotte Observer.

That same month the OCC also approved plans by PNC to build and own a \$170 million mixed use building in downtown Pittsburgh that would include ground floor retail and restaurant space, five floors of hotel space for 158 rooms, and four floors of residential condominiums, which would be sold when completed. The bank expects to occupy only 25 percent of the office space and 10 percent of the hotel rooms.

Union Bank of California received OCC approval late last year for a 70 percent equity investment in a wind energy project, which would allow the bank to take advantage of federal tax credits. The company intends to purchase wind turbines and land in order to generate electricity. Despite Union Bank's claim that the deal is structured as an investment rather than a loan only to take advantage of the tax credits, the OCC is not requiring the windmill company to repay the principal, and periodic payments are conditioned on revenues generated by the company.

“When combined with other powers, such as the ability to act as finders and to buy and sell bank and customer assets, the OCC rulings have the potential to lead to significant erosion of the separation between banking and commerce,” Stevens said.