

(717) 783-8240

March 29, 2000

[redacted]

Dear [redacted]:

This will respond to your request for the approval of the Pennsylvania Department of Banking (the "Department") for [redacted] (the "Bank"), [redacted], Pennsylvania, to form and become sole shareholder of [redacted] (the "Subsidiary"). The Subsidiary's sole purpose is to hold a 75% non-controlling interest in a limited partnership which provides real estate settlement and title agent services.

We have reviewed the Bank's request to establish such a subsidiary as noted above and hereby issue conditional approval for the formation of [redacted], pursuant to the provisions of Sections 203(d) and 315(i) of the Banking Code of 1965, as amended. Said approval is subject to the following conditions:

1. The activities of the Subsidiary are not to be expanded beyond the purposes as set forth in this letter and any such change will require the prior written approval of the Department.
2. The Board of Directors of both the Bank and the Subsidiary, respectively, are to establish a limitation on the total amount of borrowings by the Subsidiary from the Bank and any other affiliated companies.

Regarding applicable banking law, Section 315(i) of the Banking Code of 1965 ("Banking Code") provides Pennsylvania state-chartered banks with "all powers incidental to the conduct of banking business." 7 P.S. §315(i). The sale of title insurance by banks is incidental to the conduct of banking business, since banks originate mortgage loans as a fundamental part of their banking business and title insurance is typically required to be purchased from or through a title insurance agent as a reasonable condition of the loan. See 7 P.S. §310(d)(v) (borrower shall pay all expenses for title insurance on a real estate loan originated by a bank). In addition, the ability of banks to sell title insurance is neither prohibited nor restricted by Section 406 of the Banking Code, since that section pertains only to title insurance underwriting. See 7 P.S. §406. Regarding applicable insurance law, the Insurance Department Act of 1921 provides in relevant part that "a

financial institution, and any officer, employe or agent thereof, that sells insurance shall be licensed in accordance with the provisions of this Act and regulations promulgated under this Act." 40 P.S. §286(b). Construed together, the above-cited banking and insurance laws support the conclusion that Pennsylvania state-chartered banks may sell title insurance.

Since title insurance may be sold by Pennsylvania state-chartered banks, subsidiaries¹ of such banks also may engage in such activities, consistent with Section 203(d) of the Banking Code. See 7 P.S. §203(d). It is the Department's understanding that the Insurance Department Act of 1921 contains no prohibition on the ability of bank subsidiaries to engage in title insurance agent activities. Construed together, the banking and insurance laws referenced in this letter support the conclusion that subsidiary corporations that are by definition majority owned by Pennsylvania state-chartered banks, may sell title insurance.

While the ability of a Pennsylvania state-chartered bank to invest in a subsidiary corporation that will engage in title insurance agency activities is clear, there is no specific authority in the Banking Code for a bank or its subsidiary to make a majority investment in a title insurance agency that is in limited partnership form.

As a comparative matter, the Office of the Comptroller of the Currency ("OCC") has on a conditional basis authorized national banks to establish an operating subsidiary to acquire and hold a 70% non-controlling interest in a limited partnership that will engage in title insurance agency activities. See OCC Conditional Approval No. 275 (April 22, 1998).

Section 103 of the Banking Code provides the Department with adequate rule-making power and administrative discretion to supervise and regulate Pennsylvania state-chartered banks in a manner that maintains competitiveness with national banks and that is flexible and readily responsive to changes in economic conditions and to changes in banking and fiduciary practices. See 7 P.S. §103. Act 40 of 1997 confirms that financial institutions may sell title insurance and does not prohibit or restrict bank subsidiary corporations from engaging in such activity. See 40 P.S. §286(b). Therefore, as a power incidental to the conduct of banking business pursuant to Section 315(i), and in order to maintain competitiveness with national banks pursuant to the mandate in Section 103(a)(v), it is the Department's position that a Pennsylvania state-chartered bank may acquire and hold a 75% non-controlling interest in a limited partnership that will engage in title insurance agency activities

provided that the four-prong test stated below and utilized by the OCC to authorize ownership of a non-controlling interest is adhered to by the Pennsylvania state-chartered bank. In addition, since a Pennsylvania state-chartered bank may acquire and hold such an interest, a Pennsylvania state-chartered bank may establish an operating subsidiary pursuant to

¹ For purposes of the Banking Code, the term "subsidiary" is defined as "a corporation controlled by an institution which owns at least a majority of its shares." 7 P.S. §102(bb.1)(emphasis added). The term "institution" in the definition of "subsidiary" includes a Pennsylvania state-chartered bank. 7 P.S. §102(q) and (r).

Section 203(d) to acquire and hold such an interest, provided that the four-prong test stated below and utilized by the OCC to authorize ownership of a non-controlling interest is adhered to by the Pennsylvania state-chartered bank.

More specifically, a Pennsylvania state-chartered bank may establish an operating subsidiary to acquire and hold a 75% non-controlling interest in a limited partnership that will engage in title insurance agency activities if the following four conditions are met:

1. The activities of the enterprise in which the investment is made must be limited to activities that are part of or incidental to the business of banking.
2. The bank must be able to prevent the enterprise from engaging in activities that do not satisfy this requirement.
3. The bank's loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise. (For example, the bank may not be a general partner in the limited partnership.)
4. The investment must be convenient or useful to the bank and not a mere passive investment unrelated to that bank's banking business.

As stated above, the OCC has permitted national banks to establish an operating subsidiary to acquire and hold a 70% non-controlling investment in a limited partnership that will engage in title insurance agency activities. Therefore, the Bank may be required to seek the approval of the Federal Deposit Insurance Corporation ("FDIC") pursuant to Section 24 of the Federal Deposit Insurance Act, 12 U.S.C. §1831a, in order to establish a subsidiary that will acquire and hold a 75% non-controlling interest in a limited partnership that will engage in title insurance agency activities.

Receipt of the following documentation relative to the formation of the Subsidiary is acknowledged:

1. Copy of the Resolution of the Bank's Board of Directors authorizing formation of the Subsidiary.
2. Amendment and Assignment Agreement.
3. Limited Partnership Agreement.

In order to complete our files in this matter, please forward the following to the attention of Joseph A. Moretz, Manager - Corporate Applications, at the above-noted address:

1. Identification of the initial officers and Directors of the Subsidiary.

2. Articles of Incorporation for the Subsidiary.
3. Certificate of Incorporation issued by the Department of State.
4. Bylaws of the Subsidiary.
5. The initial balance sheet of the Subsidiary.
6. A statement setting forth the amount of the Bank's investment in the Subsidiary.

Please be advised that this approval is effective for a period of one (1) year from the date of this letter unless, in the meantime, a request for an extension of time has been submitted by the Bank and approved by the Department.

In addition, the Department lacks jurisdiction over the Insurance Department Act of 1921. Therefore, statements made herein regarding the Insurance Department Act of 1921 are not binding on the Insurance Department but are stated to the best of the Department's knowledge, information and belief.

I trust this letter is responsive to your request. Please contact Mr. Moretz should you require additional explanation or information regarding this matter.

Very truly yours,

Richard S. DeMartino
Director, Bureau of
Supervision and Enforcement

RSD:JAM:kse

cc: William L. Gaunt
FRB - Philadelphia
Joseph A. Moretz
Manager - Corporate Applications