NATIONAL ASSOCIATION BANKS CANNOT LEND CREDIT

The following court cases support the fact that the banks are fraudulently making loans:

“In the federal courts, it is well established that a national bank has not power to lend its credit to another by becoming surety, endorser, or guarantor for him.” Farmers and Miners Bank v. Bluefield Nat‘l Bank, 11 F 2d 83, 271 U.S. 669.

“A national bank has no power to lend its credit to any person or corporation.” Bowen v. Needles Nat. Bank, 94 F 925, 36 CCA 553, certiorari denied in 20 S.Ct 1024, 176 US 682, 44 LED
637.

“Mr. Justice Marshall said: The doctrine of ultra vires is a most powerful weapon to keep private corporations within their legitimate spheres and to punish them for violations of their corporate charters, and it probably is not invoked too often. Zinc Carbonate Co. v. First National Bank, 103 Wis 125, 79 NW 229.” American Express Co. v. Citizens State Bank, 194 NW 430.

“. . . the bank is allowed to lend money upon personal security; but it must be money that it loans, not its credit.” Seligman v. Charlottesville Nat. Bank, 3 Hughes 647, Fed Case No.12, 642, 1039.

“The contract is void if it is only in part connected with the illegal transaction and the promise single or entire.” Guardian Agency v. Guardian Mutual. Savings Bank, 227 Wis 550, 279 NW 83.

"Banking Associations from the very nature of their business are prohibited from lending credit." (St. Louis Savings Bank vs. Parmalee 95 U. S. 557)

"National Banks may lend their money but not their credit." (Norton Grocery vs. Peoples National Bank, 144 S.E. 501, 151 Va. 195)

“A bank may not lend its credit to another even though such a transaction turns out to have been of benefit to the bank, and in support of this a list of cases might be cited, which-would look like a catalog of ships.” [Emphasis added] Norton Grocery Co. v. Peoples Nat. Bank,144 SE 505. 151 Va 195.

"Neither, as to include in its powers not incidental to them, is it a part of a bank's business to lend its credit. If a bank could lend its credit as well as its money, it might, if it received compensation and was not careful to put its name only to solid paper, make a great deal more than any lawful interest on its money would amount to. If not careful, the power would be the mother of panics . . . Indeed, lending credit is the exact opposite of lending money, which is the real business of banking, for while the latter creates a liability in favor of the bank, the former gives rise to a

liability of the bank to another." (American Express Co. vs. Citizens State Bank, 194 NW 429)

“It has been settled beyond controversy that a national bank, under federal law being limited in its powers and capacity, cannot lend its credit by guaranteeing the debts of another. All such contracts entered into by its officers are ultra vires” Howard & Foster Co. v. Citizens Nat’l Bank of Union, 133 SC 202, 130 SE 758-759(1926).

“It is not within those statutory powers for a national bank, even though solvent, to lend **its** credit to another in any of the various ways in which that might be done.” Federal Intermediate Credit Bank v. L ‘Herrison, 33 F 2d 841, 842 (1929).

"Banking corporations cannot lend credit." (First National Bank of Amarillo vs. Slaton Independent School District, Tex Civ App 1933, 58 SW 2d 870)

"There is no doubt but what the law is that a national bank cannot lend its credit or become an accommodation endorser." (National Bank of Commerce vs. Atkinson, 55 Fed Rep 465)

"Nowhere is the express authority granted to the corporation to lend its credit." (Gardilner Trust vs. Augusta Trust, 134 Me 191; 291 US 245)

"A national bank has no authority to lend its credit." (Johnston vs. Charlottesville National Bank, C.C. Va. 1879, Fed Cas. 7425)

"A contract made by a corporation beyond the scope of its power corporate powers is unlawful and void." (McCormick vs. Market National Bank, 165 U.S. 538)

"A national bank . . . cannot lend its credit to another by becoming surety, endorser, or guarantor for him, such an act is ultra vires . . ." (Merchants' Bank vs. Baird, 160 F 642)

Despite the above court cases, Ralph Gelder, Superintendent, Department of Banks and Banking, State of Maine, said on Feb. 20, 1974, "A commercial bank is able to make a loan by simply creating a new demand deposit (so called checkbook money) through bookkeeping entry." This is in total contradiction to what the courts have said. Yet, that is exactly how the banksters create the money to loan to its customers or to buy government bonds.

