Office of Thrift Supervision
Department of the Treasury
Chief Counsel
1700 G Street, N.W., Washington, D.C. 20552 • (202) 906-6251

January 26, 1996

[redacted]

RE: Usury Preemption/Loans Secured by Timeshare Interests

Dear [redacted]

This responds to your letter, submitted on behalf of [redacted], requesting confirmation of your interpretation of an Office of Thrift Supervision ("OTS") opinion dated May 10, 1995 ("May 10 Opinion"). The May 10 Opinion discusses the applicability of the usury preemption provisions of § 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980 ("DIDMCA")[1] to loans secured by timeshare interests and other residential real estate interests.

Your client develops vacation timeshare projects. For purposes of this response, you ask us to assume that the typical timeshare interest entitles the purchaser to the following: (a) the right to inhabit a dwelling unit at the timeshare project for a period of time each year (the "timeshare period") and to utilize furnishings placed in that unit; (b) the right to use common facilities (such as swimming pools, golf courses, exercise equipment, and a club house) during the timeshare period; (c) daily passes to a nearby amusement park for the timeshare period; and (d) the option to trade any timeshare period at the timeshare project for the right to stay at certain other timeshare projects ("exchange rights"). For purposes of this opinion, you ask us to assume that the timeshares sold by your client convey an interest in real property under the applicable laws of the states in which the timeshares are sold.

In our May 10 Opinion, we drew a distinction between purchase money loans (loans whose sole purpose is to fund the purchase of residential real estate) and non-purchase money and mixed purpose loans (loans that are secured by residential real estate, but whose proceeds are used for a purpose other than, or in addition to, purchasing residential real estate). We concluded that:

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[1] 12 U.S.C. § 1735f-7a (West 1989).

> When the sole purpose of a loan is to finance the purchase of a timeshare or other residential real estate, the loan qualifies for usury preemption regardless of the value of the real estate pledged to secure the loan. The value of [the real estate] collateral is relevant, however, in non-purchase money situations or in mixed purchase money and non-purchase money situations. [In these situations, a lender should be able to show that] the value of the collateral at the time the loan is originated is substantially equal to the principal amount of the loan.[2]

You note that the foregoing language appears to indicate that a loan originated for the sole purpose of financing the purchase of a timeshare that conveys an interest in real property under state law will qualify for usury preemption without any need to determine the value of the real property interest -- even though the timeshare may include related incidental amenities such as furnishings, club memberships, amusement park passes, and exchange rights.

Your understanding is correct. In our view, loans to fund the purchase of interests in residential real estate and related incidental amenities should be treated as purchase money loans for purposes of DIDMCA § 501, provided the amenities in question are genuinely related and incidental to what is fundamentally a residential real estate purchase.[3] Although timeshare interests are perhaps unique among real estate transactions in the complexity of the mixture of real and personal, tangible and intangible property interests that they convey, we are satisfied that timeshare transactions of the type described in the second paragraph of this letter contain a fundamental real estate component and that the amenities you have described are related and merely incidental. We see no need to require the parties to genuine purchase money transactions to vivisect and separately value the bundle of property rights conveyed. Accordingly, a timeshare interest of the type described in the second paragraph may properly be classified as residential real estate for purposes of DIDMCA

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[2] May 10 Opinion, p. 1.

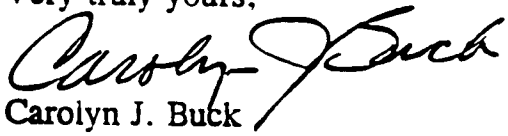
[3] By contrast, a mixed purpose loan would be deemed to arise if, for example, a single loan was utilized to fund the purchase both of a home and corporate securities. Under these circumstances, § 501 would apply only if the lender was able to demonstrate the value of the residential real estate security was substantially equal to the principal amount of the loan, as more fully explained in the May 10 Opinion.

§ 501. A loan for the sole purpose of funding the purchase of such an interest will, in our view, qualify for usury preemption under DIDMCA § 501, provided the other technical requirements of § 501 are met.[4]

In reaching this conclusion, we have relied on the factual representations contained in the materials you submitted to us, as summarized herein. Our conclusion depends upon the accuracy and completeness of those representations. Any material change in circumstances from those described herein could result in a different conclusion.

If you have any further questions regarding this matter, you may contact Ellen Sazzman, Counsel (Banking and Finance), at (202) 906-7133.

Very truly yours,



Carolyn J. Buck
Chief Counsel

cc: All Regional Directors
All Regional Counsel

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[4] As noted in our May 10 Opinion, the fact that a loan may be classified as a residential real estate loan for purposes of usury preemption does not necessarily mean that the loan will be classified as a residential real estate loan for purposes of the investment limitations imposed on federal savings associations under § 5(c) of the Home Owners' Loan Act, 12 U.S.C.A. § 1464(c) (West Supp. 1995), or for purposes of safety and soundness requirements.