



Preemption: The View From Inside A National Bank

National Banks: Preemption Helps! But...

What National Banks can count on:

- **Visitorial powers rest with the OCC only**
- **Includes operating subs – Watters**

Exportation of interest rates and fees

Unimpeded real estate lending authority

Federal laws and regulations apply

- **Alphabet regs**
- **Regulator-specific**
 - OCC onsite
 - OCC Advisory letter enforced –
due to market conditions, 2003-3
regarding broker relationships

Where the going gets grayer...

While...

- **Some state laws always apply - contract law / real estate transfers homestead rights / torts**
- **And OCC interpretations regarding lending authority are very helpful,**

The lines are not always bright...

- **CA UDAP cases – contract issue vs lending**

State responses to the subprime crisis affect national banks:

- **Antipredatory lending / high cost loan laws**
- **Working with state licensed lenders**
- **Good will and reputation**

GSEs and market realities

- **Secondary market requires representations and warranties**
- **Fannie/Freddie/OFHEO/NY AG agreements**

Other state actions...

- **Non-legislative commitments**
- **Indirect Control – CA controls CA brokers**

Activity at the Federal Level...

- **We are watching progress of Congress as it responds to the mortgage crisis... to see what actions we'll need to take in response**
- **Fed's new HOEPA Rule**
- **HUD's new RESPA rule...**