

Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

January 31, 2006

The Honorable Richard Shelby
Chairman
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I was surprised and disappointed to learn that the National Association of Realtors (NAR) recently sent a letter to Members of Congress in which they strongly criticized three interpretive letters issued by the Office of the Comptroller of the Currency. The letters concern the use of national bank premises and an energy project financing by a national bank.

I was surprised because the interpretive letters have nothing to do with real estate brokerage – in fact, only one letter even mentions real estate brokerage, and then only to make clear that the brokerage would be handled through an unaffiliated third party. I was disappointed because the NAR sent their letters before meeting with us to discuss their concerns, as we had agreed to do. Had they waited to speak to us, we would have explained to them why the concerns in their letters are unfounded.

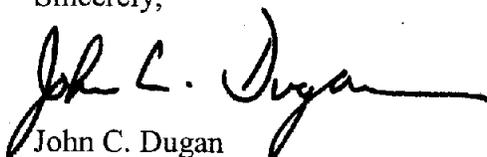
By statute, national banks have only limited authority to make real estate and equity investments. This limited authority precludes national banks from engaging in broad-based real estate development activities or the type of equity investment activity that would breach the separation between banking and commerce. But it does allow national banks to engage in a limited amount of such activities as part of their basic banking business. Over the last 100 years, both federal courts and the OCC have interpreted this limited authority to permit or preclude national banks from engaging in particular kinds of activities, depending on particular sets of facts.

The three recent OCC interpretations are entirely consistent with this body of precedent. They permitted a limited amount of real estate development in connection with a national bank's own premises, and allowed the functional equivalent of a loan to be structured as an equity investment in order for the bank to capture certain tax benefits – but only so long as the bank maintained the loan characteristics of the transaction. The transactions were carefully structured to abide by limits set forth in the precedent and to be fully consistent with safety and soundness.

In short, the transactions were not intended to and will not give national banks a "green light" to engage in broad-based real estate development or commercial activities. The limits in the interpretations, based on the limits in national banks' authority, preclude this result, and such limits are subject to the OCC's ongoing supervisory oversight. The OCC fully recognizes these limits and will apply them consistently to all national banks.

As reported in one of its recent press releases, the NAR sent us a more detailed letter raising their concerns that we understand has been widely shared. Enclosed is a point-by-point response to that letter, prepared by our Chief Counsel, that we have provided to NAR today. Please contact me or my staff if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John C. Dugan". The signature is fluid and cursive, with a long horizontal stroke at the end.

John C. Dugan
Comptroller of the Currency

Enclosure