"Federal Reserve bank credit does not consist of funds that the Reserve authorities get somewhere in order to lend, but constitute funds that they are empowered to create." (Federal Reserve Bank: Its Purposes and Functions, 1939 Edition)

"Act is ultra vires when corporation is without authority to perform it under any circumstance or for any purpose. By doctrine of ultra vires a contract made by a corporation beyond the scope of its corporate powers is unlawful." (Community Fed S&L vs. Fields, 128 F 2nd 705)

"A bank is not the holder in due course upon merely crediting the depositors account." (Bankers Trust vs. Nagler 229, NYS 2nd 142)

"A holder who does not give value cannot qualify as a holder in due course." (Uniform Commercial Code 3-303.1)

"Checks, drafts, money orders and bank notes [Federal Reserve Notes] are not lawful money of the United States." (State vs. Nealan, 48 Ore. 155)

"When an instrument [notes] lacks an unconditional promise to pay a sum certain at a fixed and determined time, it is only an acknowledgement of the debt and statutory presumptions like the presence of a valuable consideration, are not applicable." (Bader vs. Williams, 61 A 2d 637)

"A note is not negotiable unless it is payable at a time in the future." (Rhodes vs. Schofield, 82 So. 2d 236)

In a letter dated May 7, 1981, Michael Hodge, Assistant Attorney General, State of Michigan wrote, "Please be advised the United States Constitution Article I, Section 10 is binding on the States."

This is confirmed in Carol Zurn vs. Val Bjornson, Treasurer, State of Minnesota. Whereas, the plaintiff sued the defendant for payment in gold or silver Coin on a check drawn on the Treasury of the State of Minnesota. Justice of the Peace, Bill Drexler handed down this ruling: "Plaintiff is entitled to receive payment in gold and silver Coin in satisfaction of said check . . . Pursuant to LAW ONE DOLLAR is equal to 23.22 grains of pure gold or 371.25 grains of pure silver . . . Pursuant to Law neither this court nor the Treasurer of the State of Minnesota, the Defendant herein, can make any Thing but gold and silver Coin a Tender in payment of debts."

Justice of the Peace, Bill Drexler took his decision one step farther, he declared, "That Title 12, Sections 95a and Title 31, Section 443 making it a criminal offense to buy and sell gold and providing for penalties and confiscation of gold by reason of the possession thereof is unconstitutional and void."

In Bronson vs. Rhodes, the court ruled, "Lawful money of the United States could only be gold and silver, or that which by law is made its equivalent, so as to be exchangeable therefore at par and on demand." (74 U.S. 229, 247, 19 L. Ed. 141)

According to 12 USCS, Section 411, ". . . They [Federal Reserve Notes] shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, D.C., or at any Federal Reserve bank." If Federal Reserve Notes shall be redeemed in `lawful' money, what kind of money would be unlawful?

"If money does not have the value it purports to have on its face, it cannot be legal tender."

(Craig vs. Missouri, 29 U.S. 410) Try to redeem your legal tender Federal Reserve Notes for Gold or Silver. Good Luck!

"The United States is a national state which has a central banking system, the Federal Reserve System, and whose currency, for domestic purposes, is not convertible into any commodity." Beardsley Ruml, Chairman of the Federal Reserve Bank of New York, 1946

The Honorable Larry Moritz, Municipal Judge, Spearville, Kansas, declared in 1981, "If Congress won't keep its part of the Constitutional bargain and coin money of gold and silver like Article I, Section 8, Clause 5 commands, there's no way my court can require anyone to pay fines. I am not here to protect certain people's investments, I am here to carry out the mandate of the U.S. and the Kansas Constitutions." Thank God we have some righteous judges still left in our Nation.

Bruce A. Budlong of the Department of the Treasury said, "The same monetary system that was established on April 2, 1792, is in effect today."

Section 20 of the 1792 Coinage Act, 1 Stat. 246 stipulates: ". . . That the money of the account of the United States shall be expressed in dollars . . . and that all accounts in the public offices and all proceedings in the courts of the United States shall be kept and in conformity to this regulation." This section of the Act has never been repealed and is still in effect today.

Section 314 of USCS 31 states the standard unit value as "the dollar consisting of 24 8/10 grains of gold, nine tenths fine and/or 371.25 grains of .999 fine silver as established shall be the standard unit of value, and all forms of money issued and coined by the United States shall be maintained at a parity of the value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity."

