

109TH CONGRESS
1ST SESSION

H. R. 111

To amend the Bank Holding Company Act of 1956 and the Revised Statutes of the United States to prohibit financial holding companies and national banks from engaging, directly or indirectly, in real estate brokerage or real estate management activities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2005

Mr. CALVERT (for himself, Mr. KANJORSKI, Mr. LATOURETTE, Mrs. NORTHUP, Mr. SHERMAN, Mr. HINCHEY, Mr. LEWIS of California, Mr. FARR, Mr. BACA, Ms. BALDWIN, Mr. BISHOP of Georgia, Mr. BLUMENAUER, Ms. BORDALLO, Mr. BRADY of Texas, Mr. CASE, Mr. CRAMER, Mr. CULBERSON, Mr. DAVIS of Illinois, Mr. DAVIS of Florida, Mr. DEFazio, Ms. DEGETTE, Mr. DOGGETT, Mr. WOLF, Mr. ISRAEL, Ms. WOOLSEY, Mr. MCCOTTER, Mr. WEINER, Mr. FORD, Ms. SOLIS, Ms. SLAUGHTER, Mr. LANGEVIN, Mr. GRIJALVA, Mr. CLAY, Mr. ENGEL, Mr. MARSHALL, Mr. SANDERS, Mr. VAN HOLLEN, Mr. MATHESON, Mr. SCHIFF, Mr. GEORGE MILLER of California, Mr. ROGERS of Alabama, Mr. MCINTYRE, Mr. WAXMAN, Mr. MCHUGH, Mr. GORDON, Ms. ESHOO, Mr. PALLONE, Mr. WHITFIELD, Mr. SIMMONS, Mr. HINOJOSA, Mr. OWENS, Mr. HOLDEN, Ms. WATERS, Mr. FRELINGHUYSEN, Mr. SAXTON, Mr. SMITH of New Jersey, Ms. MILLENDER-MCDONALD, Mr. THOMPSON of California, Mr. MICHAUD, Ms. KILPATRICK of Michigan, Mr. GENE GREEN of Texas, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. TOWNS, Ms. LORETTA SANCHEZ of California, Ms. LEE, Mr. ANDREWS, Mr. EVANS, Mr. MEEKS of New York, Ms. KAPTUR, Mr. CHANDLER, Mr. MORAN of Virginia, Mr. HERGER, Mrs. LOWEY, Mr. CARDOZA, Mrs. NAPOLITANO, Mr. LARSON of Connecticut, Mr. KNOLLENBERG, Mr. LANTOS, Mr. PAYNE, Mr. COSTELLO, Mr. NEAL of Massachusetts, Mr. BERMAN, Mr. RADANOVICH, Mr. CUNNINGHAM, Ms. SCHAKOWSKY, Mr. WALSH, Mr. EVERETT, Mr. LEVIN, Ms. HOOLEY, Mr. BARTLETT of Maryland, Mr. FOLEY, Mr. HOLT, Mr. GALLEGLY, Mr. WEXLER, Mr. ABERCROMBIE, Mr. ROTHMAN, Mr. WAMP, Ms. LINDA T. SÁNCHEZ of California, Mrs. BONO, Mr. DICKS, Mr. ALLEN, Mr. OTTER, Mr. HOBSON, Mr. DAVIS of Tennessee, and Mr. DUNCAN) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Bank Holding Company Act of 1956 and the Revised Statutes of the United States to prohibit financial holding companies and national banks from engaging, directly or indirectly, in real estate brokerage or real estate management activities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Community Choice in
5 Real Estate Act”.

6 **SEC. 2. CLARIFICATION THAT REAL ESTATE BROKERAGE** 7 **AND MANAGEMENT ACTIVITIES ARE NOT** 8 **BANKING OR FINANCIAL ACTIVITIES.**

9 (a) BANK HOLDING COMPANY ACT OF 1956.—Sec-
10 tion 4(k) of the Bank Holding Company Act of 1956 (12
11 U.S.C. 1843(k)) is amended by adding at the end the fol-
12 lowing new paragraph:

13 “(8) REAL ESTATE BROKERAGE AND REAL ES-
14 TATE MANAGEMENT ACTIVITIES.—

15 “(A) IN GENERAL.—The Board may not
16 determine that real estate brokerage activity or
17 real estate management activity is an activity
18 that is financial in nature, is incidental to any

1 financial activity, or is complementary to a fi-
2 nancial activity.

