

PO7038

Corinthian
MORTGAGE
CORPORATION

FILED
02 SEP -9 PM 12:50
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

August 29, 2002

Amendment Section
Division of Corporations
PO Box 6327
Tallahassee, Florida 32314

600007610436--7
-09/10/02--01010--003
*****35.00 *****35.00

RE: SURRENDER OF FOREIGN CORPORATION CERTIFICATE

Dear Sir or Madam:

Withdrawn

Enclosed please find the completed Application for Certificate of Withdrawal for Corinthian Mortgage Corporation (Corinthian). Please be advised that Corinthian intends to continue transacting business in the state of Florida despite its withdrawal because, as explained below, Corinthian is authorized under federal law to do so.

Corinthian is a 1st tier, wholly-owned operating subsidiary of SOUTHBank, FSB and is subject to examination and oversight by the Office of Thrift Supervision (OTS) pursuant to the Federal Home Owners' Loan Act (HOLA) and the OTS regulations implementing that act. As you may know, the referenced OTS regulations (as well as various OTS opinions) provide that federally chartered savings banks are not subject to state licensing/registration laws (including foreign corporation qualification statutes) because of federal preemption of such laws under HOLA and the OTS implementing regulations. Those authorities further provide that state law applies to the bank's operating subsidiary (i.e., Corinthian) to the same extent as their parent savings bank (i.e., SOUTHBank, FSB).

Therefore, Corinthian, as an operating subsidiary of a federal savings bank, SOUTHBank, FSB, is not required to register as a Foreign Corporation with your office in order to transact business in the state of Florida. We have enclosed a copy of an OTS opinion letter discussing in more detail federal preemption of state foreign corporation qualification laws under HOLA for your review.

I would be happy to provide any additional information that you might need or to answer any questions you might have. I can be reached at (913) 236-1000, extension 2292.

Sincerely,



Chris Lowery
Senior Vice President

Enclosure

ADR
9/17/02

**APPLICATION BY FOREIGN CORPORATION FOR WITHDRAWAL
OF AUTHORITY TO TRANSACT BUSINESS OR CONDUCT AFFAIRS
IN FLORIDA**

Corinthian Mortgage Corporatin
(Name of Corporation)

Mississippi
(Incorporated Under Laws Of)

FILED
02 SEP - 9 PM 12:50
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

This corporation is ~~no longer~~ transacting business or conducting affairs within the State of Florida and hereby voluntarily surrenders its authority to transact business or conduct affairs in Florida.

****please see attached letter****

This corporation revokes the authority of its registered agent in Florida to accept service on its behalf and appoints the Department of State as its agent for service of process based on a cause of action arising during the time it was authorized to transact business or conduct affairs in Florida.


****please see attached letter****

The following is a current mailing address to which the Department of State may mail a copy of any process against this corporation that may be served on the Department.

5700 Broadmoor, Suite 550
(Mailing Address)

MIission, KS 66202
(City/ State /Zip)

The corporation agrees to notify the Department of State in the future of any change in its mailing address.



Signature of the chairman or vice chairman of the board,
president, or any officer. Senior Vice President
Title

Chris Lowery
Typed or printed name
August 28, 2002
Date

(Publication page references are not available for this document.)

Office of Thrift Supervision (OTS)

(Letter)

PREEMPTION OF STATE MORTGAGE LENDER LICENSING REQUIREMENTS

P-99-7

July 26, 1999

Dear ***:

This responds to your inquiries to the Office of Thrift Supervision ("OTS") on behalf of *** ("Association"), a federally chartered savings bank, and its *** state-chartered wholly-owned operating subsidiary, *** ("Operating Subsidiary"). You ask whether federal law preempts the application of certain licensing and approval requirements of Maryland and Connecticut law to Operating Subsidiary when it engages in making first and second mortgage loans secured by residential real estate in those states.

In brief, consistent with prior precedents, we conclude that federal law preempts the licensing and approval requirements of the Maryland and Connecticut laws with respect to Operating Subsidiary to the same extent as it would if the Association were directly engaging in the lending activities in question.

I. Background

The Association maintains its principal office in *** and does not have branches that accept deposits in Maryland or Connecticut. Until ***, Operating Subsidiary, then known as ***, a state-chartered corporation ("State Savings Bank Subsidiary"), was a wholly-owned subsidiary of *** ("State Savings Bank"), a state-chartered savings bank. State Savings Bank Subsidiary had been in the mortgage lending business for several years, operated offices in Maryland and Connecticut, and held licenses to act as a mortgage lender issued by those states.

