

Testimony of
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For the
COMMONWEALTH OF VIRGINIA

on behalf of the
CONFERENCE OF STATE BANK SUPERVISORS

before the
FINANCIAL SERVICES SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

UNITED STATES HOUSE OF REPRESENTATIVES

July 24, 2002

Good morning Chairman Bachus, Congresswoman Waters and members of the Subcommittee. I am Joe Face, Commissioner of Financial Institutions for the Commonwealth of Virginia, and Chairman of the Legislative Committee of the Conference of State Bank Supervisors (CSBS). Thank you for asking us to share the views of CSBS on bank real estate brokerage and management authority and on H.R. 3424, the “Community Choice in Real Estate Act.”

CSBS is the professional association of state officials who charter, regulate and supervise the nation’s nearly 7,000 state-chartered commercial and savings banks, and more than 400 state-licensed foreign banking offices nationwide.

As the organization that represents the primary regulators of more than seventy percent of our nation’s banks, we very much appreciate this opportunity to appear before the Congress to discuss the states’ experience with expanded powers for banks, and with real estate brokerage in particular.

We salute H.R. 3424’s sponsors for their appropriate emphasis on competition and choice for communities and consumers. We believe that the legislation in its current form, however, would not promote these worthy goals.

All of us, as public officials, are most concerned with the welfare of consumers. We in the state banking system have a long history of balancing

consumer protection with competitive opportunities that broaden consumer choice. Our experiences offer a valuable perspective on how to create and foster an environment that provides responsible, competitive options to consumers.

Federal Reserve/Treasury Department Proposal

As we have previously stated in written testimony to this committee and in our agency comment letter, CSBS strongly supports the rulemaking proposed by the Federal Reserve and the Treasury Department, which would allow Financial Holding Companies and Financial Subsidiaries to offer real estate brokerage and real estate management services.

While CSBS believes that real estate brokerage and management are activities that are financial in nature, and that these activities are both incidental and complementary to banking, this should not be the thrust of our policy debate. As Representative Calvert and the sponsors of H.R. 3424 appropriately identified in their legislation, advancing choice for consumers should be at the core of our discussion.

According to our most recent survey, 29 states and the District of Columbia currently allow their state-chartered banks to offer real estate brokerage services (see attached chart). States have authorized this activity through explicit authorization, regulatory interpretation, or through “wildcard” statutes that provide

parity with other federal or state charters. Several states have allowed this activity for between ten and twenty years. One state, North Carolina, has authorized real estate brokerage for more than one hundred years.

Despite the longstanding availability of these powers, only a small number of state-chartered banks are actively engaged in real estate brokerage. Among the banks that do use these powers, state bank supervisors have not encountered any significant safety and soundness or consumer protection concerns related to these real estate activities.

We believe that the states' experience supports the Federal Reserve's and Treasury's interpretation of real estate brokerage as an appropriate activity for bank holding companies. Based on this experience, we generally support a determination by the Board and Treasury that real estate brokerage and real estate management activities are financial in nature or incidental to a financial activity.

We qualify this support, however, with the stipulation that financial institutions should conduct these activities in compliance with applicable state laws, prudential operational safeguards and appropriate consumer protections. With these safeguards, we believe that consumers will benefit from the enhanced competition of new providers in real estate services.

Expanded Powers For State-Chartered Banks

The states have always been permitted to authorize powers for the institutions they charter. The importance of this authority to our nation's economic development and to the banking system cannot be underestimated. Congress acknowledged this role in the 1991 Federal Deposit Insurance Corporation Improvement Act (FDICIA) and reaffirmed it in the Gramm-Leach-Bliley Act (GLBA).

Both of those laws recognize the rights of state banks to conduct agency activities as permitted by their state legislators and state bank supervisors, and to conduct investment activities, beyond those allowed for national banks, with the review of the FDIC. State and federal regulators always have the authority to prohibit any activity that threatens the safety and soundness of an institution.

For years before the passage of GLBA, state banks conducted many non-banking or banking related activities, within the bounds of safety and soundness as determined by their state supervisors. These activities have primarily been in the areas of agency and brokerage: insurance sales, sales of uninsured investment products, travel agency and real estate brokerage. You will often hear the states described as the "laboratories for innovation" for our banking system, and the evolution of these types of agency and brokerage services at the state level

certainly helped create the range of financial products and services available in today's market.