The Section 19 of the 1792 Coinage Act states, "That if any of the gold or silver coins which shall be struck or coined at the said mint shall be debased or made worse as to the proportion of fine gold or silver therein contained, or shall be less weight or value than the same out to be pursuant to the direction of this act, through the default or with connivance of any officers or persons who shall be employed at the said mint, for the purpose of profit or gain, or otherwise with a fraudulent intent, if any of the said officers or persons shall embezzle any of the metals . . . every such officer or person who shall commit any or either of the said offenses, shall be deemed guilty of felony, and shall suffer DEATH."

Reach into your pocket, look at the money. The silver and gold have been embezzled by the Federal Reserve! The law did not say, 25 years to life imprisonment, it says "DEATH!" They have been charged with the crime and must be sentenced accordingly.

Pursuant to 12 United States Code, (hereafter, U.S.C.) Sections 341, Paragraph 8: 12 USC 104, 109, 123, and 110. Federal Reserve Notes must express ". . . upon their face that they are secured

by United States Bonds deposited with the Treasurer of the United States, by the written or engraved signatures of the Treasurer and Register, and by the imprint of the seal of the Treasury; and shall also express upon their face the promise of the association receiving the same to pay on demand, attested by the written or engraved signatures of the president or vice president and cashier; and other such statements and in such form as the Sec. of Treasury directs."

Do the Federal Reserve Notes in your pocket meet these requirements? Just don't sit there, take one out and see for yourself.

18 USC 334 makes it a "FELONY" to deliver and put in circulation any Federal Reserve Notes in violation of the above statues in Title 12. See 18 USC Sections 1, (Offenses classified); Sec. 2. (Principals); Sec. 3. (Accessory after the fact); Sec. 4. (Misprision of felony); Sec. 371. (Conspiracy); Sec. 1341. (Frauds and swindles); Sec. 1343 (Fraud by wire;) and most of all 18 USC Sec. 1960 to 1965. (Racketeer Influenced and Corrupt Organizations) Aren't all banks guilty of the above?

* Counterfeiter - "One who unlawfully makes base coin in imitation of the true metal, or forges false currency, or any instrument of writing bearing a likeness and similarity to that which is lawful and genuine, with an intention of deceiving and imposing another."

* Counterfeit coin - "Coin not genuine, but resembling or apparently intended to resemble or pass for genuine coin, including genuine coin prepared or altered so as to resemble or pass for a coin of a higher denomination."

* Lawful Money - "Money which is legal tender in payments of debt. See Legal Tender."

* Black's Law Dictionary, 6th Edition

Section 5103 of 31 USC, defines legal tender as, "United States coins and currency (including Federal reserve notes and circulating notes of Federal Reserve Banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold and silver coins are not tender for debts."

Isn't it amazing how they have changed the definition of lawful money (gold and silver), to mean legal plunder (tender)?

Banks cant lend own money

There's enough evidence below to show that the lenders are acting outside their corporate authority to do what they do. This makes the lenders not the victims, but unable to recover damages or enforce their lending agreements due to the doctrine of "ultra vires" alone.

This makes the criminal trial in CA against the Dorean Group particularly a farce when the

charges become "bank fraud", "mail fraud" or "wire fraud" when these are the things that the so called victims (lenders) have done.

ULTRA VIRES

The United States Code, Title 12, Section 24, Paragraph 7 confers upon a bank the power to lend its money, not it's credit. In First National Bank of Tallapoosa vs. Monroe, 135 Ga 614; 69 S.E. 1123 (1911), the court, after citing the statue heretofore said, "The provisions referred to do not give power to a national bank to guarantee the payment of the obligations of others solely for their benefit, nor is there any authority to issue them through such power incidental of the business of banking. A bank can lend it's money, not it's credit." Meanwhile, they do it anyway from a profit motive, even though it flies in the face of their primary duty to protect people's money.

An activity constitutes an incidental power if it is closely related to an express power and is useful in carrying out the business of banking. See First Nat. Bank of Eastern Arkansas v. Taylor, 907 F.2d 775. But even with this latitude no hint of lending credit is provided in 12 U.S.C. 24 that would give rise to an incidental power to lend credit. The exercise of powers not expressly granted to national banks is prohibited:

First National Bank v. National Exchange Bank 29 U.S. 122, 128

California Bank v. Kennedy 167 U.S. 362, 367

Concord Bank v. Hawkins 174 U.S. 364

Further, it is laid down as a general rule that a national bank cannot lend its credit by becoming surety, indorser, or guarantor for another. **"In the federal courts, it is well settled that a national bank has not power to lend its credit to another by becoming surety, indorser, or guarantor for him."** See the following cases:
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C.E. Healey & Son v. Stewardson Nat. Bank, 1 N.E.2d 858, 285 Ill. App. 290.

