



STATE OF UTAH  
DEPARTMENT OF COMMERCE  
DIVISION OF SECURITIES

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998

Victoria C. Phelps  
Latham & Watkins  
633 West Fifth Street, Suite 4000  
Los Angeles, CA 90071-2007

Re: Excel Legacy Corporation

File # 006-6382-85/B00042146

Dear Ms. Phelps:

The Utah Division of Securities ("Division") is responding to your application filed January 22, 1998, for a No-action Letter pursuant to § 61-1-25(5) of the Utah Uniform Securities Act ("Act") and § R164-25-5 of the Utah Administrative Code ("UAC"). The application included U.S. Securities and Exchange Commission ("SEC") Form 10, a \$120 fee, and your January 13, 1998, letter describing a proposed distribution by Excel Realty Trust, Inc. ("Excel Realty") of the common stock of Excel Legacy Corporation ("Excel Legacy"), par value \$.01 common stock, to the existing shareholders of Excel Realty. The distribution is further described in the Registration Statement/Proxy Statement accompanying your application.

Based upon the representations in your application and a finding by the Division of Securities that registration is not necessary or appropriate for the protection of investors, it is the order of the Division of Securities, Department of Commerce, State of Utah, that the above-referenced securities may be distributed in Utah, as described in your filing, without registration pursuant to §61-1-14(2)(s) of the Utah Uniform Securities Act ("Act"). Furthermore, pursuant to § 61-1-13(2) of the Act, the Definition of "Agent" does not include an individual who represents an issuer, provided that individual receives no commission or other remuneration, directly or indirectly, for effecting or attempting to effect purchases or sales of securities exempted from registration, pursuant to §61-1-14(2)(s) of the Act.

Because this finding is based upon the representations made to the Division of Securities, it should be noted that any different facts or conditions of a material nature might require a different conclusion.

Very truly yours,

MARK J. GRIFFIN, DIRECTOR  
DIVISION OF SECURITIES

S. Anthony Taggart  
Assistant Director

SAT/gb

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January 13, 1998

## VIA FEDERAL EXPRESS

Department of Commerce  
Division of Securities  
160 East 300 South  
2nd Floor  
Salt Lake City, Utah 84111

Re: Excel Legacy Corporation  
Request for No-Action

Ladies and Gentlemen:

As counsel to Excel Realty Trust, Inc., a Maryland corporation ("Excel Realty"), and Excel Legacy Corporation, a Delaware corporation and a wholly-owned subsidiary of Excel Realty ("Excel Legacy"), we are submitting this letter in connection with a proposed distribution (the "Distribution") to common shareholders of Excel Realty of all of the outstanding common stock of Excel Legacy, par value \$.01 per share (the "Excel Legacy Common Stock"). On behalf of Excel Realty, we respectfully request that the Utah Division of Securities (the "Division") confirm that either (a) it concurs with Excel Realty's belief that the Distribution would not constitute a "sale" of the Excel Legacy Common Stock to the holders of Excel Realty common stock, par value \$.01 per share (the "Excel Realty Common Stock") under Section 61-1-13(22) of the Utah Uniform Securities Act (the "Securities Act"), or (b) it will not take enforcement action if the Distribution is effected without registration of the Excel Legacy Common Stock under the Securities Act.

Department of Commerce  
January 13, 1998  
Page 2

Excel Realty is a self-administered, self-managed real estate investment trust ("REIT") which acquires, owns and manages neighborhood and community shopping centers and other retail and commercial properties. Excel Realty is limited in its activities by the investment limitations and leverage expectations imposed by the public markets and Federal income tax laws applicable to REITs. The Board of Directors of Excel Realty (the "Excel Board") believes that significant opportunities are available to those investors that are not restricted by the tax laws governing REITs or influenced by public market perception. Thus, the Excel Board determined that it is in the best interests of Excel Realty and its stockholders to organize Excel Legacy to pursue such opportunities, to transfer to Excel Legacy certain real properties, notes receivable and related assets and liabilities currently held by Excel Realty and its development affiliate, ERT Development Corporation, and to spin-off Excel Legacy to the Excel Realty stockholders. Excel Legacy intends to create and realize value by identifying and making opportunistic real estate investments through the direct acquisition, rehabilitation, development, financing and management of real properties and/or participation in these activities through the purchase of debt instruments or equity interests of entities engaged in such real estate businesses.

The separation of Excel Realty and Excel Legacy will (i) provide Excel Legacy with the flexibility to pursue opportunistic real estate investments, (ii) permit investors to make more focused investment decisions based on the specific attributes of the businesses of Excel Realty and Excel Legacy, and (iii) enable financial markets to better understand and recognize the merits of the two businesses.

The general terms and conditions relating to the Distribution are set forth in the Distribution Agreement (the "Distribution Agreement") that will be executed on or prior to the Distribution between Excel Realty and Excel Legacy. The Distribution will be made on the basis of one share of Excel Legacy Common Stock for each share of Excel Realty Common Stock held as of the close of business on the record date. As of September 30, 1997, there were outstanding 20,913,926 shares of Excel Realty Common Stock. Based on such number, approximately 20,913,926 shares of Excel Legacy Common Stock will be distributed to Excel Realty stockholders in the Distribution. The shares of Excel Legacy Common Stock will be fully paid and nonassessable.

Upon consummation of the Distribution, Excel Legacy will become an independent publicly-held corporation. On December 12, 1997, Excel Legacy filed a registration statement on Form 10 under the Securities Exchange Act of 1934. The Distribution will not occur until the Form 10 has been declared effective and the Information Statement contained therein has been delivered to Excel Realty stockholders.

Excel Realty believes that the Distribution will not involve an "offer to sell" or "sale" of a security under Section 61-1-13(22) of the Securities Act because there will be no disposition by Excel Realty of securities for value and no new investment decision by Excel

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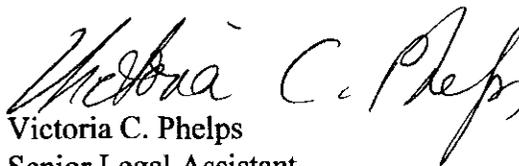
Department of Commerce  
January 13, 1998  
Page 3

Realty stockholders receiving Excel Legacy Common Stock in the Distribution. Furthermore, Excel Realty's stockholders will not provide any consideration to Excel Realty for the Excel Legacy Common Stock they will receive as a dividend in the Distribution. Thus, Excel Realty believes that registration of the Distribution is not required under the Securities Act. We urge the Division to concur in this view. Alternatively, we hereby request that the Division take no enforcement action if the Distribution is effected without registration under the Securities Act.

Enclosed for your review is the Form 10 for Excel Legacy. Also enclosed is a check in the amount of \$60 in payment of the required filing fee.

Should you require additional information, please do not hesitate to contact Craig Garner at (619) 238-3006 or the undersigned at (213) 891-8397.

Very truly yours,

  
Victoria C. Phelps  
Senior Legal Assistant