

Letter to the Editor: Realty Rulings Raise Specter of S&L Crash

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To the Editor:

It's too bad that *American Banker* readers who read Richard K. Kim's Viewpoint piece ["Believe It: Realty Rulings Break No Ground," Feb. 10] weren't told that Mr. Kim's law firm has represented Bank of America, a recipient of the OCC's letter, and that he is a past employee of the bank. Had Mr. Kim's relationship been disclosed, the reasons for his position would have been easier to comprehend.

Frankly, it's difficult for those of us who remember the savings and loan debacle of the 1980s to understand how the comptroller of the currency could possibly sanction national banks' owning and operating the very kinds of real estate projects that got thrifts - and the federal taxpayers - so deeply in trouble.

Last December the OCC blessed 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% of the 150 rooms would be used by persons related to its 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% of the office space and 10% of the hotel rooms, and sell all the condos.

Union Bank of California received OCC approval late last year for an equity investment in 70% of 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.

Mr. Kim argues that long-standing law authorizes national banks to develop, manage, and own any "excess premises" as long as 20% of the facility is used by the bank, though he notes there is a long-standing precedent for numbers lower than 20%.

According to the FDIC, it insures financial institutions with more than 90,000 offices and branches in this country. Can we look forward to 90,000 applications from FDIC-insured institutions for bank-owned and -managed real estate investments? It's enough to make Charles Keating blush.

Chief Justice Earl Warren once said, "It is the spirit and not the form of law that keeps justice alive." Before things get out of hand, perhaps Mr. Kim, Comptroller Dugan, and the national megabanks should pay attention to the spirit of federal laws that have sought for decades to maintain a clear distinction between banking and commerce.

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