

## CHAPTER 9 REAL ESTATE LENDING

[Prior to 7/6/94, see 189—Chs 9 and 10]

**189—9.1(533) Definitions.** For purpose of these rules, the following terms shall have the meaning indicated in this chapter.

*“Abundance of caution loan”* means a loan on which a lien on real estate has been taken at the request of the lender when it has been determined the collateral offered by the borrower(s) is insufficient and where the terms of the transaction as a consequence are not made more favorable than they would be in the absence of the lien.

*“Equity capital”* means the total of the statutory reserve, special reserve, all segregations of undivided earnings, and current net income, excluding the allowance for loan losses and investment losses accounts.

*“First mortgage loan”* means a mortgage loan secured by a lien on real estate which ranks in the first position of encumbrance against the property described in the instrument and which is made for the purpose of acquisition or refinance of acquisition of the real estate.

*“Home equity loan”* means a loan secured by a lien on real estate which is other than a first or second mortgage loan and in which the amount advanced is based upon the borrower’s paid-up equity in the real estate.

*“Immediate family member”* means a spouse or other family members living in the same household.

*“Mortgage loan”* means a loan for the purchase, construction, improvement or rehabilitation of an owner-occupied one-family to four-family residence in which the real estate is secured by a mortgage, deed of trust or similar instrument in the real estate.

*“Nonconforming loan”* means a loan secured by a lien on real estate that does not fully comply with the provisions of subrules 9.2(4) to 9.2(8).

*“Official”* means any officer, director or committee member of the credit union board of directors.

*“Owner-occupied residence”* means a noncommercial real estate property in which the borrower has marketable title and which is the borrower’s primary or secondary residence for no less than 120 days per year.

*“Reverse annuity mortgage loan”* means a loan secured by a lien on real estate in which either the loan proceeds are used to purchase an annuity or are advanced to the mortgagor(s) in periodic installments in accordance with Iowa Code chapter 528.

*“Second mortgage loan”* means a mortgage loan secured by a lien on real estate other than in the first position of encumbrance against the property described in the instrument.

*“Senior management employee”* means the credit union’s chief executive officer (typically the individual holding the title of president, treasurer or manager), any assistant or vice chief executive officer and the chief financial officer (comptroller), or any individual performing the duties or functions of these persons, regardless of the title used.

*“Tack-on loan”* means an otherwise fully collateralized loan on which a lien on real estate has been taken by the lender at the request of the borrower(s) and where the terms of the transaction as a consequence are not made more favorable than they would be in the absence of the lien.

**189—9.2(533) Real estate lending.** These rules shall apply to real estate-related loans either originated by a credit union or acquired by purchase, assignment or otherwise.

**9.2(1)** The board of directors of the credit union shall formulate and maintain a written real estate lending policy that is appropriate for its size and the nature and scope of its operation. Each policy must be comprehensive and consistent with safe and sound lending practices. The standards and limits established in the policy must be reviewed and approved at least annually by the board. The real estate lending policy should reflect the level of risk that is acceptable to the board and should provide clear

and measurable underwriting standards that enable the credit union’s lending staff to evaluate all relevant credit factors. The real estate lending policy, at a minimum, should:

- a. Establish loan portfolio diversification standards.
- b. Set appropriate terms and conditions by type of real estate loan.
- c. Establish loan origination and approval procedures.
- d. Establish prudent underwriting standards which include clear and measurable loan-to-value limitations.
- e. Establish review and approval procedures for exempted loans.
- f. Establish loan administration procedures.
- g. Establish real estate appraisal and evaluation programs.
- h. Monitor the portfolio and provide timely reports to the board of directors.
- i. Establish conformance with secondary market investor requirements where applicable.

When formulating the real estate policy, the board should consider both internal and external factors, such as size and condition of the credit union, expertise of its lending staff, avoidance of undue concentrations of risk, compliance with all real estate-related laws and rules, and general market conditions.

**9.2(2)** Real estate loans shall be evidenced by a note or other form of indebtedness and shall be secured by liens on or interests in real estate in the form of mortgages, deeds of trust, or similar instruments.

**9.2(3)** The credit union shall use written real estate appraisals independently and impartially performed by appraisers who have demonstrated competency and are subject to effective supervision in connection with certain real estate-related transactions. The credit union shall use the services of certified or licensed appraisers for specific transactions in accordance with Part 722 of the National Credit Union Administration Rules and Regulations that implement the requirements of Title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. Sections 3310, 3331-3351). All appraisals performed must conform to the minimum appraisal standards of federal regulations. Credit unions must establish appropriate procedures for evaluating the market value of all real estate-related transactions which are exempt from federal appraisal regulations, based upon safety and soundness considerations, as well as economic considerations.

**9.2(4)** The board of directors of the credit union shall establish its own internal loan-to-value (LTV) limits for real estate loans. These internal limits shall not exceed the following:

LOAN CATEGORY	LTV (PERCENT)
Raw land	65
Land development	75
Construction:	
Multifamily, commercial & other nonresidential	80
1-to-4 family residential	85
Farmland, ranchland or timberland	85
1-to-4 family residential (not owner-occupied)	85
Multifamily residential (5 or more units)	85
Commercial and other nonresidential	85
Owner-occupied 1-to-4 family residential, second mortgage and home equity	*

The loan-to-value limits established by the board shall not apply to loans for which a lien on or interest in real estate is taken as additional collateral through an abundance of caution or tack-on loan program.