The ability for state banks to test new products, services, powers and structures on a state-by-state basis has helped policymakers identify best practices for the delivery of financial services before granting these powers on a nationwide basis. This model has been very effective in promoting safety and soundness and ensuring consumer protection, while fostering innovation within our banking system.

H.R. 3424 – The “Community Choice in Real Estate Act”

The state bank supervisors believe that H.R. 3424, while well intentioned, does not promote, but in fact may limit choice.

While the current level of real estate brokerage activities among state-chartered banks does not give us a large competitive model for study, the communities in which these banks do operate clearly enjoy greater competitive opportunities and choices for the consumer. As with securities brokerage or insurance sales, we believe that, if adopted on a greater scale and with thoughtful consumer protections, the results would be in the consumers' interest.

Also, as I'm sure the committee is aware, state-chartered banks are not the only insured depositories that are able to offer real estate brokerage services. Regulatory interpretations of federal law have allowed Federal Savings Banks to conduct this activity through service corporations. The business lines of community banks and savings and loans are now almost indistinguishable from each other. It therefore seems unfair that the Congress would allow real estate brokerage for federal thrifts and prohibit it for bank holding companies.

Though real estate brokerage authority is available to thousands of insured depositories large and small, very few are engaged in the activity. Meanwhile, an innovative and evolving industry of securities firms, insurance companies and notably real estate firms, are blending banking and real estate services. We see no reason why this evolution should be one-sided, but that would be the effect of H.R. 3424, by preventing banks from offering their customers the same breadth of services.

We would also like to comment on the concern that Federal Reserve and the Treasury should not approve real estate brokerage for holding companies because it would allow the largest banks to dominate the market unfairly. As a part of our mission, state bank supervisors seek to promote credit availability and economic development in all communities in our states. We would strenuously

oppose a system that would allow a few institutions to dominate the financial markets and limit choice in our local communities.

In this regard, our recent experience is telling. The congressional passage of Riegle-Neal in 1994, allowing nationwide branching and banking, led to unprecedented consolidation in the banking industry. During the same period of time, we saw a record number of new banks chartered, mostly at the state level. These new institutions identified opportunities to provide their communities choices in products and service that were not available from some of the large consolidated institutions.

Like banking, real estate is a service business. And as in banking, local providers often know their customers' needs best. If this is truly the case, government intervention to protect these local service providers should not be necessary. We are convinced that increased competition in real estate will benefit consumers and their communities, as well as the service providers that are eager to earn their business.

Again, we commend this committee for its attention to this challenging issue. State bank supervisors appreciate the Committee's interest in our experience with real estate brokerage and management authority and in our views

on regulation and legislation affecting the authority of bank holding companies to conduct these activities.

We thank you for this opportunity to testify and look forward to any questions you and the members of the subcommittee might have.



Real Estate Brokerage

State	Available	Subsidiary Required	Authorization	Citation
Alabama	Yes	No	Statute	5-5A-18
Alaska	No	N/A	Statute	AS 06.05.272(d)
Arizona	Yes	Yes	Statute	ARS 6-184(A)(7)
Arkansas	No	N/A	Not Authorized	N/A
California	Yes	No	Statute	Cal. Corps. C. Sec. 206 and Cal. Fin. C. Sec. 751.3
Colorado	No	N/A	Not Authorized	N/A
Connecticut	Yes	No	Statute	36(a)-250(a)(40)
Delaware	Yes	Yes	Statute	Title 5 Del C. § 761(a)(3)
DC	Yes	No	Statute	DC Official Code §26.1401.09(a)
Florida	Yes	Yes	Statute	658.67(6), F.S.
Georgia	Yes ¹	No	Statute & Regulation	7-1-261, operational powers of banks; Regulation 80-5-5
Guam				
Hawaii	No	N/A	Not Authorized	N/A
Idaho	Yes	No	Wildcard	26-1101
Illinois	No	N/A	Not Authorized	N/A – Express prohibition exists within IL wildcard statute that grants parity with federal thrifts, among other entities
Indiana	Yes	No	Statute	I.C. 28-1-3.1
Iowa	Yes	No	Statute	Section 524.802(8)
Kansas	No	N/A	Not Authorized	N/A
Kentucky	Yes	No	Statute	KRS 287.102 for CAMEL 1 & 2 banks only
Louisiana	No	N/A	Not Authorized	N/A
Maine	Yes ²	No	Regulation	Maine 9B Section 131(6-A); 9B Section 446-A; Regulation #7
Maryland	No	N/A	Not Authorized	N/A
Massachusetts	Yes	No	Statute	G.L.c.167F §2 p. 25
Michigan	Yes	No	Statute	MCL 487.14104(1)
Minnesota	No	N/A	Not Authorized	N/A
Mississippi	No	N/A	Not Authorized	N/A
Missouri	No ³	N/A	Not Authorized	N/A
Montana	No	N/A	Not Authorized	N/A
Nebraska	Yes	No	Statute & Regulation	Department Statement of Policy #9
Nevada	No ⁴	N/A	Not Authorized	N/A
New Hampshire	Yes	Yes	Regulation & Wildcard	Ban 525, Federal Savings Associations Powers
New Jersey	Yes	No	Regulation	NJAC 3:11-11.5(a)(3)



