



NATIONAL ASSOCIATION OF REALTORS®

The Voice For Real Estate®

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The Honorable Michael Oxley
Chairman
House Financial Services Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Oxley:

I want to bring to your attention another recent Court opinion that shows how national banks and their operating subsidiaries use federal preemption to avoid state licensing and regulatory enforcement. In Wachovia Bank v. Burke, the U.S. Court of Appeals for the Second Circuit upheld the Office of the Comptroller of the Currency's (OCC's) preemption rule.

This decision is further evidence of the need for Congress to pass the Community Choice in Real Estate Act (H.R. 111/S. 98) to prohibit federally chartered banking conglomerates from owning real estate companies. If these banks are allowed to own real estate companies, not only would there be mixing of banking and commerce, it could result in the preemption of state real estate licensing and consumer protection laws.

On July 11, 2005, the Court concluded that federal law preempts state regulation of a national bank's operating subsidiary to the same extent that it preempts state regulation of the national bank itself.

The case arose when Wachovia Bank (and its operating subsidiary, Wachovia Mortgage Corporation) sued Connecticut to prevent the state from requiring the operating subsidiary to obtain a license from the state and from enforcing certain other state laws against the subsidiary. Both the U.S. District Court and now, on appeal, the 2nd Circuit, agreed with Wachovia. This reduces regulatory burden on the bank-owned Wachovia Mortgage Company and gives it an advantage over mortgage companies that remain subject to state licensing and regulation.

Although the decision was widely anticipated, and the case has no immediate impact on REALTORS®, it is another indicator of possible consequences if the Treasury Department and Federal Reserve Board were permitted—over NAR's strenuous, ongoing objections—to issue a final rule permitting banks in real estate. If the OCC decided that real estate development and/or management were permitted national bank activities, preemption would presumably apply. The extent of the preemption, in that event, would depend on OCC.

This would be bad for consumers, small businesses and Realtors®. I urge you once again to enact the Community Choice in Real Estate Act and articulate Congressional authority in this area.

Sincerely,

Al Mansell, President
National Association of REALTORS®

