

INTERPRETIVE LETTER NO. 97-06 (October 16, 1997)

An Illinois corporate fiduciary may deal with trust owned farm real estate as trustee or may engage in farm real estate management and brokerage in an agency capacity.

We are writing in response to your letter on behalf of your client, ("Bank"), to issue an interpretation pursuant to Section 8-2 of the Corporate Fiduciary Act ("CFA"), 205 ILCS 620/8-2 (1996). Specifically, you requested that the Office of Banks and Real Estate ("Agency") determine that the trust department of an Illinois state-chartered bank may engage in farm real estate brokerage in accordance with the terms and conditions set forth in Interpretive Letter 95-11 (October 27, 1995). (An Illinois trust company may deal with trust owned farm real estate as trustee or may engage in farm real estate management and brokerage in an agency capacity). The Agency concludes that the terms and conditions set forth in Interpretive Letter 95-11 for an Illinois state-chartered trust company should apply equally to the trust department of an Illinois state-chartered bank.

Bank is an Illinois state-chartered bank and a wholly owned subsidiary of *, a bank holding company. * ("Trust Company"), is an Illinois trust company and also a wholly owned subsidiary of *. Trust activities are presently conducted by the Trust Company; however, Bank also currently holds a valid certificate of authority to exercise trust powers issued by the Agency. The Bank proposes to undertake farm real estate brokerage activities as set forth in Interpretive Letter 95-11, but the activities would be conducted by Bank through its trust department rather than by an Illinois trust company as was the case in Interpretive Letter 95-11.

State-chartered banks are permitted by Section 3 of the Illinois Banking Act, 205 ILCS 5/3 (1996), to accept and execute trusts upon obtaining a certificate of authority pursuant to the Corporate Fiduciary Act ("CFA"). The term "corporate fiduciary" is defined in the CFA to include a trust company or the trust department of a bank, savings bank, savings and loan association, or foreign banking corporation. 205 ILCS 620/1-5.05 (1996). The CFA grants the Agency authority to specify powers of corporate fiduciaries generally or of a particular corporate fiduciary and to limit such powers. Trust departments and corporate fiduciaries have long exercised farm real estate brokerage activities as a fiduciary power and the Agency is aware of no reason to limit that power to a particular form of corporate fiduciary.

By this Interpretive Letter, the Office now extends the application of Interpretive Letter 95-11 to any Illinois corporate fiduciary. The analysis, opinions, limitations and requirements set forth in Interpretive Letter 95-11 are hereby applicable to all corporate fiduciaries. (Certain references to the Business Corporation Act of 1983, 805 ILCS 5 (1996), in Interpretive Letter 95-11 are not applicable to corporate fiduciaries that are organized as banks, savings banks, savings and loan associations, or foreign banking corporations because those entities are not established under the Act). In addition, references to the Illinois Commissioner of Savings and Residential Finance refer to this Agency, and the references to the licensing authority under the Real Estate License Act of 1983, now refers to the Agency's Bureau of Real Estate Professions; the present Agency was formed by the merger of the former Commissioner of Banks and Trust Companies and the Commissioner of Savings and Residential Finance.

Therefore, the trust department of Bank may act as a farm real estate broker with respect to: 1) farm real estate owned by Trust Company as trustee; 2) farm real estate managed by Trust

Company in an agency capacity; and 3) farm real estate owned by a third party who enters into an agency relationship with the trust department of Bank under a brokerage listing agreement.

It remains the position of this Office that an Illinois corporate fiduciary may deal with trust owned farm real estate as trustee or engage in farm real estate management and brokerage as agent in accordance with terms and conditions as set forth in Interpretive Letter 95-11, including the proper licensure.