

CHAPTER 12

REAL ESTATE LOANS

[Prior to 3/25/87, Auditor of State[130] Ch 12]

197—12.1(534) General authority—definitions.

12.1(1) An association may, subject to Iowa Code chapter 534 and these rules, loan money, extend credit, discount, purchase or finance vendors' or vendees' interest in real estate contracts and discount or purchase other evidence of indebtedness and agreements for the payment of money.

12.1(2) Real estate loans may be secured or unsecured. If secured the association may hold a first or junior mortgage on the security property.

12.1(3) "*Association*" shall mean that as defined in Iowa Code chapter 534.

12.1(4) "*Superintendent*" shall mean that as defined in Iowa Code chapter 534.

12.1(5) "*First mortgage loan*" shall mean any loan secured by a first mortgage on real property. The loan may be granted to purchase real property, to refinance a contract of sale, to refinance a prior loan, to construct improvements on real property and to assume a prior loan. For the purposes of these rules, a first mortgage loan may include a loan on a leasehold interest, if the leasehold interest extends or is automatically renewable at the option of the holder, or at the option of the association, for a period of time at least ten years beyond the maturity of the loan.

12.1(6) "*Home loan*" shall mean a first mortgage loan secured by an owner-occupied, one- or two-family dwelling.

197—12.2(534) First mortgage loans—safety and soundness.

12.2(1) An association may make first mortgage loans in which the payment, the loan balance and the maturity may vary, subject to any limitations contained in Iowa Code chapter 534 or these rules.

12.2(2) First mortgage real estate loans may be granted based upon terms of repayment which are negotiated and agreed to between the association and borrower, subject to the limitations contained in subrules 12.3(534) and 12.4(534).

12.2(3) For the purposes of these rules, adjustments to the various terms of first mortgage loans shall not interrupt the underlying security interest of the lender. The mortgage on the security property shall continue in place until it is released by the association.

12.2(4) Each first mortgage loan shall be underwritten based upon the applicant's ability to pay and creditworthiness, and the security to be given as collateral for the loan.

12.2(5) When granting first mortgage loans, the following documentation shall be collected and retained by the association:

a. Loan application describing the name of the applicant(s), purpose of the loan and the location of the security property;

b. Statement of financial condition describing the applicant's financial ability to repay the credit applied for;

c. Credit report describing the applicant's history of repaying debt;

d. Proof that the proposed security property is covered by adequate hazard or liability insurance;

e. Legal opinion affirming the quality and validity of the institution's lien or claim on the security property;

f. All other requirements of the Iowa Code.

g. If the loan is insured by FHA or guaranteed by VA, loan documentation is subject to the requirements of those agencies.

12.2(6) Payments shall be applied first to the payment of interest on the unpaid balance of the loan and the remainder if any to the reduction of principal.

12.2(7) If the first mortgage loan is in default in any manner, payments may be applied by the lender in any manner agreed upon between the borrower and association.

12.2(8) A lender may require additional collateral on first mortgage loans, subject to prohibitions of the Iowa Code.

12.2(9) First mortgage loans may be made on a fully amortized basis, nonamortized basis or a partially amortized basis, subject to limitations contained within Iowa Code chapter 534. Amortized and partially amortized loans may be granted for a maximum term of 40 years. Nonamortized loans may be granted for a maximum term of 15 years. If made for the purpose of construction, a nonamortized loan may be combined with an amortized or partially amortized loan into one note, provided that the total term does not exceed 42 years. Except for insured or guaranteed loans, interest shall be payable at least semiannually on nonamortized loans.

12.2(10) First mortgage loans with principal and interest payments less frequently than monthly but at least annually may be made with the same terms as monthly amortized loans, if the loan is secured by a first mortgage on a farm residence or combination of farm residence and commercial farm real estate.

12.2(11) Unless insured or guaranteed, no mortgage loan shall be made to exceed 90 percent of the appraised value of the security property.

12.2(12) The documentation requirements of this rule are not required for junior mortgage loans, however, prudent lending practices may dictate their use.

197—12.3(534) Home loans.

12.3(1) Home loans shall be repayable in installments except that a loan authorized under 12.3(2) “c”(3) or a home loan under which an association purchases an annuity from an insurance company on behalf of a borrower need not require any payment until maturity.

12.3(2) Adjustments to rate, payment, balance or term. Subject to limitations on adjustment that are set forth in the loan contract, an association may adjust the interest rate, the payment, the loan balance or the term to maturity as follows:

a. Interest rate. Adjustments to the interest rate shall correspond directly to the movement of an interest-rate index or an index that measures the rate of inflation, or one that measures rate of change in consumer disposable income, which is readily available to and verifiable by the borrower and is beyond the control of the association. The interest rate may be decreased at any time.

b. Payment. The payment may be decreased to reflect a decrease in the interest rate or in the loan balance, and may be increased if:

- (1) The contract requires that increases be made pursuant to a formula or schedule set forth in the contract that specifies the percentage or dollar increase in the payment per adjustment;
- (2) The increase reflects an increase in the interest rate or the loan balance; or
- (3) The contract provides for payment increases tied to increases in a national or regional index that measures the rate of inflation or the rate of change in consumer disposable income, is readily available to and verifiable by the borrower, and is beyond the control of the association.

c. Loan balance (principal plus deferred, capitalized interest). The balance of a home loan may be increased or decreased if:

- (1) The contract provides for changes in the interest rate and payment;
- (2) The contract provides for the deferral and capitalization of interest;
- (3) The contract provides that changes in the loan balance shall be tied to changes in a national or regional index that measures the rate of inflation, is readily available to and verifiable by the borrower, and is beyond the control of the association;
- (4) The contract provides for lump-sum disbursement of the loan proceeds or for scheduled periodic disbursements to the borrower made directly by the association; or
- (5) The contract provides that a portion of the consideration to be received by the association in return for making the home loan shall be interest in the form of a percentage, fixed at or before the time of loan closing, of the amount by which the current market value of the property exceeds the original appraised value.

d. Term to maturity. The term of a home loan may be increased or decreased to reflect an increase or decrease in the interest rate, the payment or the loan balance.

