

**Interpretive Letter No. 00-05 ( July 31, 2000)**

**A state bank may dispose of other real estate owned by any transaction that is a sale under accepted accounting principals, including selling the real estate pursuant to a land contract or a contract for deed. Disposal may also be made by a donation of the real estate, but may not be conditioned by a potential reversion.**

Please accept this correspondence as confirmation that the Office of Banks and Real Estate (the "Agency") has received and reviewed your letter and attachments. That letter asked how certain property owned by \* (The "Bank") could be disposed of in order to comply with the requirements of Section 5(9) of the Illinois Banking Act, [205 ILCS 5/1 et seq.] (the "Act"). Specifically you queried whether the Bank could donate four unimproved lots to the Village.

Your letter indicates that the Bank has obtained title to four unimproved lots located one-half block from the Bank's main location. This property is not utilized by the Bank to conduct its business and is considered to be "other real estate owned." Section 5(9) of the Act generally prohibits a state-chartered bank from directly owning real estate, other than that necessary to do its banking business, for a period longer than ten years. You have also indicated that the Agency has previously indicated this other real estate owned must be disposed of by May 13, 2001.

A state-chartered bank may comply with its obligation to dispose of real estate pursuant to Section 5(9) of the Act by entering into a transaction that divests the bank of title to the property. Disposal may be achieved by any transaction that is a sale under accepted accounting principles, including selling the property pursuant to a land contract or contract for deed.

Pursuant to the authority provided under Section 5(6) of the Act, a bank may make reasonable donations for the public welfare. Therefore, the bank is authorized to dispose of the property by means of a donation. Your letter expressed an interest in making such a donation to the Village subject to a covenant that would restrict financial services from being conducted on the property, absent prior approval from the Bank. Although such restrictive covenants are generally acceptable under current Illinois case law, Illinois courts have required that they be carefully drafted to avoid ambiguity. You are urged to consult with the Bank's counsel in order to determine the viability of making the donation subject to such a restriction.

Your letter also raised the possibility of the donation including a provision whereby the property would revert to the Bank if the Village determined to subsequently dispose of the donated property. It is the Agency's position that any provision that allows for reversion of the property to the Bank following a donation transfer of title may be considered less than the complete divestment required by Section 5(9) of the Act.

We trust this is responsive to your inquiry. If you have additional questions, please do not hesitate to contact the Agency at your convenience. You are also urged to consult with your federal regulator in order to ensure compliance with applicable regulations.