\*A loan-to-value limit has not been established for permanent mortgage or home equity loans on owner-occupied, 1-to-4 family residential property. However, for any such loan with a loan-to-value ratio that exceeds 90 percent at origination, a credit union should require appropriate credit enhancement in the form of either mortgage insurance or readily marketable collateral.

Real estate loans made for sale into the secondary market shall be considered in transit for a period of up to 90 days after being sold and shall not be considered risk assets for reserving purposes during this time period.

Compliance with the appropriate loan-to-value limits shall require that the credit union's lien be aggregated with more senior liens securing the same property. The credit union shall retain written verification of the outstanding balance or the maximum credit available to the borrower of any more senior lien at the inception of the loan. The existence of taxes or assessments that are not delinquent, instruments creating or reserving mineral, oil or timber rights, rights-of-way, joint driveways, sewer rights, rights in walls or by reason of building restrictions or other like restrictive covenants, or when such real estate is subject to lease in whole or part whereby the rents or profits are reserved to the owner shall not be deemed senior liens for purposes of compliance with loan-to-value limits.

**9.2(5)** The credit union shall obtain, when lending for the purpose of acquisition or for the purpose of refinance of acquisition, when a new mortgage, deed of trust, or similar instrument is filed, either:

*a.* A written legal opinion by an attorney admitted to practice in the state in which the real estate is located showing marketable title in the mortgagor and describing any existing liens and stating that the credit union's mortgage, deed of trust or similar instrument is a first lien on the real estate; or

*b.* Title insurance written by an insurance company licensed to do business in the state in which the real estate is located describing any existing liens and insuring the title to the real estate and the validity and enforceability of the mortgage, deed of trust or similar instrument as a first lien on the real estate.

**9.2(6)** A lien or title search is required when lending for the purposes of a second mortgage or home equity loan.

**9.2(7)** The credit union shall require, when lending for purposes of acquisition or refinance of acquisition of real estate when a new mortgage, deed of trust, or similar instrument is filed, insurance against loss from fire, wind, and natural hazards on all structures which are included in the mortgage for the term of the loan. The credit union may, at its own expense, maintain insurance covering its interest as lender. If the real estate is located within a special flood hazard area as identified by the Federal Emergency Management Agency, the credit union shall require flood insurance in accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. Section 4003 et seq.) and implementing regulations adopted in connection therewith.

**9.2(8)** Credit unions with assets of \$500,000 or more may make real estate-related loans to members on real estate located in any state where the credit union maintains an office approved by the superintendent and in bordering counties of adjacent states thereto.

Credit unions with assets under \$500,000 may, with the written approval of the superintendent, make real estate-related loans under this chapter.

**9.2(9)** The credit union shall provide pertinent and timely disclosures to borrowers pursuant to the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. Section 2601 et seq.) and the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and implementing regulations adopted in connection therewith.

**9.2(10)** There are certain real estate transactions in which other factors significantly outweigh the need to apply the provisions of subrules 9.2(4) to 9.2(8). Therefore, the following transactions are exempt from subrules 9.2(4) to 9.2(8):

*a.* Loans guaranteed, insured, or for which a written commitment for such has been issued by the U.S. government or its agencies.

*b.* Loans guaranteed, insured, or for which a written commitment for such has been issued by a state, a political subdivision, or agency thereof, provided that the credit union has determined that the guarantor or insurer has the financial capacity and willingness to perform under the terms of the agreement.

c. Loans guaranteed, insured, or for which a written commitment for such has been issued by any other guarantor or insurer authorized to do business in this state, provided that the credit union has determined that the guarantor or insurer has the financial capacity and willingness to perform under the terms of the agreement. Such loans must substantially meet the provisions of this chapter.

d. Loans purchased through the secondary market or pools of loans in which financing has been arranged by the credit union in participation with other lenders, except such loans must substantially meet the provisions of this chapter.

e. Real estate-related transactions in which a lien on real estate has been taken solely through an abundance of caution or tack-on loan program whereby the terms of the transaction as a consequence are not more favorable than they would be absent the lien.

f. Acceptance of real estate as collateral to secure debts previously contracted in good faith.

g. With the prior approval of the superintendent, any other loans approved, issued, insured or guaranteed by any other federal or state sponsored program.

**9.2(11)** In addition to the exemptions set forth in subrule 9.2(10), it may be appropriate to originate or purchase real estate loans that do not meet the requirements of subrules 9.2(4) to 9.2(8). Credit unions shall be allowed to make such other nonconforming loans; however, the aggregate amount of the loans that fall into this category shall not exceed 25 percent of the total equity capital as reflected on the credit union's most recent call report, unless prior approval to exceed this limitation has been obtained from the superintendent. These exempted loans must be separately identified in the records of the credit union so they may be easily differentiated from other real estate loans which meet the requirements of subrules 9.2(4) to 9.2(8) and by member number and outstanding balance and must be reviewed by the audit committee or the board of directors at least annually. No real estate loan to a credit union official, senior management employee, loan officer, or their immediate family members shall be allowed in the exempted category permitted by this subrule.

**189—9.3(533) Other real estate-related loans.** Credit unions may make other real estate-related loans, the proceeds of which will be used for a commercial, corporate, business investment property or venture, or agricultural purpose. These loans shall adhere to the requirements stated in Part 701.21(h) of the National Credit Union Administration Rules and Regulations and shall be made in accordance with provisions prescribed by the superintendent.

These rules are intended to implement Iowa Code sections 533.4(21) and 533.16(4) "a."

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