

INTERPRETIVE LETTER NO. 01-04 (September 17, 2001)

A loan to a land trust is not aggregated with the individual borrowings of a beneficiary unless the bank is actually looking to the beneficiary for repayment.

This is in response to your inquiry to the Office of Banks and Real Estate ("Agency") asking whether a loan from * ("Bank") to six individuals would be aggregated with a separate loan to a land trust whose beneficiaries are trusts established by the same six individuals. Based upon the information you have provided, it is the Agency's position that aggregation of the loans would not be required.

The Bank is considering making an unsecured loan ("Loan 1") in the amount of \$700,000 to six individuals who would be jointly and severally liable for repaying the loan. The borrowers on Loan 1 have an aggregate net worth of over \$250,000,000. The Bank also wishes to extend a separate loan ("Loan 2") to a land trust in the amount of \$1,100,000, secured by an assignment of beneficial interest. The Bank would retain \$1,000,000 of Loan 2 and the remaining \$100,000 would be participated out to another institution.¹ The beneficiaries of the land trust are trusts established by the six individuals described above. Those individuals would not be guaranteeing or personally signing Loan 2. The value of the property in the land trust well exceeds the loan amount proposed, and the income produced by the property in the land trust is sufficient to cover both the expenses and the servicing requirements of the proposed debt. The Bank's legal lending limit is slightly over \$1,000,000.

Section 32 of the Illinois Banking Act ("Act") prohibits the Bank from permitting any person's outstanding liabilities to exceed the legal lending limit.² Section 2 of the Act defines "person" to include a trust.³ Illinois case law has also established that a written trust possesses a distinct legal existence.⁴ The circumstances under which loans to different persons would be aggregated are described by Rule.⁵ In general, the rules of aggregation will be applied to a loan made to one person that is not justified without relying on the creditworthiness of another person. Relevant factors in this determination are: 1) Will the borrower have the capacity from his or her own assets and operations to repay the loan, or is the source of repayment the other person; and 2) Were the proceeds of the loan used for the primary benefit of the other person without a corresponding economic benefit to the borrower?

Your correspondence indicated that the Bank is relying on the individual creditworthiness of the respective borrowers in making the loans and that Loan 2 would not be based on the net worth of the individual beneficiaries of the land trust. Rather, it would be based on the value of and the income generated by the property in the land trust. Provided the land trust has ample collateral and income to service its debt independent of the creditworthiness of the individual beneficiaries, the loans you have described would not be aggregated for lending limit purposes.

1 Since the Bank intends to participate out the portion of Loan 2 that exceeds the Bank's lending limit, the loan would not create a lending limit violation.

2 205 ILCS 5/32

3 205 ILCS 5/2

4 Pierce v. Chester Johnson Electric Co. 454 N.E.2d 55(1983).

5 38 Ill. Admin. Code § 330 (Subpart B).