12.3(3) Index—notice of adjustment. In making any of the adjustments described in this subrule, any combination of indices or a moving average of index values may be used as an index, and an association may use more than one index during the term of a home loan. The initial index to be used by the

association shall be one which was published within the six-month period immediately preceding the closing of the loan. Adjustments shall be based on the difference between

a. The index value identified by the association at time of loan commitment or loan closing, or, if one index is substituted for another during the loan term, the value most recently available as of the date of substitution, and

b. Its value as of the time of adjustment or as of the time within which notice of adjustment must be given. At least 30 but not more than 120 days prior to an adjustment of loan terms, and at least 90 but not more than 120 days prior to the expected maturity of a nonamortized, or partially amortized loan, an association shall provide the borrower with notice of the adjustment or maturity, respectively. However, where the contract provides that changes in the interest rate shall occur more frequently than changes in the payment, the association need not notify the borrower of changes in the rate, or of changes in the loan balance or term resulting from a rate change, until notice of a payment adjustment is given. In addition, where the loan contract sets out a schedule of adjustments to the payment, notice need not be given of each payment change made pursuant to that schedule.

12.3(4) Loan-to-value ratio.

a. A loan shall not at the time of origination exceed 90 percent of the value of the security property. If the loan is insured by the Federal Housing Administration or guaranteed by the Servicemen's Readjustment Act of 1944 (37 U.S.C., Sections 1801 to 1824), as amended, or is insured or guaranteed, in whole or in part, by any other duly constituted federal instrumentality or private mortgage insurer approved by the superintendent, or if the home loan is made to people with low or moderate income as a part of programs approved by the Iowa finance authority, it may be made regardless of the requirements for other home loans contained in this subrule.

b. During the term of the home loan, the loan-to-value ratio may increase above the maximum allowed in paragraph "a" of this subrule, if the increase results from a change authorized by subrule 12.3(2). Continued compliance with loan-to-value limitations will be assumed if the original ratio met the requirements of paragraph "a" of this subrule, but in no event may the loan balance exceed 100 percent of the original appraised value unless the loan is insured or guaranteed. If the loan balance has increased since the inception of the loan, the loan contract may provide that the payment be adjusted at least once each five years, beginning no later than the tenth year of the loan, to a level sufficient to amortize the loan at the then-existing interest rate and loan balance over the remaining term of the loan.

12.3(5) Loan on cooperatives.

a. Home loans may be made on the security of cooperative housing developments ("blanket" loans). The association shall require that the cooperative housing development maintain reserves at least equal to those required for comparable developments insured by the Federal Housing Administration.

b. Home loans may be made on individual cooperative units. These loans may be made on the security of

(1) A security interest in stock, a membership certificate, or other evidence of ownership issued to a stockholder or a member by a cooperative housing organization, and

(2) An assignment of the borrower's interest in the proprietary lease or occupancy agreement issued by the organization.

12.3(6) The association shall pay the cost of any appraisal of the security property obtained by the association after loan closing but prior to maturity of a home loan unless the borrower specifically requests the appraisal or the appraisal is made pursuant to the borrower's request to modify or refinance the loan.

197—12.4(534) Disclosure. Prior to accepting an application for a home loan, an association must provide each loan applicant with a written disclosure describing in plain language the specific terms of the loan offered to the applicant. The purpose of the disclosure is to make a good faith attempt to explain to the applicant the operation of the loan being offered. The disclosure does not alone constitute a commitment on the part of an association to make a loan to a loan applicant. The disclosure shall contain the following information that is relevant to the type of loan being offered:

a. A general explanation of the fact that:

(1) The association and the applicant become bound by the terms of the loan contract upon signing it,

(2) Even though subsequently either party may request modification of the contract, neither party is bound to agree to such a request, and

(3) Since normally the contract and mortgage (or deed of trust) alone establish the rights of the borrower, the borrower should be familiar with and understand the provisions of the contract.

b. The term to maturity, and any provisions of the loan contract that would authorize the association to lengthen or shorten the term to maturity.

c. The initial interest rate and, if the contract provides for adjustment of either the interest rate, the payment, the loan balance or the term in accordance with changes in an index, the base index rate, or, if neither fact is known, the manner in which the initial interest rate and base index rate will be established.

d. The amount of the initial payment, if known, and an explanation of the amortization schedule for the loan, including how the association determines both the amount of each payment and what proportion of each payment is credited to interest.

e. The terms under which the association must offer to refinance a partially amortized (balloon) loan at the time the balloon payment is due (maturity).

f. A good faith example of how the interest rate, the payment, the loan balance, or the term to maturity may be adjusted (including identification of the index(es) to be used and how index values may be obtained by the borrower), and how the adjustment of one item may affect the others.

g. What information will be contained in each notice of an adjustment or, in the case of partially amortized or nonamortized loans, of maturity, and how far in advance of an adjustment or maturity each notice will be provided.

h. Whether the loan contract will provide for escrow payments, the purpose of requiring escrow payments, and how the amount of an escrow payment is established.

These rules are intended to implement Iowa Code section 534.204.

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