On ***, 1997, State Savings Bank merged into the Association. As a result of the merger, State Savings Bank Subsidiary became a wholly-owned operating subsidiary of the Association and took its present name. Operating Subsidiary continues to operate offices in Maryland and Connecticut that previously were established by State Savings Bank Subsidiary, and continues to engage in making first and second mortgage loans to Maryland and Connecticut residents secured by residential real estate located in those states. [FN1]

You indicate that shortly after the merger, Operating Subsidiary received Mortgage Lender License Renewal and Registration forms addressed to State Savings Bank Subsidiary from the Maryland Department of Labor, Licensing and Regulation, Division of Financial Regulation ("MD Division") and from the Connecticut Department of Banking ("CT DoB"). The Association notified the MD Division and the CT DoB that Operating Subsidiary had become the Association's wholly-owned subsidiary and that, as an operating subsidiary of a federally-chartered savings

(Publication page references are not available for this document.)

bank, Operating Subsidiary was no longer subject to state licensing requirements. The MD Division responded that Operating Subsidiary, regardless of its change in status, must comply with the state's licensing requirements to continue to engage in the business of lending in Maryland. [FN2] The CT DoB responded that its position is that Operating Subsidiary must comply with the state's licensing and approval requirements. [FN3]

Maryland Mortgage Lender Law

The provisions of the Maryland Mortgage Lender Law ("MD Licensing Law") you have provided to us require each entity subject to its terms to obtain a separate license to act as a mortgage lender for each location at which it does business in Maryland. [FN4] An applicant for a mortgage lender license must submit an application, as well as application, license, and renewal fees, and post surety bonds for each office at which it seeks to conduct business. [FN5] A first-time applicant is subject to a background check. [FN6] A licensee must maintain books and business records required by the state Commissioner of Financial Regulation and make them available to the MD Division for review. [FN7] A licensee is subject to examination by the Division. [FN8]

The MD Licensing Law exempts from its licensing requirements, inter alia, specified state- and federally-chartered financial institutions. [FN9] The MD Licensing Law also exempts subsidiaries and affiliates of, among others: (1) any Maryland- or federally-chartered bank, trust company, savings bank, savings and loan association, or credit union that maintains its principal office in Maryland; (2) any out-of-state bank having a branch that accepts deposits in Maryland; or (3) any federally-chartered savings association or savings bank that has a branch that accepts deposits in Maryland. [FN10] The Association does not maintain its principal office in Maryland or operate any branches that accept deposits in Maryland; therefore, Operating Subsidiary does not fall within these exemptions. The MD Licensing Law also exempts employees of licensed or exempt entities, so long as the employees act within the scope of their employment. [FN11]

Connecticut Mortgage Lenders and Brokers Law

The provisions of Connecticut law that you cite require a person or entity engaging in the first mortgage loan business as a mortgage lender or broker to obtain a license for each location at which it intends to conduct business in the state ("CT Licensing Law"). [FN12] An applicant for a mortgage lender or broker license must submit detailed background information and pay a fee. [FN13] An applicant must post a surety bond each time it seeks or renews a license. [FN14] A licensee must maintain books and records concerning its business as required by the state Banking Commissioner and make them available for examination by the CT DoB. [FN15] A person wishing to engage in the secondary mortgage loan business must obtain a separate license. [FN16] The fee, recordkeeping, and examination requirements for secondary mortgage lending licenses are similar to those for first mortgage lending licenses. [FN17]

The CT Licensing Law exempts from its mortgage lending licensing requirements any bank, out of state bank, Connecticut credit union, federal credit union, or

(Publication page references are not available for this document.)

out-of-state credit union, but specifically provides that subsidiaries of such institutions are not exempt. [FN18] Operating subsidiary does not appear to fall within the language of any of these exemptions. In addition, the CT Licensing Law requires a non-bank subsidiary of a banking corporation to obtain the state Banking Commissioner's approval to establish an office in the state to engage in "banking business," which is defined to include "lending money." [FN19]

