

INTERPRETIVE LETTER 90-22 (OCTOBER 25, 1990)

**State bank may form subsidiary to hold title to assets acquired in foreclosure;
Commissioner will waive 60 day notice period in extenuating circumstances.**

This is in reply to your letter regarding the incorporation of a subsidiary by the Bank. The subsidiary would be incorporated pursuant to Section 5(12)(a) of the Illinois Banking Act [Ill. Rev. Stat. Stat. 1989, ch. 17, par. 311(12)(a)]. It is the Bank's intention to incorporate the subsidiary for the purpose of holding title to assets, in particular a motel and restaurant, which the bank will be acquiring by foreclosure.

Section 5(12)(a) authorizes a state-chartered bank to:

[O]wn, possess and carry as assets stock of one or more corporations which is or are engaged solely in one or more of the following businesses:

(a) Holding title to and administering assets acquired as a result of the collection or liquidating of loans....

Clearly the Bank is authorized to establish a subsidiary for the purpose of "holding title to and administering assets" such as the motel and restaurant. However, because state-chartered banks are not authorized to engage in non-banking business activities for an unlimited period of time, this Office will expect the Bank to provide this Office with a business plan for divestiture or liquidation of the motel and restaurant. The Bank should also provide this Office with periodic information that reveals what commercially reasonable efforts the Bank is making toward divestiture or liquidation of those assets. This information (i.e., the business plan and documentation related to divestiture) should be communicated to District Supervisor * in this Office.

As you acknowledged in your letter, Section 5(12) calls for state-chartered banks to provide this Office with 60 days advance notice of their intent to establish a subsidiary. In fact, this Office requires state-chartered banks to complete and file a "Notice of intent to establish a subsidiary or acquire stock in a corporation pursuant to Section 5(12) of the Illinois Banking Act." A filing fee of \$500.00 is to accompany the Notice. As I understand the circumstances which we discussed during our telephone conversation and which were set forth in your letter, the Bank is proposing to foreclose on the property in question as early as next week. Obviously, this "sudden" establishment of a subsidiary by the Bank is not consistent with the 60 day advance notice requirement. My analysis of the 60 day advance notice requirement is that the purpose of the requirement is to give this Office time to review the circumstances, the proposed business activities of the subsidiary and the potential impact on the safety and soundness of the state-chartered bank establishing the subsidiary. The 60 day period gives this Office time to notify the establishing bank of any objections this Office might have regarding the subsidiary. This 60 day "review and comment" period is particularly applicable when a state-chartered bank intends to engage de novo in a business activity through a subsidiary established pursuant to Section 5(12)(c). Circumstances may arise when adherence to and

enforcement of the 60 day notice requirement is not commercially reasonable or in furtherance of the safety and soundness of the state-chartered bank. Your letter states that the Bank has decided to foreclose on the property as early as next week. Presumably having to wait another 60 days to take action could lead to further deterioration of both the loan(s) in question and the condition and value of the collateral. A 60 day delay may not be prudent and may not be consistent with safe and sound banking practices.

Please be advised that this Office will offer no objection and will take no action to penalize the Bank for failure to comply with the 60 day notice requirement on this occasion. It is the opinion of this Office that the Bank is authorized to establish the subsidiary in question pursuant to Section 5(12)(a) and that the establishment of the subsidiary prior to the expiration of the 60 day notice period will not have a negative impact on the safety and soundness of the Bank. In fact, the establishment of the subsidiary at this time to hold title to the property might further insulate the bank from unknown liabilities and a 60 day delay in foreclosing on the property might not be commercially reasonable, safe or sound banking practice by the Bank. The Bank will be required to complete the enclosed "Notice of intent to establish a subsidiary or acquire stock in a corporation pursuant to Section 5(12) of the Illinois Banking Act" and submit the \$500.00 filing fee. The completed form and fee should be sent to District Supervisor *.

[NOTE: The extenuating circumstances were found because of the danger of immediate collateral deterioration and the Agency received prior notice, which enabled it to expedite the same review that would have been made during the statutory review period.]