

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 356

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.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 29, 2009

Mrs. BOXER (for herself and Mr. BURR) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## 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”.

1 **SEC. 2. CLARIFICATION THAT REAL ESTATE BROKERAGE**  
2 **AND MANAGEMENT ACTIVITIES ARE NOT**  
3 **BANKING OR FINANCIAL ACTIVITIES.**

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

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

10 “(A) IN GENERAL.—The Board may not  
11 determine that real estate brokerage activity or  
12 real estate management activity is an activity  
13 that is financial in nature, is incidental to any  
14 financial activity, or is complementary to a fi-  
15 nancial activity.

16 “(B) REAL ESTATE BROKERAGE ACTIVITY  
17 DEFINED.—For purposes of this paragraph, the  
18 term ‘real estate brokerage activity’ means any  
19 activity that involves offering or providing real  
20 estate brokerage services to the public, includ-  
21 ing—

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

24 “(ii) listing or advertising real prop-  
25 erty for sale, purchase, lease, rental, or ex-  
26 change;

1           “(iii) providing advice in connection  
2 with the sale, purchase, lease, rental, or  
3 exchange of real property;

4           “(iv) bringing together parties inter-  
5 ested in the sale, purchase, lease, rental, or  
6 exchange of real property;

7           “(v) negotiating, on behalf of any  
8 party, any portion of a contract relating to  
9 the sale, purchase, lease, rental, or ex-  
10 change of real property (other than in con-  
11 nection with providing financing with re-  
12 spect to any such transaction);

13           “(vi) engaging in any activity for  
14 which a person engaged in the activity is  
15 required to be registered or licensed as a  
16 real estate agent or broker under any ap-  
17 plicable law; and

18           “(vii) offering to engage in any activ-  
19 ity, or act in any capacity, described in  
20 this subparagraph.

21           “(C) REAL ESTATE MANAGEMENT ACTIV-  
22 ITY DEFINED.—For purposes of this paragraph,  
23 the term ‘real estate management activity’  
24 means any activity that involves offering or pro-

1           viding real estate management services to the  
2           public, including—

3                   “(i) procuring any tenant or lessee for  
4                   any real property;

5                   “(ii) negotiating leases of real prop-  
6                   erty;

7                   “(iii) maintaining security deposits on  
8                   behalf of any tenant or lessor of real prop-  
9                   erty (other than as a depository institution  
10                  for any person providing real estate man-  
11                  agement services for any tenant or lessor  
12                  of real property);

13                  “(iv) billing and collecting rental pay-  
14                  ments with respect to real property or pro-  
15                  viding periodic accounting for such pay-  
16                  ments;

17                  “(v) making principal, interest, insur-  
18                  ance, tax, or utility payments with respect  
19                  to real property (other than as a deposi-  
20                  tory institution or other financial institu-  
21                  tion on behalf of, and at the direction of,  
22                  an account holder at the institution);

23                  “(vi) overseeing the inspection, main-  
24                  tenance, and upkeep of real property, gen-  
25                  erally; and

1           “(vii) offering to engage in any activ-  
2           ity, or act in any capacity, described in  
3           this subparagraph.

4           “(D) EXCEPTION FOR COMPANY PROP-  
5           ERTY.—This paragraph shall not apply to an  
6           activity of a bank holding company or any affil-  
7           iate of such company that directly relates to  
8           managing any real property owned by such  
9           company or affiliate, or the purchase, sale, or  
10          lease of property owned, or to be used or occu-  
11          pied, by such company or affiliate.

12          “(E) CURRENT ACTIVITIES NOT AF-  
13          FECTED.—No provision of this paragraph, or  
14          any determination made pursuant to any such  
15          provision, may be construed as prohibiting, re-  
16          stricting, altering, or otherwise affecting the  
17          right, power, or ability of any financial holding  
18          company to engage in any activity, or acquire  
19          or retain the shares of any company engaged in  
20          an activity, if engaging in such activity, or ac-  
21          quiring or retaining such shares, was author-  
22          ized for financial holding companies on Decem-  
23          ber 6, 2001.”.

24          (b) REVISED STATUTES OF THE UNITED STATES.—  
25          Section 5136A(b) of the Revised Statutes of the United

1 States (12 U.S.C. 24a(b)) is amended by adding at the  
2 end the following new paragraph:

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

5           “(A) IN GENERAL.—The Secretary may  
6 not determine that real estate brokerage activ-  
7 ity or real estate management activity is an ac-  
8 tivity that is financial in nature, is incidental to  
9 any financial activity, or is complementary to a  
10 financial activity.

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

16           “(C) EXCEPTION FOR COMPANY PROP-  
17 erty.—This paragraph shall not apply to an  
18 activity of a national bank, or a subsidiary of  
19 a national bank, that directly relates to man-  
20 aging any real property owned by such bank or  
21 subsidiary, or the purchase, sale, or lease of  
22 property owned, or to be owned, by such bank  
23 or subsidiary.

24           “(D) CURRENT ACTIVITIES NOT AF-  
25 FECTED.—No provision of this paragraph, or

1           any determination made pursuant to any such  
2           provision, may be construed as prohibiting, re-  
3           stricting, altering, or otherwise affecting the  
4           right, power, or ability of any national bank, or  
5           a subsidiary of a national bank, to engage in  
6           any activity, or acquire or retain the shares of  
7           any company engaged in an activity, if engag-  
8           ing in such activity, or acquiring or retaining  
9           such shares, was authorized for national banks,  
10          or subsidiaries of national banks, on December  
11          6, 2001.”.

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