

INTERPRETIVE LETTER 87-3 (MARCH 19, 1987)

Liability of general partner is aggregated with liability of partnership under Section 32 notwithstanding loan document that purports to limit liability of general partner.

This is in response to your letter regarding a lending transaction involving * and *.

The lending limit violations cited by this Agency's examiners in their examination of the [Bank] involve the attribution of partnership loans to general partners. You have taken the position that the loans in question should not be aggregated, since the loan documentation expressly states that the [Bank] would not assert any liability against the general partners arising out of their execution of the loan documents in their capacity as general partners. This belief was predicated upon the language of Section 5(b) of the Uniform Partnership Act which states that any partner in a partnership may enter into a separate obligation to perform a partnership contract. You view this language as authorizing a partner to reduce his obligation with the consent of the obligee. Furthermore, you have relied upon the fact that Section 3-105(h) of the Uniform Commercial Code expressly provides that a promissory note contains an unconditional promise, regardless of the fact that the "instrument is limited to payment out of the entire assets of the partnership....Comment seven to the Code clearly states that the liability of individual members is thereby excused and that this policy is extended to a partnership." On the basis of these positions, you have concluded that you cannot agree with the conclusion reached in my * letter that the limitation of liability of general partners is questionable in light of basic partnership law.

After a thorough review of the applicable provisions of the Uniform Partnership Act (UPA), I am unable to agree with your contention that general partners may limit their liability for partnership debts to partnership assets. While Section 15 of the UPA does provide that general partners are jointly liable for all debts of the partnership but any partner may enter into a separate obligation to perform a partnership contract, this Agency views this language as an extension of the principle that every partner is an agent of the partnership. Section 9 of the UPA sets forth this principle and further provides that any partner may bind the partnership by executing any instrument in the partnership name. To construe the language of Section 15 as authorization for a general partner to limit his or her personal liability would be the death knell of basic partnership law.

With respect to Section 3-105(1)(h) of the Uniform Commercial Code, it provides that a promise is not made conditional by virtue of the fact that the instrument is limited to payment out of the assets of the partnership. I strongly disagree with your argument that this Section provides further support for partners to limit their liability for partnership debt to partnership assets. The official comment to Section 3-105(1)(h) states that this provision only relates to the negotiability of the instrument and is not intended to change the law with respect to the liability of a partner.

On the basis of this reasoning and the firm position of this Agency that an attempt to eliminate the liability of certain general partners from the liabilities of the partnership when the partnership borrows from a bank is not a prudent banking practice, these transactions will remain in violation of Section 32 of the Illinois Banking Act.