



STATE OF ALABAMA
STATE BANKING DEPARTMENT



Bob Riley
Governor

John D. Harrison
Superintendent of Banks

MEMORANDUM

TO: Chief Executive Officers of all Alabama, State-chartered Banks

FROM: John D. Harrison, Superintendent of Banks

SUBJECT: SBD Opinion 2007-1 – Real Estate Brokerage and Management Activities

DATE: June 13, 2007

As noted in the attached Opinion, this department has previously issued opinions stating that certain real estate brokerage and real estate management activities are authorized for Alabama, State-chartered banks pursuant to Alabama Banking Code Section 5-5A-18(12) as powers incident to the business of banks. The attached Opinion does nothing to change the department's position that such powers are authorized for Alabama, State-chartered banks, but does set out the following:

- 1) Rescinds the prior two approvals because they have not been acted upon,
- 2) Establishes procedures for future applications that include a listing of required information to be furnished to the superintendent,
- 3) Exempts activities in which Alabama, State-chartered banks are currently engaged,
- 4) Provides for consideration by the superintendent of consumer safeguards to limit tying of other services, and
- 5) Provides for review and consideration of applicable licensing requirements for banks, their affiliates, their subsidiaries, or their individual employees to be engaged in real estate brokerage and management activities.

In relation to the fifth item above, it is anticipated that banks, their affiliates or subsidiaries, and individuals employed by or affiliated with banks will not be discriminated against or unreasonably denied real estate licenses. While this Opinion sets forth the expectation that, pursuant to applicable requirements, applications for licenses will be filed, the general authority for banks, their affiliates, or their subsidiaries to engage in real estate brokerage and management activities is not conditioned upon approvals by any office or agency other than that of the Superintendent of Banks.

If you have any questions, please feel free to contact me at (334) 242-3585 or Deputy Superintendent Trabo Reed at (334) 242-3507.

SBD Opinion 2007-1

Real Estate Brokerage and Management Activities – Rescission of Prior Opinions

Background: This Office previously has issued two conditional approvals, both dated July 8, 2002 under Alabama Banking Code Section 5-5A-18, for Alabama, state-chartered banks to conduct certain real estate brokerage and real estate management activities. The approvals granted on that date were for real estate brokerage and management activities described as follows:

“Real Estate Brokerage

Real estate brokerage is the business of bringing together parties interested in consummating a real estate purchase, sale, exchange, lease, or rental transaction and negotiating on behalf of such parties a contract relating to the transaction. The activity of real estate brokerage would include acting as agent for a party to a real estate transaction; listing and advertising real estate; locating buyers, sellers, lessors, and lessees interested in engaging in real estate transactions among themselves; conveying information between the parties to a potential real estate transaction; providing advice in connection with a real estate transaction; negotiating price and other terms on behalf of parties to a real estate transaction; and administering the closing to a real estate transaction. Real estate brokerage generally does not involve purchasing or selling real estate as principal.

Real Estate Management

Real estate management is the business of providing for others day-to-day management of real estate. Day-to-day management of real estate could include procuring tenants; negotiating leases; maintaining security deposits; billing and collecting rent payments; providing periodic accountings for such payments; making principal, interest, insurance, tax, and utilities payments; and generally overseeing inspection, maintenance, and upkeep of real property. Real estate management generally does not involve purchasing, selling, or owning real estate as principal.”

Each of the July 8, 2002 approvals of the above activities from this Office contained the following conditions:

“While certain real estate brokerage and management activities are permitted as incidental powers, the bank and its subsidiaries in providing these services are not permitted to: (i) invest in or develop real estate as principal; (ii) take title to, acquire or hold any ownership interest in real estate brokered by the bank or its subsidiaries; or (iii) directly or indirectly, other than in a pure oversight capacity, maintain or repair real estate managed by the bank or its subsidiaries (the bank or its subsidiaries may arrange for an independent, unaffiliated third party to provide these services).

Additionally, as a condition to providing real estate brokerage and management activities, the bank and its subsidiaries are further prohibited from (i) offering preferential terms on any loan to any customer who uses the bank’s or subsidiary’s real estate brokerage or management services; and (ii) tying real estate brokerage or management services to any other services provided by the bank, its subsidiaries or the bank’s affiliates. For example, while engaging in real estate brokerage or management, the bank or its subsidiary would be prohibited from varying the terms and conditions for any loan or service on the condition that the customer obtain real estate brokerage or management services from the bank or its subsidiary.

Furthermore, while these powers are authorized for an Alabama State-chartered Bank or its majority owned subsidiary, they are not authorized via Alabama Banking Code §5-5A-18 for a bank holding company or a non-bank subsidiary of the bank holding company.”

The approvals were granted under an opinion that such limited real estate brokerage and management activities were incidental to the business of banking under §5-5A-18(12). Subsequent to the issuance of these approvals, neither of the banks to which the approvals were granted has elected to rely on the approvals to exercise the approved real estate brokerage or management powers.

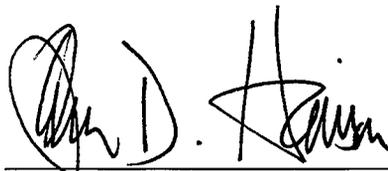
This Office believes that it is now proper to rescind the previous approvals, and upon receipt of any future application, to evaluate appropriate conditions under which such approvals should be granted to provide for applicable regulation and licensing of such activities.

Opinion: The two previous approvals dated July 8, 2002, issued by this Office relating to real estate brokerage and management activities are hereby rescinded. Effective this date, unless excluded by the next sentence, any Alabama, state-chartered bank or trust company, including subsidiaries thereof, (collectively "company" or "companies") wishing to engage in real estate brokerage or real estate management activities that were previously approved under the July 8, 2002 opinions and which are to be provided to the public in Alabama for a fee, commission or other valuable consideration must submit a written application to this Office to engage in such activities. No such application is required if the activity could have been engaged in as of July 8, 2002; or is not provided to the public in Alabama for a fee, commission or other valuable consideration; or is provided for the company's fiduciary customers; or is provided in connection with property that is collateral of the company or its affiliate for debts previously contracted or is owned, leased or occupied by the company or its affiliate.

Where an application is required, such written application must contain (a) a complete description of the real estate brokerage and management activities in which the company wishes to engage; (b) whether the proposed activities are to be conducted in the bank, trust company, or a subsidiary thereof; (c) information as to requirements for and the status of filings of applications for licensure with the Alabama Real Estate Commission; (d) a description of proposed consumer safeguards and policies prohibiting tying of other company services, loan approvals, or pricing thereof to the real estate brokerage or management activities; and (e) other information required by this Office. It is expected that this Office and the Alabama Real Estate Commission will coordinate and otherwise cooperate with respect to processing any applications that require a license from the Alabama Real Estate Commission.

Any future approval of such application by this Office also will consider required compliance with applicable requirements of Alabama Code Section 34-27-30 regulating real estate activities. It is the intent of this Office that future approvals of such applications by this Office that require licensing within Alabama will be conditioned upon such applications for licenses being properly filed with the Alabama Real Estate Commission.

This the 13th day of June, 2007.



John D. Harrison
Superintendent of Banks