People's Nat. Bank of Winston-Salem vs. Southern States Finance Co., 122 S.E. 415, 192 N.C. 69, 48 A.L.R. 519.

Colley v. Chowchilla Nat. Bank, 255 P. 188, 200 C. 760, 52 A.L.R. 569.

Rice & Hutchins Atlanta Co. v. Commercial Nat. Bank of Macon, 88 S.E. 999, 18 Ga.App. 151.

First Nat. Bank of Hagerman v. Stringfield, 235 P. 897, 40 Ill.App. 376

City Nat. Bank of Wellington v. Morgan, Civ. App., 258 S.W. 572.

Farmers' & Merchants' Bank of Reedsville v. Kingwood Nat. Bank, 101 S.E. 734, 85 W.Va. 371.

Best v. State Bank of Bruce, 221 N.W. 379, 197 Wis. 20.

Bank of New York v. SINGH - Judge KURTZ 14Dec 2007.

Bank of New York v. TORRES - Judge COSTELLO 11Mar2008.

Bank of New York v. OROSCO - Judge SCHACK 19Nov2007.

Citi Mortgage Inc. v. BROWN - Judge FARNETI 13Mar2008.

". . . checks, drafts, money orders, and bank notes are not lawful money of the United States ..." State v. Neilon, 73 Pac 324, 43 Ore 168.

A national bank's charter requires that they protect customers money first, and then make money second. National banks are only allowed to make money in order to protect people's money-so one serves the other, but the priority is to protect.

In Central Transp. Co. v. Pullman, 139 U.S. 60, 11 S. Ct. 478, 35 L. Ed. 55, the court said: "A contract ultra vires being unlawful and void, not because it is in itself immoral, but because the corporation, by the law of its creation, is incapable of making it, the courts, while refusing to maintain any action upon the unlawful contract, have always striven to do justice between the parties, so far as could be done consistently with adherence to law, by permitting a property or money, parted with on the faith of the unlawful contract, to be recovered back, or compensation to be made for it. In such case, however, the action is not maintained upon the unlawful contract, nor according to its terms; but on an implied contract of the defendant to return, or failing to do that, to make compensation for, property or money which it has no right to retain. To maintain such an action is not to affirm, but to disaffirm, the unlawful contract."

a. "When a contract is once declared ultra vires, the fact that it is executed does not validate it, nor can it be ratified, so as to make it the basis of suitor action, nor does the doctrine of estoppel apply." Fand PR v. Richmond

b. "A national bank cannot lend its credit to another by becoming surety, endorser, or guarantor for him, such an act; is ultra vires…" Merchants Bank v. Baird 160 F 642.

The following case cites also support this Memorandum on credit loans and void contracts:

"In the federal courts, it is well established that a national bank has no power to lend its credit to

another by becoming surety, endorser, or guarantor for him." Farmers and Miners Bank v. Bluefield Nat'l Bank, 11 F 2d 83, 271 U.S.669.

"A bank may not lend its credit to another even though such a transaction turns out to have been a benefit to the bank, and in support of this a list of cases might be cited, which-would like a catalog of ships." [Emphasis added] Norton Grocery Co. v. Peoples Nat. Bank, 144 SE 505. 151 Va 195.

"It has been settled beyond controversy that a national bank, under federal Law being limited in its powers and capacity, cannot lend its credit by guaranteeing the debts of another. All such contracts entered into by its officers are ultra vires…" Howard and Foster Co. v. Citizens Nat'l Bank of Union, 133 SC 202, 130 SE 759 (1926).

"…checks, drafts, money orders, and bank notes are not lawful money of the United States…" State v. Neilon, 73 Pac 324, 43 Ore 168.

"Neither, as included in its power not incidental to them, it is a part of a bank's business to lend it's credit. If a bank could lend its credit as well as its money, it might, if it received compensation and was careful to put its name only to solid paper, make a great deal more than any lawful interest on its money would amount to. If not careful, the power would be the mother of panics,…Indeed, lending credit is the exact opposite of lending money which is the real business of a bank, for while the latter creates a liability in favor of the bank, the former gives rise to a liability of the bank to another. I Morse. Banks and Banking 5th Ed. Sec. 65; Magee, Banks and Banking, 3rd Ed. Sec 248." American Express Co. v. Citizens State Bank, 194 NW 429.

"It is not within those statutory powers for a national bank, even though solvent, to lend its credit to another in any of the various ways in which that might be done." Federal Intermediate Credit Bank v. L "Herrison, 33 F 2d 841, 842 (1929).

