



State of Washington
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF BANKS

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July 5, 2005

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RE: Holding and Developing Branch Facilities in the Form of Condominiums

Dear Mr. Tombari:

The matter of your inquiry, dated June 13, 2005, directed to Michael C. Abe, Program Manager for the Division of Banks of the Washington State Department of Financial Institutions (“DFI”), has been forwarded to me for review and response.

Background

[REDACTED] Bank (“Bank”) is a Washington state-chartered commercial bank insured by the Federal Deposit Insurance Corporation (“FDIC”), i.e., an “insured state bank” within the meaning of the Federal Deposit Insurance Act (“FDIA”). Bank is also a member of the Federal Reserve (“Federal Reserve”).

Bank intends to engage in real estate development activity through the conversion of its principal headquarters (“Bank Facility”) to a condominium and liquidation all but the ground floor (“Bank Retained Unit”) through the sale of the upper floor units as individual condominium units (“Proposed Activity”).

Questions Presented

May Bank hold title, either directly or through a subsidiary, to the Bank Facility as a declared and recorded condominium?

Should Bank hold title indirectly through a subsidiary?

May this process be replicated with other branch facilities of Bank?

Summary Answer

Subject to safety and soundness considerations as noted below, Bank may hold title to the Bank Facility as a declared and recorded condominium as property held for development and sale, and the same is true, in principle, for branch facilities other than Bank Facility. However, it is preferable that Bank, as developer, hold title through a subsidiary, either a limited liability company or Subchapter S corporation.

Discussion

As a member of the Federal Reserve, Bank is not subject to applicable provisions of Section 24 of the FDIA [12 USC 1831], as a non-member insured state bank may be. Since we know of no Federal Reserve prohibitions upon the Proposed Activity for insured state banks that are Federal Reserve members, we have looked to Washington state law to answer your questions.

RCW 30.04.210 provides, in pertinent part, that:

A bank . . . may purchase, hold, and convey real estate for the following purposes:

(1) Such as shall be necessary for the convenient transaction of its business, including with its banking offices other space in the same building to rent as a source of income: PROVIDED, That any bank or trust company shall not invest for such purposes more than the greater of: (a) Fifty percent of its capital, surplus, and undivided profits; or (b) one hundred twenty-five percent of its capital stock without the approval of the director.

. . . .

(6) Such as shall be purchased, held, or conveyed in accordance with RCW 30.04.212 granting banks the power to invest directly or indirectly in unimproved or improved real estate.

[Emphasis added.]

RCW 30.04.212 further declares in part, as follows:

(1) In addition to the powers granted under RCW 30.04.210 and subject to the limitations and restrictions contained in this section and in RCW 30.60.010 and 30.60.020, a bank:

(a) May acquire any interest in unimproved or improved real property;

(b) *May construct, alter, and manage improvements of any description on real estate in which it holds a substantial equity interest.*

(2) *The powers granted under subsection (1) of this section do not include, and a bank may not:*

(a) *Manage any real property in which the bank does not own a substantial equity interest;*

(b) Engage in activities of selling, leasing, or otherwise dealing in real property as an agent or broker; or

(c) Acquire any equity interest in any one to four-family dwelling that is used as a principal residence by the owner of the dwelling; however, this shall not prohibit a bank from making loans secured by such dwelling where all or part of the bank's anticipated compensation results from the appreciation and sale of such dwelling.

[Emphasis added.]

Based upon RCW 30.04.210(6) and RCW 30.04.212(1)(b), cited above, Bank may, directly or indirectly, convert the Bank Facility into a condominium and engage in the proposed activity for the purpose of liquidating its owned real estate, while keeping the Bank Retained Unit as its main branch facility.

Indeed, as a method of maximizing the return on its investment in the Bank Facility, the sale of condominium units, while retaining a portion as its principal branch facility, is preferable to the sale of the entire building and relocation.

Our only preference, as a matter of safety and soundness, is that a subsidiary of Bank be formed to take title to the Bank Facility as developer of the condominium project ("Developer Subsidiary"), and that Developer Subsidiary be the entity to (1) plat the condominium with the appropriate governmental authorities, (2) sell and convey title to the upper floor condominium units, and (3) reconvey the Retained Bank Unit to the Bank. It is also preferable, as a matter of safety and soundness, (1) that Developer Subsidiary remain in control of the Condominium Owners' Association until at least all units have been sold and/or conveyed and (2) that Developer Subsidiary be considered for third-party management of the Condominium Owners' Association and Common Area even after the sale and conveyance of all units.

Now, you have also inquired whether the Proposed Activity may be employed with respect to your other branch facilities. We see no problem in principle with this technique, but

we feel, as a matter of safety and soundness, that the same subsidiary (Developer Subsidiary) or other subsidiaries of Bank be used to act as developer(s) for condominium(s) of your other branch(es).

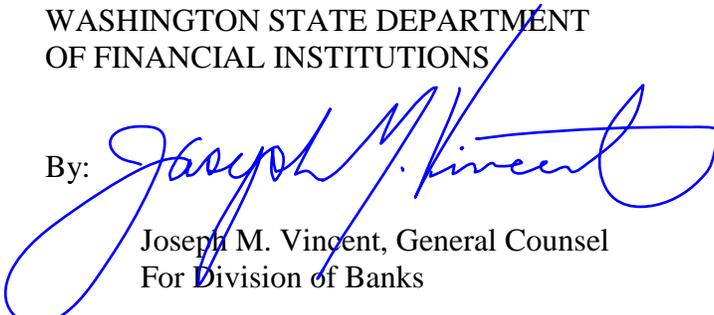
This interpretation is limited to the inquiry made by F & M Bank concerning its particular situation and, accordingly, may *not* have general applicability to other Washington-chartered banks and savings banks.

If you have any further questions, please do not hesitate to call upon Mike Abe, Program Manager for the Division of Banks.

Yours very truly,

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By:


Joseph M. Vincent, General Counsel
For Division of Banks

cc: Michael C. Abe