

Federal Banking Law Reporter Agency Letters and Opinions (1977 to present) - FRB Interpretations, Comptroller Letters, FDIC Advisory Opinions, OTS General Counsel Opinions, FinCEN Rulings and Guidance, Bank Development of Its Other Real Estate Owned., ¶84,031, Federal Reserve Board, (Mar. 12, 1987)

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Madonna Kissel Starr, Attorney. No Objection Letter No. 87-2. ¶84,031. March 12, 1987. Interpreting 12 USC 24(3) (¶58,705); 12 USC 29 (¶47,157); 12 CFR 5.34 (¶60,513G), 12 CFR 7.3025 (¶60,854).

This is in response to your December 8, 1986 request for a no objection letter on behalf of Florida National Bank (FNB) regarding its proposal for the development of its other real estate owned (OREO). The legal memorandum accompanying your letter indicated that in 1984 FNB made a loan to a borrower, taking a valid first mortgage on the property. Subsequently, the borrower defaulted on the loan and FNB took back a deed in lieu of foreclosure. In order to preserve the existing zoning classification of the land, a planned unit development (PUD), FNB began immediate development plans and the commencement of construction. If FNB had failed to act, the PUD zoning would have expired, which would have resulted in a substantial decrease in the ultimate land value as developed.

In order to protect the value of the property and to obtain full repayment of the loan, FNB proposes to continue to improve and develop the property through CIMC, Inc. CIMC is one of nine operating subsidiaries established by FNB in 1985 to purchase, hold and convey real estate that was transferred to FNB in satisfaction of debts previously contracted (DPC) or that was purchased at sales under judgments, decrees, or mortgages held by FNB. In accordance with 12 C.F.R. §7.3025(j), the subsidiary would undertake to improve and develop the real estate in anticipation of its sale.

Initially, a joint venture agreement between CIMC and an independent engineer/architect for the purpose of developing the real estate was proposed in your letter of October 29, 1986. The December 8, 1986 legal memorandum suggested that the FNB proposal was virtually identical to one described in a no objection letter to Barnett Bank, Jacksonville, Florida. No Objection Letter No. 86-6 [Current] Fed. Banking L. Rep. (CCH) ¶84,012 (April 22, 1986). That letter, however, involved a limited partnership arrangement between Barnett Bank's subsidiary and a real estate development company, not a joint venture agreement. A partnership comprising subsidiaries of financial institutions for purposes of liquidating DPC assets had previously been approved, under specified parameters, in Interpretive Letter No. 355, [Current] Fed. Banking L. Rep (CCH) ¶85,525 (December 10, 1985).

In lieu of the joint venture agreement, your letter of February 3, 1987 proposed that CIMC enter into an employment contract with the developer. The relationship will be strictly one of master-servant, *i.e.*, employer-employee. CIMC will have total control over the developer and will supervise the project. In addition to an hourly charge for his services, the developer has requested compensation of forty percent (40%) of the profits, if any, once the project has been sold.

A national bank is expressly authorized to make contracts under 12 U.S.C. §24 (Third). Activities legally permissible for a national bank may be conducted by means of an operating subsidiary in accordance with 12 C.F.R. §5.34. Consequently, CIMC can enter into an employment contract with a developer to develop and dispose of OREO.

Furthermore, under 12 U.S.C. §29, a national bank is authorized to hold real estate for specified purposes, including property conveyed to it in satisfaction for debts previously contracted. FNB must ensure that the development and divestiture is completed within the statutory requirement of five years. Moreover, as mandated by 12 C.F.R. §7.3025(e), the bank must continue to exert diligent efforts to dispose of the property, and it must maintain current documentation reflecting this effort. The bank must obtain an annual appraisal of the fair

market value of the property, which has been prepared by an independent and qualified appraiser. 12 C.F.R. §7.3025(h). Finally, FNB's loans to, and other dealings with, CIMC generally must be prudent and conducted in a safe and sound manner.

Based on your representations that the proposal complies with all the requirements of 12 U.S.C. §29 and 12 C.F.R. §7.3025, and provided that the forty percent (40%) compensation to the developer under the employment contract does not result in joint venture liability under relevant state law, the Comptroller interposes no objection to FNB's plans to develop and dispose of its OREO through its operating subsidiary, CIMC.