"There is no doubt but what the law is that national bank cannot lend its credit or become an accommodation endorser." National Bank of Commerce v. Atkinson, 55 E 471.

"…the bank is allowed to hold money upon personal security; but it must be money that it loans, not its credit." Seligman v. Charlottesville Nat. Bank, 3 Hughes 647, Fed Case No. 12, 642, 1039.

"A loan may be defined as the delivery by one party to, and the receipt by another party of, a sum of money upon an agreement, express or implied, to repay the sum with or without interest." Parsons v. Fox 179 Ga 605, 176 SE 644. Also see Kirkland v. Bailey, 155 SE 2d 701 and United States v. Neifert White Co., 247 Fed Supp 878, 879.
"The word `money' in its usual and ordinary acceptation means gold, silver, or paper money used as a circulating medium of exchange…" Lane v. Railey 280 Ky 319, 133 SW 2d 75.

"A promise to pay cannot, by argument, however ingenious, be made the equivalent of actual payment.." Christensen v. Beebe, 91 P 133, 32 Utah 406.

"A check is merely an order on a bank to pay money." Young v. Hembree, 73 P2d 393.

"Any false representation of material facts made with knowledge of falsity and with intent that it shall be acted on by another in entering into contract, and which is so acted upon, constitutes `fraud,' and entitles party deceived to avoid contract or recover damages." Barnsdall Refining Corn, v. Birnam Wood Oil Co., 92 F 26 817.

"Any conduct capable of being turned into a statement of fact is representation. There is no distinction between misrepresentations effected by words and misrepresentations effected by other acts." Leonard v. Springer 197 Ill 532.64 NE 301.

"If any part of the consideration for a promise be illegal, or if there are several considerations for an unseverable promise, one of which is illegal, the promise, whether written or oral, is wholly void, as it is impossible to say what part or which one of the considerations induced the promise." Menominee River Co. v. Augustus Spies L and C Co., 147 Wis 559.572; 132 NW 1122.

"It is not necessary for recession of a contract that the party making the misrepresentation should have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be unjust to allow one who made false representations, even innocently, to retain the fruits of a bargain induced by such representations. " Whipp v. Iverson, 43 Wis 2d 166.

"Turner was told that the blank for the debtor's name would be completed by adding the name of a company affiliated with Turner. Unknown to Turner, the guarantee was completed by filling in the name of a debtor with whom Turner was not affiliated and by altering the guarantee to change the name of the bank/creditor. The court held that Turner could assert a fraud claim against the Federal Deposit Insurance Corporation as owner of the note in its corporate capacity." Federal Deposit Insurance Corporation v. Turner, 869 F. 2d 270 (6th Cir. 1989)

"The court held that the fraud claim was defective since it alleged a promise to perform an act in the future or a representation as to future events…The court rejected this claim holding that there was no evidence that the lender had any sort of power or domination over the borrower who was free to seek financing elsewhere." Southern Mortgage Company v. O'Dom, 699 F. Supp. 1227 (S.D. Miss. 1988)

"The court held that, considering the relationship of the parties, Hanson was reasonable in relying upon the alleged representations by the bank. The court held that the future financing provisions were not so indefinite that it would be unreasonable for Hanson to rely upon them. Hanson's

failure to read the loan documents was excusable since he was encouraged by the bank officer not to read them and the bank officer advised him not to have his lawyer present at the closing. The court affirmed a jury award of compensatory and punitive damages against the bank." American National Bank & Trust Company v. Hanson Construction Co., Inc., 1991 WL 42668 (Ky. 1991)

"The court acknowledged that the statute would not bar a claim for unjust enrichment if it could be shown that a benefit had been conferred on the lender by mistake, fraud, coercion or request. Thus, had Home induced Nibbi to provide work on the project under circumstances in which Home's inducement fell under circumstances traditional categories of mistake, fraud, coercion or request, a claim for unjust enrichment might escape the reach of the statutory bar." Nibbi Brothers. Inc. v. Brannen Street Investors, 205 Cal. App. 3d 1415 (1988)

"The court affirmed the jury verdict in favor of Esser for fraud based upon evidence that at the closing the bank advised Esser that she was signing only for the new truck loan. The court held that Esser's reliance on the bank's misrepresentations was reasonable since she trusted the bank's security practices and believed that the guarantee only applied to the new loan. The court also held that the trial court should have submitted Esser's punitive damage claim to the jury because of evidence that the bank's misrepresentation was active and the bank took advantage of Esser's trust and reliance." Bank of Sun Prairie v. Esser, 151 Wis.2d 11, 442 N.W.2d 540 (1989)