II. Discussion

A. Preemption Principles Applicable to Federal Savings Associations

1. Generally

The doctrine of federal preemption, rooted in the Supremacy Clause of the United States Constitution, [FN20] applies in three situations: (1) Congress may expressly preempt state law; [FN21] (2) congressional intent for federal preemption of state law may be inferred when federal law dominates or occupies a particular field; [FN22] and (3) state law is nullified to the extent that it conflicts with federal law, that is, when compliance with both state and federal law or regulations is a physical impossibility, or when compliance with state law stands as an obstacle to the accomplishment of the objectives of Congress. [FN23] Federal regulations have no less preemptive effect than federal statutes. [FN24]

As we have observed on numerous occasions, [FN25] sections 4(a) and 5(a) of the Home Owners' Loan Act ("HOLA") [FN26] authorize OTS (and formerly its predecessor, the Federal Home Loan Bank Board ("FHLBB")), to provide for the safe and sound operation of federal savings associations, and grant OTS exclusive and plenary authority to regulate all aspects of federal savings association operations. Federal courts have consistently found that the HOLA and its implementing regulations preempt state laws that purport to regulate the "activities or operations" of federal savings associations [FN27] or that conflict with federal thrift regulations. [FN28] In particular, the Supreme Court has recognized that the mortgage lending practices of a savings association are "a critical aspect of its 'operations,' over which the [FHLBB, now OTS] unquestionably has jurisdiction." [FN29]

Federal lending laws and regulations are intended to "occupy the entire field" of lending regulation for federal savings associations, leaving no room for state regulation. By its regulations, OTS has expressly occupied the entire field of federal savings association operations (§ 545.2) [FN30] specifically including lending activities (§ 560.2). [FN31] Section 545.2 expressly states that the OTS's promulgation of regulations regarding federal savings association operations (Part 545) pursuant to section 5(a) of the HOLA "is preemptive of any state law purporting to address the subject of the operations of a Federal savings association." [FN32] Section 560.2(a) expressly reflects OTS's intent to "occup[y] the entire field of lending regulation for federal savings associations ..." so as to accord federal savings associations "maximum flexibility to exercise their lending powers in accordance with a uniform federal scheme of regulation." [FN33]

(Publication page references are not available for this document.)

2. Licensing and Approval Requirements

It is well-established that state laws purporting to impose licensing, registration, and approval requirements on federal savings associations as a condition of engaging in lending activities are preempted by federal law. OTS regulation § 560.2 specifically provides that federal savings associations may extend credit as authorized under federal law without regard to state laws purporting to regulate their credit activities and that state laws imposing licensing and registration requirements on federal savings associations are preempted. [FN34] Such state requirements conflict with the objectives of federal lending regulation and serve as obstacles to the HOLA's comprehensive scheme to enable federal thrifts to originate loans under a single set of uniform federal laws and regulations, free from undue state regulatory burden. [FN35]

In promulgating § 560.2, OTS set forth an express policy objective of flexibility in the lending operations of federal thrifts to maximize efficiencies and limit potential liabilities. A state law imposing a licensing scheme on federal thrifts stands as an obstacle to achieving these federal goals of enhancing an association's operational flexibility and safety and soundness. Section 560.2(b)(1) therefore expressly provides that state laws purporting to impose requirements regarding "licensing [and] registration" are preempted for federal savings associations.

Moreover, OTS and the FHLBB have repeatedly opined that state laws that purport to regulate lending activities of federal savings associations are preempted. [FN36] In particular, state laws that impose license, registration, and approval requirements on federal savings associations as a condition of doing business in a state are preempted. [FN37] The MD and CT Licensing Laws thus clearly would not apply to a federal savings association. As OTS has previously stated, "[t]he power to license is the power to prohibit, and states cannot prohibit what federal law has authorized." [FN38]

B. Application of Preemption Principles to Operating Subsidiaries

In both its regulations and opinions, OTS has consistently indicated that state laws purporting to regulate the activities of a federal savings association's operating subsidiary [FN39] are preempted by federal law to the same extent such laws are preempted for the federal savings association itself. [FN40] Pursuant to OTS's statutory authority under sections 4(a) and 5(a) of the HOLA to regulate all aspects of the operations of federal savings associations, OTS duly promulgated its subordinate organizations regulations, after notice and full opportunity to comment. [FN41] The subordinate organizations regulations specifically permit federal savings associations to use subsidiaries to conduct certain of their operations. A federal savings association's decision to conduct a particular activity in a subsidiary is an integral part of that association's structural operations, which as discussed above, OTS has exclusive authority to govern.

