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TESTIMONY
OF
RUSSELL K. BOOTH, PRESIDENT
NATIONAL ASSOCIATION OF REALTORS®

BEFORE
THE COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
OF THE
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING LEGISLATION TO REFORM THE NATION'S BANKING LAWS

H.R. 10, THE "FINANCIAL SERVICES COMPETITIVENESS ACT OF 1997"
H.R. 268, THE "DEPOSITORY INSTITUTIONS AFFILIATION AND THRIFT CHARTER CONVERSION ACT"
H.R. 669, THE "DEPOSITORY INSTITUTIONS AFFILIATION ACT"

May 14, 1997

NATIONAL ASSOCIATION OF REALTORS®
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Financial Services Modernization Testimony

Mr. Chairman, members of the Committee, I am Russell K. Booth, 1997 president of the **NATIONAL ASSOCIATION OF REALTORS®** . I am president of Mansell Commercial Real Estate Services, Inc. in Midvale, Utah. Our company is a full-service commercial, investment, property management and development company. We also have residential offices throughout Utah.

On behalf of the more than 730,000 professional members of the **REALTORS®** , I am pleased to present our association's views on the legislation proposing comprehensive modernization of the federal banking laws. As you know all so well Mr. Chairman, this is a critical issue for the banking industry as well as for those industries that rely on the supply of credit from the nation's financial services industry. We commend you on your leadership and tenacity in bringing this issue before the public.

REALTORS® are naturally concerned with the involvement of financial institutions in various aspects of the real estate industry. Consequently, the basic issue of whether or to what extent banking and commerce should be mixed is a question for our association's membership. Like all dynamic industries we, too, are contending with change and consolidation within the industry, and with the expressed desires of non-real estate entities for opportunities to enter the business. The fundamental question of modernizing the Glass-Steagall Act, which is admittedly becoming dated as are some other federal finance-related laws, comes in the face of rapid technological change and the drive for diversified product lines and income streams in current markets.

Necessarily, our concern is with how real estate activities might be treated in any schema to modernize the Glass-Steagall Act. Our comments, except for pertinent general principles, will be confined to banks becoming involved in real estate. Our testimony will review the implications that the pending bills have on the real estate industry. Specifically, we will focus on provisions that permit financial service holding companies via a subsidiary corporation to engage in real estate development, investment, management and brokerage.

Commerce and Banking

At the outset, the **NATIONAL ASSOCIATION OF** REALTORS® strongly opposes the legislative or regulatory definition of real estate as "banking in nature, or incidental thereto." The practical test is clear; the real estate business practices are much more akin to commerce than to banking, and claims to the effect that real estate is banking, or incidental to banking simply pushes the broadest interpretation of a legal definition to extremes. Real estate brokerage, development, investment and management are all commercial, purely and simply. Indeed, it is the extension of credit — the core business of commercial banking — that makes the real estate industry possible, as with any other commercial or business venture.

It is our observation that an important shift occurred in the terms of the debate regarding the mixture of commerce and banking. As recently as last year the debate seemed to turn, in large measure, on *whether* commerce and banking should be mixed; or should the Glass-Steagall Act restrictions be removed at all. Now it seems, the debate is focused more on to *what extent* commerce and banking should be mixed. Certainly recent U.S. Supreme Court decisions, market forces, and technological applications are reshaping the debate.

Pending Legislation

Are the stars actually aligning? Perhaps. If legislative action is to proceed, **REALTORS**® believe that H.R.10, the "Financial Services Competitiveness Act," contains the provisions that should be the starting point for this Committee. Indeed, Mr. Chairman, you made it clear, as did the distinguished chair of the Financial Institutions Subcommittee, Rep. Roukema, that the most likely legislative vehicle will be a consensus bill that blends elements from H.R. 10 and H.R. 268, the "Depository Institution Affiliation and Thrift Charter Conversion Act." We believe reasonable, moderate Glass-Steagall Act reforms could follow from the framework envisioned by these two bills.

We prefer the real estate-related provisions of H.R.10 to those of other bills. We strongly support the H.R. 10 prohibition on operating subsidiaries investing in real estate and the limitations on inter-affiliate transactions, credit and credit enhancement of this bill, and H.R. 268. Further, we support the regulatory framework generally proposed by H.R. 10.

From our perspective H.R. 669, the "Depository Institution Affiliation Act," erects a framework for the financial services industry that would bend the market to a preconceived set of relationships, without the restraints that should protect the public and ancillary industries that rely on commercial banking from the threats of concentrated economic and business power or the potential conflicts of interests affecting the assessment of business risks and lending decisions. The logical extension of H.R. 669 would be a financial Darwinism, providing all the benefits to the most aggressive banking and commercial organizations with the deepest pockets. Admittedly, H.R. 669 pushes expanded and risky activities into new entities that presumably would not have the protective cover or benefits of the current financial system. But H.R. 669 envisions a bold experiment, which could result in the fulfillment of unintended consequences. We do not support statutory experimentation in the financial services industry, and we also have deep concerns about provisions of H.R .669 that seem to preempt state laws in the area of real estate. Such a preemption opens the way for full involvement in real estate brokerage by all state-chartered banks and savings institutions.

We cannot overstate the point, however, that this proposal could have far reaching and not necessarily positive consequences on our nation's financial markets by consolidating assets and credit decision power. For these reasons, we urge Congress to be cautious of the impact such changes could have on the continued viability of the real estate industry.

General Overview of Banks Involvement in Real Estate Activities

Historically when enacting the various laws governing the permissible activities of banks and bank holding companies, Congress was more restrictive regarding bank and bank holding company involvement in real estate activities than other non-banking activities. We believe Congress took this approach due to a general desire to require banks to concentrate their resources on traditional banking activities rather than other areas of commerce.

While national banks have been allowed to engage in real estate lending, they have been all but prohibited under the National Bank Act from engaging in other real estate activities. Generally, national banks are permitted to own and manage the buildings in which they operate and to hold temporarily other real estate assets received in connection with debts owed to the bank.

While there may be a growing consensus among some observers that the Glass-Steagall Act prohibitions on mixing banking and commerce should be modified, the **NATIONAL ASSOCIATION OF REALTORS**® does not support unfettered or broadly experimental efforts in this regard. For more than a decade now, **REALTORS**® have opposed the direct involvement of financial institutions in real estate activities. We recognize that some states, as part of the dual banking system, have permitted banks and thrifts to engage in some real estate activities. These activities cannot be undertaken without restrictions because of the risks and potential for conflicts of interest entailed in real estate operations where financial institutions are involved.

Traditionally banks do not perform well in the real estate arena when they venture beyond lending.0Ricki Helfer, "Testimony of the Federal Deposit Insurance Corporation On Financial Modernization," U.S. House of Representatives Subcommittee on Capital Markets, Securities, and Government Sponsored Enterprises, March 5, 1997. pp. 4; 2-5, *passim*.