Real Estate Brokerage

State	Available		Subsidiary Required		Authorization	Citation
	Yes	No	Yes	No		
New Mexico	Yes		No		Wildcard	58-1-54 58-1-34(2)(c)
New York	No		N/A		Not Authorized	N/A
North Carolina	Yes		Yes		Statute	NCGS 53-47c(3)
North Dakota	No		N/A		Not Authorized	N/A
Ohio	Yes ⁵		No		Statute	1109.02 ORC
Oklahoma	No		N/A		Not Authorized	N/A
Oregon	Yes		No		Wildcard	708A.010(4)
Pennsylvania	No		N/A		Not Authorized	N/A
Puerto Rico	No		N/A		Not Authorized	N/A
Rhode Island	Yes		Yes		Wildcard	RIGL 19-3-1(7)
South Dakota	Yes		No		Wildcard	51-A-2-14(3)
Tennessee	Yes		No		Statute, Regulation & Wildcard	T.C.A. § 45-2-607(d); Regulation Chpt. 0180-19; 45-14-105
Texas	Yes		No- Preferred		Statute & Regulation	Texas Real Estate License Act TFC 32.001(b)(2) & VTCS Art. 6573a TAC 535.553
Utah	No		N/A		Not Authorized	N/A
Vermont	No		N/A		Not Authorized	N/A
Virginia	Yes		Yes		Wildcard	6.1-58.1 B(3)
Washington	Yes		No		Wildcard	RCW 30.04.127
West Virginia	No		N/A		Not Authorized	N/A
Wisconsin	Yes		No		Statute & Regulation	221.0322 & DFI -Bkg#16
Wyoming	Yes		No		Statute	W.S.13-2-101(a)(xiii) & W.S.13-2-101(a)(xii)
SUMMARY	Yes	No	Yes	No		
	30	22	7	23		

NR: Not Reported.
N/A: Not Applicable.

¹ Not specifically referenced in the Code. In 1997, the Department approved one bank to perform real estate brokerage services as a power incidental to the purposes for which banks are organized. However, the Department's authority has been challenged recently by the real estate industry and, as a result, a Declaratory Ruling was issued on 2/13/02 which states that the Department will not approve real estate brokerage as an incidental power of banks until the following information is available: (1) Action by the Board of Governors of the Federal Reserve System, the Secretary of the Treasury, or the Office of the Comptroller of the Currency, which would allow a national bank, a financial holding company or a financial subsidiary to perform real estate brokerage services; or (2) Federal legislation that would permit real estate brokerage services by banks, their subsidiaries or affiliates, financial subsidiaries, or financial holding companies; or (3) Other action at the federal level that would permit real estate brokerage to be performed by banks, their subsidiaries or affiliates, financial subsidiaries or financial holding companies.

² The Department would review on a case-by-case basis and refer to Sections 416 and 419-A of the Maine Banking Statute, together with Regulation 7.



³ Depository Trust Companies have real estate brokerage powers under 362.105/Banks may convert to depository trust companies to engage in real estate brokerage activities.

⁴ Authorized for Savings Banks under state wildcard authority with OTS

⁵ Prohibition on real estate brokerage specifically removed in 1997. Authority available under incidental powers.

NOTE: The data included in this table is provided for information purposes only. It should not be construed to be legal guidance.