"the court held that the alleged misrepresentations made by the bank were material and actionable since it was claimed that the bank affiliate did not have the development expertise it was represented to have and had no intention of advancing the funds when the promise was made." Touche Ross Limited v. Filipek, 778 P.2d 721 (Haw. 1989)

"The court held that a claim of negligent misrepresentation is included within the definition of "fraud" as used in the statute and as that term is defined in Civil Code § 1572. The court also held that questions of fact were presented as to whether the investors had justifiably relied upon Hutton's alleged representations concerning the investment." Blankenheim v. E.F. Hutton & Company, Inc., 217 Cal. App. 3d 1463 (1990)

"Regarding the power to delegate the control of our money supply to a private corporation can be found in 16 Am Jur 2d, Section 347, which states: "The rule has become fixed that the legislature may not delegate legislative functions to private persons or groups, or to private corporations or a group of private corporations." *First National Bank of Montgomery vs. Jerome Daly.*

"Banking Associations from the very nature of their business are prohibited from lending credit." (St. Louis Savings Bank vs. Parmalee 95 U. S. 557)

"Banking corporations cannot lend credit." (*First National Bank of Amarillo vs. Slaton Independent School District, Tex Civ App 1933, 58 SW 2d 870*)

"Nowhere is the express authority granted to the corporation to lend its credit." (*Gardilner Trust vs. Augusta Trust, 134 Me 191; 291 US 245*)

"A national bank has no authority to lend its credit." *(Johnston vs. Charlottesville National Bank, C.C. Va. 1879, Fed Cas. 7425*)

"A contract made by a corporation beyond the scope of corporate powers is unlawful and void." (*McCormick vs. Market National Bank, 165 U.S. 538)*

Despite the above court cases, Ralph Gelder, Superintendent, Department of Banks and Banking, State of Maine, said on Feb. 20, 1974, "A commercial bank is able to make a loan by simply creating a new demand deposit (so called checkbook money) through bookkeeping entry." This is in total contradiction to what the courts have said. Yet, that is exactly how the banks create the money to loan to its customers or to buy government bonds.

"Act is ultra vires when corporation is without authority to perform it under any circumstance or for any purpose. By doctrine of ultra vires a contract made by a corporation beyond the scope of its corporate powers is unlawful." (Community Fed S&L vs. Fields, 128 F 2nd 705)

(Note: Black's Law Dictionary: ultra vires - Latin for "beyond powers." It refers to conduct by a corporation or its officers that exceeds the powers granted by law.)

"A holder who does not give value cannot qualify as a holder in due course." (Uniform Commercial Code 3-303.1)

A nonjudicial foreclosure sale conducted by mistake was invalid where the trustee had no right to sell the property since the buyer and lender entered into an agreement to cure the buyer's default. *Bank of Am. v. La Jolla Group, No. F045318 (Cal. 5th App. Dist. May 19, 2005)*

National banking corporations are agencies or instruments of the general government, designed to aid in the administration of an important branch of the public service, and are an appropriate constitutional means to that end. *Pollard v. State, Ala.1880, 65 Ala. 628. See, also, Tarrant v. Bessemer Nat. Bank, 1913, 61 So. 47, 7 Ala.App. 285.*

A national bank cannot lend its credit or become the guarantor of the obligation of another unless it owns or has an interest in the obligation guaranteed especially where it receives no benefits therefrom. *Citizens' Nat. Bank of Cameron v. Good Roads Gravel Co., Tex.Civ.App. 1921, 236 S.W. 153, dismissed w.o.j.*

A national bank has no power to guarantee the performance of a contract made for the sole

benefit of another. *First Nat. Bank v. Crespi & Co., Tex.Civ.App. 1920, 217 S.W. 705, dismissed w.o.j.*

National banks have no power to negotiate loans for others. *Pollock v. Lumbermen's Nat. Bank of Portland, Or.1917, 168 P. 616, 86 Or. 324.*

A national bank cannot act as broker in lending its depositors' money to third persons. *Byron v. First Nat. Bank of Roseburg, Or.1915, 146 P. 516, 75 Or. 296.*

A national bank is not authorized to act as a broker in loaning the money of others. *Grow v. Cockrill, Ark.1897, 39 S.W. 60, 63 Ark. 418. See, also, Keyser v. Hitz, Dist.Col.1883, 2 Mackey, 513.*

