Financial Institutions and Real Estate Brokerage

The Gramm-Leach-Bliley Act of 1999 permits holding companies and national bank subsidiaries to engage in any activity that is financial in nature or incidental to a financial activity. However, the Act does not authorize holding companies or subsidiaries to act as real estate brokers or managers. The Act specifically excludes real estate investment and development, unless otherwise authorized by law, as a permissible activity for bank financial subsidiaries. The Act also authorizes the Federal Reserve and the Treasury (Agencies) to expand the permissible list of financial activities, though the two Agencies must mutually agree on what a financial activity may be.

In January 2001, the Agencies issued a Joint Proposed Regulation seeking comment on whether real estate brokerage and real estate management activities are financial in nature or incidental to a financial activity. If the Agencies determine that real estate brokerage and management services are financial in nature, these activities could be declared permissible for financial holding companies and subsidiaries.

It is apparent why financial holding companies and subsidiaries would want to enter the real estate brokerage and management market. Commercial real estate transactions are averaging higher and higher prices while the transaction volume continues to climb. Pension fund advisors are looking for large, high-quality property assets to meet their asset allocation targets and are turning to commercial real estate brokers. Banks see a huge, viable market that Congress has placed outside their grasp.

Since 2002, Congress has annually enacted temporary bans against the Treasury Department issuing a final rule permitting national bank conglomerates to engage in real estate brokerage and management. More recently, in December 2007, President Bush signed into law the FY2008 appropriations bill which includes a two-year provision banning banks from entering the real estate brokerage, property leasing, and management business. A permanent ban was very close to passing Congress; however, due to a last minute objection in the Senate, the permanent language was replaced with a two-year ban.

Position Statement

The CCIM Institute opposes changes or interpretations in federal statutes and regulations which would permit any banks or bank holding companies or subsidiaries to enter the field of commercial real estate investment, brokerage and/or management.

The CCIM Institute urges the Federal Reserve Board, the Department of Treasury and Congress to use their authority to disallow financial holding companies and financial subsidiaries from expanding into the field of real estate investment, brokerage and/or management. The Institute is opposed to such expansion for the following reasons (but not limited to):

- The investment or financial aspects of commercial real estate – wealth creation, tax deduction, financial asset – are incidental to the primary purpose for which people purchase commercial real estate. People buy commercial real estate in order to operate a business;
- Financial Institutions and Real Estate Brokerage – banks are often not in a position to give unbiased representation to a buyer or a seller. They often are in an ownership, trusteeship or receivership position or at the very least stand to make additional fees from financing.
- Independent commercial real estate companies, even large and well-capitalized ones, cannot compete with the advantages gained through a federal banking charter. The federal deposit insurance system subsidizes these institutions, giving them a significant competitive boost in the market place. Congress has long recognized the power of this advantage, which is one reason why limits have been placed on banks’ non-banking activities;
- Certified Commercial Investment Members (CCIMs) provide valuable services that are not financial in nature such as market analysis, lease analysis and investment analysis. While financial analysis is also
essential to the CCIM skill set, it is a very specialized activity related to the link between buyers and the best property for their investment, not finding or arranging financing;

- Congress has consistently rejected state financial entities and their federal counterparts’ efforts to allow them entry into the real estate brokerage and management arena, therefore, they should not be allowed to circumvent the power of Congress by appealing to the Agencies;

- Consumers will suffer if financial entities are allowed to enter the real estate market. Banks could control the real estate transaction from end-to-end, creating opportunities for extra charges and add-ons. Unconstrained integration of banking and commerce could compromise bank-lending decisions and create conflicts of interest. Also, this rule would allow banks to buy up large brokerages and then drive smaller ones out of business leaving a less competitive market and fewer choices for the consumer. (updated 10/08)