

2003

**DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION**

**DIVISION OF BANKING**

**BUREAU OF BANKS AND TRUST COMPANIES**

**COMMERCIAL BANKING**

**BANK LEASE AGREEMENTS**

**INSURANCE REGISTERED FIRMS AND INSURERS**

The Division of Banking, Bureau of Banks and Trust Companies applies the following guidelines to all agreements for the lease of bank space in Illinois by a business entity acting as an insurance producer as defined in Section 500-30 of the Illinois Insurance Code, 215 ILCS 5/500-30, or an insurer as defined in Section 132.2 of the Illinois Insurance Code, 215 ILCS 5/132.2.

1. The lease must be in writing.
2. The tenant must be a business entity acting as an insurance producer or an insurer in good standing under the laws of Illinois.
3. The rental payments under the lease shall constitute remuneration for the use of the leased space, any personal property such as furniture, fixtures and equipment, cleaning, maintenance and janitorial services, secretarial and clerical assistance, and utilities provided, if any. The rental payments shall not be expressed as including any participation in the insurance commissions, fees or other income generated by the tenant, but may be expressed as a percentage of the tenant's gross or net receipts.
4. The lease shall provide:
  - a. That the tenant shall be responsible for all insurance related functions, including:
    - i. Maintaining all necessary local and state listings, registrations, licenses, permits and regulatory approvals for both its lawful operation and its employees ("employee" means any person acting on the tenant's behalf in connection with the solicitation, sale, issuance or servicing of the tenant's products on the bank's premises and includes, without limitation, dual employees).
    - ii. Compliance training of its employees.

- iii. Processing all insurance product transactions.
  - iv. Providing all marketing materials relating to the sale of the tenant's products ("marketing materials" includes, without limitation, any signage, product literature and other promotional and advertising materials).
  - v. Conducting due diligence on a continuing basis on any insurer for which the tenant issues products to determine if the insurer is operating in a manner that is lawful and not hazardous to its policyholders, and shall include the periodic review of:
    - A. Ratings issued by independent rating firms.
    - B. Other appropriate financial background information.
    - C. Investment and mortgage portfolios.
    - D. Investment philosophy compared to accepted industry rating standards.
  - vi. Conducting due diligence on a continuing basis on any insurance products that are marketed or issued on the bank's premises to determine their suitability for the bank's customers.
- b. That the tenant's business shall be operated subject to the following restrictions:
- i. The tenant's business shall be maintained separate and distinct from the bank so that the public will understand it is obtaining products from the tenant and not the bank, and specifically shall:
    - A. Disclose in all marketing materials that:
      - 1. The insurance products are offered through the tenant and not the bank.
      - 2. The insurance products are not FDIC or otherwise insured and are not guaranteed by the bank.
    - B. Cause its employees to secure from its customers before a sale of any insurance product is made a signed statement that the customer understands the information set out in 4.b.i.A. above.
  - ii. The tenant shall not solicit insurance business on the bank's premises outside of the tenant's leased space, and the bank shall

not conduct its business in the space leased by the tenant unless all of the tenant's marketing materials and other information identifying the tenant are first removed from the space.

- c. That the tenant shall indemnify the bank and its affiliates, their respective directors, officers and agents, and their respective successors and assigns, from and against any liability (including reasonable attorney fees) that the bank may incur at any time after the date of the lease resulting from the tenant's conduct of business or the tenant's failure to comply with applicable laws, rules, regulations, guidelines or interpretations.
- d. That the bank and the tenant are not partners, joint venturers or agents of each other, and that the bank shall not participate in any of the tenant's management decisions and shall not otherwise exert control over the tenant.
- e. That the bank is not liable for the tenant's debts and other liabilities.
- f. That the tenant shall secure and maintain in full force and effect during the term of the lease the following types of insurance, with such aggregate limits and deductibles, if any, as the bank deems will provide sufficient coverage:
  - i. Commercial general liability insurance (unless the tenant is itself an insurer and has demonstrated to the bank's satisfaction that the insurer has sufficient reserves to indemnify the bank against any liability commonly covered under such insurance).
  - ii. Commercial errors and omissions liability insurance (unless the tenant is itself an insurer and has demonstrated to the bank's satisfaction that the insurer has sufficient reserves to indemnify the bank against any liability arising from the errors or omissions of the tenant or its employees).
  - iii. Fidelity bond insurance.
  - iv. Worker's compensation insurance as required by Illinois law.
- g. That the bank shall provide for a secure entrance for the tenant if its hours of operation are different from the bank's, and that the bank shall implement other security measures that it may in its sole discretion deem necessary if the public is given access to the tenant's leased space during hours when banking services are not available.
- h. That the lease is subject to all applicable local, state and federal laws, rules, regulations, guidelines and interpretations, and it shall be modified or terminated if so required by the appropriate banking regulatory authority.

5. Leases that provide for dual employees shall require the selected bank's employees to enter into a separate agreement with the tenant, and such leases shall provide that the dual employees are:
  - a. Subject to the tenant's exclusive supervision while offering the tenant's products and related activities.
  - b. Compensated by the tenant for their business activities for the tenant; provided, however, the bank and the tenant may provide in the lease for the tenant to make such compensation payments to the bank for payment to the dual employee on behalf of the tenant.
6. A bank shall not engage in the tying of extensions of credit or specific banking related services to the sale of the tenant's insurance products and services in violation of Section 48.2(a) of the Illinois Banking Act, 205 ILCS 5/48.2(a), or in violation of federal law, 12 USC 1972(1).
7. Pursuant to the customer-records confidentiality provisions of Section 48.1 of the Illinois Banking Act, 205 ILCS 5/48.1, the tenant shall not have access to the bank customers' financial records. The tenant may have access to a list of bank customers' names, addresses and telephone numbers provided no financial information of any kind is included.
  - a. The tenant will maintain in strict confidence at all times all customer lists and shall use such information solely for the purpose of conducting the tenant's business.
  - b. The tenant shall return to the bank any customer lists obtained from the bank and any other documents or other medium containing such information in whole or in part (except information relating to the customers of the tenant) immediately upon the termination of the lease.
8. Any bank marketing materials informing the bank's customers that the tenant is offering insurance products in leased space at the bank shall clearly indicate that such information is not a solicitation or promotion by the bank and shall disclaim any financial relationship between the bank and the tenant. The bank may include marketing materials of the tenant in mailings to its customers provided such materials are separate inserts and otherwise conform with these guidelines.

*[Revised October, 2005]*