Officers of national bank in handling its funds are acting in a fiduciary capacity, and cannot make loans and furnish money contrary to law or in such improvident manner as to imperil its funds. *First Nat. Bank v. Humphreys, Okla.1917, 168 P. 410, 66 Okla. 186.*

Representations made by bank president to proposed surety as to borrower's assets, in connection with proposed loan by bank, held binding on bank. *Young v. Goetting, C.C.A.5 (Tex.) 1926, 16 F.2d 248.*

Bank is liable for its vice president's participation in scheme to defraud depositor by facilitating prompt withdrawal of his money. *National City Bank v. Carter, C.C.A.6 (Tenn.) 1926, 14 F.2d 940.*

A national bank receiving the proceeds of a customer's note and mortgage with authority to pay out the same upon a first mortgage lien upon real estate is acting intra vires and liable for breach of its duty. *Brandenburg v. First Nat. Bank of Casselton, N.D.1921, 183 N.W. 643, 48 N.D. 176.*

It has been held that the right to discount and negotiate notes, etc., goes no further than to authorize the taking of them in return for a loan of money made on the strength of the promises contained in them, and does not contemplate a purchase in the market. *Lazear v. National Union Bank, Md.1879, 52 Md. 78, 36 Am.Rep. 355. See, also, Rochester First Nat. Bank v. Pierson, 1877, 24 Minn. 140, 31 Am.Rep. 341.*

National bank is not authorized under national banking laws to lend deposited money on depositor's behalf. *Carr v. Weiser State Bank of Weiser, Idaho 1937, 66 P.2d 1116, 57 Idaho 599.*

Under this section, a national bank had no authority to enter into a contract for loaning money of a depositor kept in a deposit account through its cashier authorized by the depositor to draw thereon to make loans. *Holmes v. Uvalde Nat. Bank, Tex.Civ.App. 1920, 222 S.W. 640, error refused.*

A bank has no right to loan the money of other persons. *Grow v. Cockrill, Ark.1897, 39 S.W. 60,*

63 Ark. 418.

A "deposit for a specified purpose" is one in the making of which a trust fund is constituted with respect to which a special duty as to its application is assumed by the bank. *Cooper v. National Bank of Savannah, Ga.App.1917, 94 S.E. 611, 21 Ga.App. 356, certiorari granted 38 S.Ct. 423, 246 U.S. 670, 62 L.Ed. 931, affirmed 40 S.Ct. 58, 251 U.S. 108, 64 L.Ed. 171.*

Fund, deposited in bank for special purpose subject to depositor's check, remains property of depositor. *U.S. Shipping Board Emergency Fleet Corporation v. Atlantic Corporation, D.C.Mass.1925, 5 F.2d 529, error dismissed 16 F.2d 27.*

'In the case of a special deposit, the bank assumes merely the charge or custody of property, without authority to use it, and the depositor is entitled to receive back the identical money or thing deposited. In such case, the right of property remains in the depositor, and if the deposit is of money, the bank may not mingle it with its own funds. The relation created is that of bailor and bailee, and not that of debtor and creditor.' *3 R.C.L. 522. Tuckerman v. Mearns, App.D.C.1919, 262 F. 607, 49 App.D.C. 153.*

National banks are liable for the loss of property held by them merely for the accommodation of their customers, without any consideration for the keeping of it except the profit derived from the banking business of such customers. *Security Nat. Bank v. Home Nat. Bank, Kan.1920, 187 P. 697, 106 Kan. 303.*

In securities law, the most important requirement is full disclosure. Investors have to be given the full scoop. You cannot hold anything back. Everything-lawsuits, criminal records, market share, debt-has to be disclosed. This same type of disclosure is required in the Truth in Lending Act as well. With that said, why is it that no one has ever heard of this legal argument? Well, probably because they have not been told. But don't you think that it is important and relevant to tell potential loan customers, as well as bank shareholders, that according to the US Code and numerous judicial decisions, it is questionable whether a national bank is actually authorized to lend credit, become a guarantor, or become surety? They should at least say something to their customers and shareholders along the lines of this:

"Disclaimer: We the bank, are lending credit, guaranteeing debts and becoming surety, through our lending business, for profit. The Comptroller of Currency approves. Congress has been silent in recent years. However, both federal and state courts in the past have repeatedly told us that the National Bank Act does not provide for this activity. Therefore, at any point in the future, the bank could be subject to either federal or state cease and desist orders. In that event the bank will require immediate and full payments and will cancel your credit or loan. Further, the bank may be exposed to civil lawsuits from all its former loan Clients and shareholders. "

Here are other things to consider:

If a party breaches its authority, by entering into an agreement that it knows it is not allowed by law to execute, is it moral to allow that party to enforce the agreement?