With respect to preemption, § 559.3(n)(1) of OTS's subordinate organizations regulations explicitly provides: "state law applies to operating subsidiaries only to the extent it applies to you [federal savings association]." [FN42] This has been OTS's position since 1992, when OTS originally promulgated its operating

(Publication page references are not available for this document.)

subsidiaries regulation." [FN43] The principle was reaffirmed in 1996 when OTS revised its regulations on subordinate organizations, 12 C.F.R. Part 559. [FN44]

The preamble to the current subordinate organizations regulations at Part 559 explains that an operating subsidiary "may only engage in activities permissible for its parent federal savings association and must be controlled by the investing savings association--[therefore it] is treated as the equivalent of a department of the parent thrift for regulatory and reporting purposes." [FN45] Indeed, among the reasons OTS authorized federal savings associations to establish operating subsidiaries was to allow an institution to maintain control over an activity, and to structure its operations to maximize efficiencies. [FN46] Therefore a federal savings association's decision to conduct an authorized activity through an operating subsidiary is a legitimate business decision concerning the structure of the association's operations. [FN47]

OTS opinions also have articulated the principle that state law applies to operating subsidiaries only to the extent state law applies to the parent federal savings association. In 1994, OTS concluded that state lender licensing, registration, bonding, net worth, and other requirements did not apply to an operating subsidiary engaged in mortgage and consumer lending. [FN48] The opinion observed that because a federal savings association's authority to invest its assets in its operating subsidiaries is unlimited, the success or failure of an operating subsidiary can have a significant impact on its parent savings association. [FN49] The opinion also noted that because of the symbiotic relationship between federal savings associations and their operating subsidiaries, OTS cannot fulfill its statutory mandates unless it regulates operating subsidiaries in the same manner and to the same extent as it regulates their parent institutions. [FN50] The opinion concluded that OTS "occup[ies] the field of operating subsidiary regulation to the same extent as the OTS occupies the field of federal savings association regulation ..." and therefore state licensing and registration requirements do not apply to an operating subsidiary engaged in mortgage and consumer lending. [FN51]

More recently, in 1997 OTS addressed whether federal law preempted the application of a New Jersey licensing statute to a federal savings bank's operating subsidiaries engaged in residential mortgage lending. [FN52] Consistent with the reasoning in the 1994 Opinion, OTS concluded that because the New Jersey statute's licensing requirements would not apply to a federal savings association due to the preemptive federal regulatory scheme, those requirements also would not apply to its operating subsidiaries pursuant to § 559.3(n).

The principle that state law applies to operating subsidiaries only to the extent it applies to federal thrifts represents a proper exercise of OTS's plenary, exclusive authority under sections 4 and 5 of the HOLA to regulate the operations of federal savings associations. [FN53] As the Supreme Court has acknowledged, "[t]he broad language of § 5(a) expresses no limits on the [FHLBB's, now OTS's] authority to regulate the lending practices of federal savings and loans." [FN54] OTS's plenary regulatory authority over the operations of federal savings association necessarily encompasses broad authority over their operating subsidiaries to ensure that such entities are operated so as to maintain the viability of the parent thrift institutions and the solvency of the federal deposit insurance system. [FN55] To accomplish these statutory objectives, OTS has determined to apply its regulations and policies to operating subsidiaries in the same manner and to the same extent as to their parent federal associations. OTS's

(Publication page references are not available for this document.)

position regarding the preemption of state law with respect to operating subsidiaries is rationally based and entitled to deference. [FN56]

C. Preemption of MD and CT Licensing Requirements for Operating Subsidiary Engaged in Mortgage Lending

Turning to the state statutes at issue here, we conclude that the licensing and approval requirements of the MD and CT Licensing Laws do not apply to lending activities in Association's wholly-owned Operating Subsidiary by reason of federal preemption. [FN57] As discussed above, the MD and CT Licensing Laws would not apply to a federal savings association. By virtue of OTS regulation § 559.3(n), which expressly applies to operating subsidiaries the same preemption principles that apply to federal thrifts, the MD and CT Licensing Laws also do not apply to Operating Subsidiary, a wholly-owned subsidiary of Association.

