Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

July 8, 1993

Interpretive Letter #1043
December 2005
12 USC 29

Dear **[ ]**:

This letter responds to your correspondence of June 22, 1993, in which you inquire whether **[ ]** ("the Bank") its condominium when it is not being used for bank purposes. In a previous letter, dated January 21, 1993, I opined that the Bank could legally retain the condominium as bank premises under 12 U.S.C. § 29. At the time, the condominium was used only for bank purposes and the Bank did not intend to rent it. Now, the Bank proposes to lease the condominium when it is not being used by the Bank in order to offset some of the condominium's expenses. Subject to the conditions discussed below, I believe that the Bank may let the condominium when it not being used for bank purposes.

The condominium in question was contributed at not cost to the Bank upon the dissolution of the Bank's former holding company. It has been used exclusively for purposes of the Bank's business. At certain times of the year, is so crowded that commercial accommodations are not available for the Bank's auditors, consultants, and certain off-island customers. The Bank has maintained the condominium on its books at no more that $1.00 and claimed the condominium fee of approximately $9600 annually as a business deduction on its tax return.

The National Bank Act allows national banks to purchase, hold, and convey real estate for only four purposes. On of those purposes is "[s]uch as shall be necessary for its accommodation in the transaction of its business." 12 U.S.C § 29 (First). In my earlier letter, I opined that the Bank could retain the condominium because providing accommodations for outside consultants, auditors and customers, when other commercial lodging is not readily available, is a legitimate business concern of the Bank.

Section 29's limitations are designed "to keep the capital of the banks flowing in the daily channels of commerce; to deter them from embarking in hazardous real estate speculations; and

to prevent the accumulation of large masses of such property in their hands . . .. " Union Nat'l Bank v. Matthews, 98 U.S. 621, 626 (1879(. See also First Nat'l Bank v. Comptroller of the Currency, 697 F.2d 675, 681 (5th Cir. 1983). However, 12 U.S.C. § 29 does not prohibit a national bank from owning or leasing a building larger that its current needs dictate. See, e.g., Perth Amboy Nat'l Bank v. Brodsky y, 207 F. Supp. 785, 788 (1962). Additionally, consistent with section 29, both the courts and the OCC have recognized that it is appropriate for a bank to maximize the utility of its banking premises.

In Brown v. Schleier, 118 F. 981 8th Cir. 1902), aff'd, 194 U.S. 18 (1904), the court stated:

> If the land which [a national bank] purchases or leases for the accommodation of its business is very valuable, it should be accorded the same rights that belong to other landowners of improving it in a way that will yield the largest income, lessen its own rent, and render that part of its funds which are invested in realty most productive. There is nothing, we think, in the national bank act, when rightly construed, which precludes national bank, so long as they act in good faith, from pursing the policy above outlined.

The basic requirement, therefore, is that the Bank's activities must be conducted in good faith, that is, for banking purposes and not in an effort to violate 12 U.S.C. § 29. And, once land is owned appropriately ban a national bank, better utilization thereof is also permissible under section 29. The Brown decision continued:

> When an occasion arises for an investment in real property for either of the purposes specified in the statute, the national ban k act permits banking associations to act as any prudent person would act in making an investment in real estate, and to exercise the same measure of judgment and discretion. The act out not to be construed in such a way as t o compel a national bank, when it acquires real property for a legitimate purpose, to deal with it otherwise than a prudent landowner would ordinarily deal with such property.

Brown, 118 F. at 984.

It is prudent for the Bank to attempt to offset some of the expenses associated with its legitimate condominium ownership. If, in good faith, the Bank maintains the condominium as bank premises by continuing to use it for bank purposes, it may legitimately, under the National Bank Act, rent the condominium when it is not being used by the Bank. The Bank's continued use of the condominium must be substantial in order for the property to continue to be regarded as "bank premises for the purposes of 12 U.S.C. § 29.

The Bank has indicated that it estimates possible proceeds from the condominium rental to be $4900. Since the condominium fees are approximately $9600 per year, the Bank would not profit as a result of renting the condominium. Your correspondence states that "[t]the Bank does not intend and will not turn this into a net income producing situation whereby the rental income

will exceed the occupancy expenses." In my opinion, under the described circumstances, the Bank may lease the condominium when it is not being used by the Bank for business purposes.

I trust this reply is responsive to your request

Sincerely,

/s/ *William B. Glidden*

William B. Glidden
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