Is it moral to force a person to pay on a loan, when that person did not know that the bank did not have the legal authority to issue credit or to become surety?
Is it moral for a bank to place a negative mark on your credit report, when they did not have the authority to enter into the agreement in the first place, and that any deficit in payment has been insured by a third party insurance company and can be written off as a claim?

In addition to these three points, consider also that moral arguments (arguments based in equity), verses legal arguments (arguments based in law), are only upheld if the party seeking to enforce the agreement comes to the court with "clean hands." This concept is known as the clean hands doctrine. What this doctrine means is that if a bank desires to enforce an agreement based on equity (morality), then they must have acted equitable (moral). In the case of credit, if the banks know that the law prevents them from loaning credit (there is over a hundred years of case law on this point) and they do it anyway, then they simply do not have clean hands, and cannot argue their case in equity. Therefore they must argue in law. MEANWHILE, THE LAW PREVENTS THEM FROM LOANING CREDIT. There are penalties and forfeitures attached to what the bank did. In this case there are. In fact there are penalties attached to national banks going beyond their express powers in that they are exposing depositor's money to loss in contradiction to the bank's primary duty.

Therefore, the issue that can be raise is the argument of ultra virus and not only is the contract void, but even if the borrower did receive a benefit, the borrower was not unjustly enriched. If the contract is void then both parties walk away as if there never was a contract. The judge is then asked to declare a zero balance and deem it as paid as agreed. Since the borrower provided the value for the source of funds, the borrower is also entitled to a judgment in the amount of the highest credit limit issued or loan amount. Also, since the banks acts demonstrates that the bank took unfair advantage of the borrower, this results in the bank needing to be penalized. Typically, the borrower is entitled to ask for a financial award against the bank in the amount of the debt forgiven. Since fraud is committed, the borrower is entitled to all sums paid on the contract including interest, plus treble (triple) damages, attorney fees expended and court and other costs in addition. The borrower can also demands a zero balance on this debt, and a voidance of the loan agreement, and a financial judgment in favor of the borrower due to the bad behaviour of the lender.

ADDITIONAL BORROWERS RELIEF

In Federal District Court, the borrower may have additional claims for relief under "Civil RICO" Federal Racketeering laws. (18 U.S.C. 1964) As the lender may have established a "pattern of racketeering activity" by using the U.S. Mail more than twice to collect an unlawful debt and the lender may be in violation of 18 U.S.C. 1341, 1343, 1961 and 1962. The borrower may have other claims for relief. If he can prove there was or is a conspiracy to deprive him of property

without due process of law. Under 42 U.S.C. 1983 (Constitutional Injury), 1985 (Conspiracy) and 1986 ("knowledge" and "Neglect to Prevent" a U.S. Constitutional Wrong). Under 18 U.S.C.A. 241 (Conspiracy) violators, "shall be fined not more than $10,000 or imprisoned not more than ten (10) years or both.

In a Debtor's RICO action against its creditor, alleging that the creditor had collected an unlawful debt, an interest rate (where all loan charges were added together) that exceeded, in the language of the RICO Statute, "twice the enforceable rate." The Court found no reason to impose a requirement that the Plaintiff show the Defendant had been convicted of collecting an unlawful debt, running a "loan sharking" operation. The debt included the fact that exaction of a usurious interest rate rendered the debt unlawful and that is all that is necessary to support the Civil RICO action. Durante Bros. And Sons, Inc. v. Flushing Nat'l Bank, 755 F2d 239, Cert. Denied, 473 US 906 (1985).25. The Supreme Court found that the Plaintiff in a civil RICO action, need establish only a criminal "violation" and not a criminal conviction.

Further, the court held that the Defendant need only have caused harm to the Plaintiff by the commission of a predicate offense in such a way as to constitute a "pattern of Racketeering activity." That is, the Plaintiff need not demonstrate that the Defendant is an organized crime figure, a mobster in the popular sense, or that the Plaintiff has suffered some type of special Racketeering injury; all that the Plaintiff must show is what the Statute specifically requires. The RICO Statute and the civil remedies for its violation are to be liberally construed to effect the congressional purpose as broadly formulated in the Statute. Sedima, SPRL v. Imrex Co., 473 US 479 (1985).