

# Frequently Asked Questions

**Q1: How are the recent OCC rulings inconsistent with laws and regulatory precedent?**

- A1:**
- The National Bank Act imposes strict limits on how and why national banks can own real estate.
    - The condo and hotel rulings are based on 12 U.S.C. § 29, which authorizes banks to purchase, hold and convey real estate for only four purposes.
    - In this case, the important one is that a bank may own property necessary for accommodating its business.
  - Everyone agrees a bank should be able to develop and own its offices, parking lots, and branches. NAR thinks:
    - Congress did not intend to authorize a national bank to own a Ritz Carlton Hotel when the private market could meet the need.
    - Congress did not intend for banks to develop residential condominiums for immediate resale to make a project economically feasible.
    - The recent OCC rulings go too far.
  - The OCC has allowed Union Bank in California to take a 70 percent equity stake in a windmill farm, under its Bank Lending rule.
    - This decision undermines several longstanding OCC principles.
    - The question is whether a national bank should own 70 percent of a windmill farm, in the extremely volatile energy sector, for 10 years. This raises the question whether the project involves too much risk.
    - The OCC tries to justify the windmill farm letter as nothing more than another form of lending. A close review of the terms of the proposal make it readily apparent that the terms and conditions go well beyond those of a typical lending transaction and put the bank at risk that its investment will not be repaid in the ordinary course.
  - The OCC obviously disagrees with NAR's views.
    - The question isn't whether the OCC ruling would hold up in court. The courts generally defer to regulatory agencies.

- The question is whether banks should be real estate developers.
- NAR believes that Congress should set the rules, not a regulatory agency.

**Q2: The OCC rulings don't permit banks to broker real estate. So why is NAR so concerned?**

**A2:** NAR believes that these rulings are inconsistent with the national policy against mixing banking and commerce and that Congress should decide whether to amend this policy, not a federal regulatory agency, especially without public comment.

- If banks are permitted to compete with commercial firms, they would have an unfair advantage because of their access to cheap capital and other advantages. Furthermore, it creates an inherent conflict of interest when real estate developers seek financing for projects that would then compete with a bank's projects.
- While the rulings do not authorize banks to enter into real estate brokerage, commentators have noted that, if asked, OCC would be likely to permit banks to broker real estate they own and that it would be a short step to letting them broker real estate for others. This would create an unlevel playing field and inherent conflicts of interest when bank brokerages compete with non-bank brokerages.

**Q3: Doesn't NAR's opposition to the recent OCC rulings hurt the ability of banks to promote community and economic development in their communities?**

**A3:** No.

- Banks have statutory authority to invest in community and economic development projects that are "designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families" subject to various safeguards (12 U.S.C. 24 (Eleventh)).
- NAR strongly supports the current statutory authority allowing banks to invest in community and economic development projects.
- NAR's objection to OCC's rulings has nothing to do with bank investment in Low Income Housing, Historic Preservation, or New Market Tax Credit projects. The condo and luxury hotel rulings don't involve tax credits. As far as bank ownership of windmill farms to get energy tax credits, we think OCC should be extremely cautious

about when to permit such investments, considering a risky corner of a volatile industry is involved.

- The OCC rulings are not based on the community and economic development authority. Instead, they rely on the “bank premises” statute that lets banks own real estate as necessary to accommodate their business (12 U.S.C. § 29).
  - The condos will never be used as bank premises by its employees or customers. The condos are intended purely to generate a profit to help pay for the rest of the project.
  - The hotel approvals don’t pass the test in the OCC’s own regulation, which permits banks to build hotels where “suitable commercial lodging is not readily available”—which is clearly not the case in Charlotte or Pittsburgh.
  - NAR thinks the OCC rulings stretch the bank premises authority to the breaking point.

**Q4: Is NAR the only group opposed to these rulings?**

**A4:** No, REALTORS® are not the only ones fighting to keep banking and commerce separate.

- The National Association of Home Builders sent a letter to Comptroller Dugan on February 10, supporting NAR’s position.
- NAR is working with several other partners in the industry who also oppose these rulings and are communicating with the OCC.
- Consumer groups have previously testified against the mixing of banking and commerce.

**Q5: How do the OCC rulings compare to the Federal Reserve-Treasury Department 2001 proposal to allow banks to engage in real estate?**

**A5:** ● Five years ago, the Federal Reserve Board and the Treasury Department issued a hush-hush regulation while Congress was on holiday recess that would have allowed financial holding companies and financial subsidiaries of national banks into the real estate brokerage and management business.

- The OCC rulings concern the authority of national banks themselves to engage in real estate development, which is related, but different.
- Both the Treasury regulation and the OCC rulings represent a breach of the national policy against mixing banking and commerce.
  - Banks should be “honest brokers” of financial services.
  - This role is compromised if they or their affiliates are involved in commerce.
  - It creates an inherent conflict of interest and an unlevel playing field.

**Q6: Why does NAR oppose Wal-Mart’s application for federal deposit insurance?**

**A6:** NAR supports a clear separation of banking and commerce;  
Our position on the Wal-Mart petition is consistent with this principle.

- NAR strongly believes that Wal-Mart’s effort to obtain a federally insured industrial loan company (ILC), if successful, will establish a dangerous precedent that will inevitably lead to an erosion of the separation of banking and commerce. There would also be serious consequences for the continued stability and growth of the nation’s financial system.
- 2006 NAR President Tom Stevens sent letters to Fed Chairman Bernanke and to Treasury Secretary Snow, asking them to oppose Wal-Mart’s pending application for federal deposit insurance for its proposed ILC. On April 11, 2006, President Stevens will testify at the FDIC hearing on this subject.
- One could say that it is hypocritical for many in the banking industry to oppose commercial companies entering the banking business, while at the same time seeking to expand permissible bank activities into commercial lines of business, such as real estate brokerage, management, and development.

**Q7: What is the current status of H.R. 111, the Community Choice in Real Estate Act?**

**A7:** ● 2005 was the fifth consecutive year that authorizing legislation has been introduced to permanently bar national bank conglomerates from engaging in real estate brokerage and management activities. Bipartisan support for this legislation is at its highest level ever.

- H.R. 111 was reintroduced in the 109th Congress by Representatives Calvert (R-CA) and Kanjorski (D-PA). S. 98 was introduced by Senators Allard (R-CO), Clinton (D-NY) and Shelby (R-AL).
  - The House bill has 251 cosponsors, while the Senate bill has 26 cosponsors.
- An opposing bill, introduced on May 26, 2005, by House Financial Services Chairman Mike Oxley (R-OH) and Ranking Democrat Barney Frank (D-MA) has languished with no additional co-sponsors.
- Last year Congress enacted another one-year ban, effective through September 30, 2006, against the Treasury Department from issuing a final rule permitting national bank conglomerates to engage in real estate brokerage and management.
- NAR expects that Congress will either pass a permanent ban or enact another one-year moratorium this year.