The MD and CT Licensing Laws impose burdensome obligations on federal thrifts and their operating subsidiaries that conflict with the objectives of federal lending regulation [FN58] and that represent obstacles to the HOLA's comprehensive scheme to enable federal thrifts to lend under a single set of uniform federal laws and regulations, free from undue state regulatory burden. [FN59] To the extent the MD and CT Licensing Laws purport to impose licensing and approval schemes on federal savings association operating subsidiaries, the laws stand as obstacles to achieving, and therefore conflict with, the federal goals of enhancing a thrift's operational flexibility and safety and soundness. [FN60]

Our conclusion that the MD and CT Licensing Laws are preempted for Association's wholly-owned Operating Subsidiary also is consistent with the Supreme Court's views on the preemptive effect of federal authorization outside the banking context. In *Douglas v. Seacoast Products, Inc.*, 431 U.S. 265 (1977), the Supreme Court invalidated a Virginia statute that sought to distinguish between nonresident owners of federally licensed vessels and state residents with respect to fishing rights in Virginia waters. The Supreme Court held that insofar as certain Virginia statutes subjected federally licensed vessels owned by nonresidents or aliens to fishing restrictions different from those applicable to Virginia residents and American citizens, the state statutes were preempted by the federal Enrollment and Licensing Act and the Supremacy Clause. The Supreme Court quoted from *Gibbons v. Ogden*, where the Court had previously pointed out that "a license to do any particular thing, is a permission or authority to do that thing; and if granted by a person having power to grant it, transfers to the grantee the right to do whatever it purports to authorize. It certainly transfers to him all the right which the grantor can transfer, to do what is in the terms of the license." [FN61] Accordingly, once a federal license for fishery was granted to a vessel, the state of Virginia had no right to look behind that license in an effort to use the structure of that vessel's ownership as an excuse for limiting the rights transferred by the federal license.

As discussed above, the HOLA authorizes OTS to regulate all aspects of the organization and operations of federal savings associations. Based on this broad plenary authority, the issuance of a federal thrift charter by OTS essentially grants federal savings associations permission akin to a federal license to engage in a wide range of lending activities, and to structure those activities consistent with safety and soundness, without interference from state laws. OTS's

(Publication page references are not available for this document.)

duly promulgated regulations also specifically authorize federal savings associations to structure their lending activities through establishment of operating subsidiaries. Consistent with Douglas, states do not have the authority to look behind a federal grant of authority, such as a federal savings association's charter, in an attempt to either impose state structural requirements on the association or to limit rights granted by that federal charter with respect to how the association chooses to structure its activities.

Parallel to the scenario in Douglas, the MD and CT Licensing Laws purport to impose a burdensome array of licensing, application, fee, and bond requirements on operating subsidiaries of federal savings associations that engage in mortgage lending activities while not imposing those same requirements on many state-chartered entities engaging in mortgage lending. [FN62] The MD and CT Licensing Laws effectively attempt to look behind the federal savings association's license to conduct mortgage lending activities and limit the association's federally granted authority to structure its activities through operating subsidiaries. These state laws improperly attempt to inhibit federal savings associations from making legitimate business decisions concerning the most efficient way to conduct and structure their lending operations consistent with their federal charter and safety and soundness. The MD and CT Licensing Laws not only unlawfully restrict federal savings associations from exercising their federal grant of rights to engage in mortgage lending activities but also preferentially allow certain other entities to conduct the same lending activities without restriction. For all these reasons, the MD and CT Licensing Laws must be preempted with respect to Association's wholly-owned Operating Subsidiary. [FN63]

Our conclusion that the MD and CT Licensing Laws are preempted in the particular situation described in your inquiry is consistent with OTS's exercise of its plenary and exclusive authority to regulate and occupy the field of operations of federal associations and their operating subsidiaries as evidenced in long-standing OTS regulations and as consistently interpreted in OTS opinions. [FN64] As discussed above, OTS clearly has statutory authority to promulgate regulations governing the operations and structure of federal savings associations including regulations authorizing federal savings associations to structure their operations through operating subsidiaries. Those regulations were properly promulgated, rationally based, and are entitled to deference. [FN65] State laws inconsistent with those regulations must fall under the Supremacy Clause. [FN66]

In reaching the foregoing conclusions, we have relied upon the factual representations contained in the materials you submitted to us, as set forth in the background discussion above. Our conclusions depend upon the accuracy and completeness of those representations. Any material change in facts from those set forth herein could result in different conclusions.

If you have any questions regarding the foregoing, please contact Ellen Sazzman, Counsel (Banking and Finance), at (202) 906-7133 or Vicki Hawkins-Jones, Assistant Chief Counsel, at (202) 906-7034.

Very truly yours,

Carolyn J. Buck