3 “(B) REAL ESTATE BROKERAGE ACTIVITY
4 DEFINED.—For purposes of this paragraph, the
5 term ‘real estate brokerage activity’ means any
6 activity that involves offering or providing real
7 estate brokerage services to the public, includ-
8 ing—

9 “(i) acting as an agent for a buyer,
10 seller, lessor, or lessee of real property;

11 “(ii) listing or advertising real prop-
12 erty for sale, purchase, lease, rental, or ex-
13 change;

14 “(iii) providing advice in connection
15 with sale, purchase, lease, rental, or ex-
16 change of real property;

17 “(iv) bringing together parties inter-
18 ested in the sale, purchase, lease, rental, or
19 exchange of real property;

20 “(v) negotiating, on behalf of any
21 party, any portion of a contract relating to
22 the sale, purchase, lease, rental, or ex-
23 change of real property (other than in con-
24 nection with providing financing with re-
25 spect to any such transaction);

1 “(vi) engaging in any activity for
2 which a person engaged in the activity is
3 required to be registered or licensed as a
4 real estate agent or broker under any ap-
5 plicable law; and

6 “(vii) offering to engage in any activ-
7 ity, or act in any capacity, described in
8 clause (i), (ii), (iii), (iv), (v), or (vi).

9 “(C) REAL ESTATE MANAGEMENT ACTIV-
10 ITY DEFINED.—For purposes of this paragraph,
11 the term ‘real estate management activity’
12 means any activity that involves offering or pro-
13 viding real estate management services to the
14 public, including—

15 “(i) procuring any tenant or lessee for
16 any real property;

17 “(ii) negotiating leases of real prop-
18 erty;

19 “(iii) maintaining security deposits on
20 behalf of any tenant or lessor of real prop-
21 erty (other than as a depository institution
22 for any person providing real estate man-
23 agement services for any tenant or lessor
24 of real property);

1 “(iv) billing and collecting rental pay-
2 ments with respect to real property or pro-
3 viding periodic accounting for such pay-
4 ments;

5 “(v) making principal, interest, insur-
6 ance, tax, or utility payments with respect
7 to real property (other than as a deposi-
8 tory institution or other financial institu-
9 tion on behalf of, and at the direction of,
10 an account holder at the institution);

11 “(vi) overseeing the inspection, main-
12 tenance, and upkeep of real property, gen-
13 erally; and

14 “(vii) offering to engage in any activ-
15 ity, or act in any capacity, described in
16 clause (i), (ii), (iii), (iv), (v), or (vi).

17 “(D) EXCEPTION FOR COMPANY PROP-
18 ERTY.—This paragraph shall not apply to an
19 activity of a bank holding company or any affil-
20 iate of such company that directly relates to
21 managing any real property owned by such
22 company or affiliate, or the purchase, sale, or
23 lease of property owned, or to be used or occu-
24 pied, by such company or affiliate.

1 “(E) CURRENT ACTIVITIES NOT AF-
 2 FECTED.—No provision of this paragraph, or
 3 any determination made pursuant to any such
 4 provision, may be construed as prohibiting, re-
 5 stricting, altering, or otherwise affecting, the
 6 right, power, or ability of any financial holding
 7 company to engage in any activity, or acquire
 8 or retain the shares of any company engaged in
 9 an activity, if engaging in such activity, or ac-
 10 quiring or retaining such shares, was author-
 11 ized for financial holding companies on Decem-
 12 ber 6, 2001.”.

13 (b) REVISED STATUTES OF THE UNITED STATES.—
 14 Section 5136A(b) of the Revised Statutes of the United
 15 States (12 U.S.C. 24a(b)) is amended by adding at the
 16 end the following new paragraph:

17 “(4) REAL ESTATE BROKERAGE AND REAL ES-
 18 TATE MANAGEMENT ACTIVITIES.—

19 “(A) IN GENERAL.—The Secretary may
 20 not determine that real estate brokerage activ-
 21 ity or real estate management activity is an ac-
 22 tivity that is financial in nature, is incidental to
 23 any financial activity, or is complementary to a
 24 financial activity.

1 “(B) DEFINITIONS.—For purposes of this
2 paragraph, the terms ‘real estate brokerage ac-
3 tivity’ and ‘real estate management activity’
4 have the same meanings as in section 4(k)(8) of
5 the Bank Holding Company Act of 1956.

6 “(C) EXCEPTION FOR COMPANY PROP-
7 ERTY.—This paragraph shall not apply to an
8 activity of a national bank, or a subsidiary of
9 a national bank, that directly relates to man-
10 aging any real property owned by such bank or
11 subsidiary, or the purchase, sale, or lease of
12 property owned, or to be owned, by such bank
13 or subsidiary.

14 “(D) CURRENT ACTIVITIES NOT AF-
15 FECTED.—No provision of this paragraph, or
16 any determination made pursuant to any such
17 provision, may be construed as prohibiting, re-
18 stricting, altering, or otherwise affecting, the
19 right, power, or ability of any national bank, or
20 a subsidiary of a national bank, to engage in
21 any activity, or acquire or retain the shares of
22 any company engaged in an activity, if engag-
23 ing in such activity, or acquiring or retaining
24 such shares, was authorized for national banks,

1 or subsidiaries of national banks, on December
2 6, 2001.”.

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