

Chapter DFI-CU 54

REAL ESTATE MORTGAGE LOANS

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Note: Chapter CU 54 as it existed on June 30, 1990 was repealed and a new chapter CU 54 was created effective July 1, 1990.

Note: Chapter CU 54 was renumbered chapter DFI-CU 54 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 7., Stats., Register, October, 1997, No. 502.

DFI-CU 54.01 Purpose and scope. It is the purpose of this chapter to permit Wisconsin credit unions to make loans to their members secured by real estate in accordance with applicable state or federal rules, regulations, and statutes. This chapter is intended to assist institutions in the formation and maintenance of a real estate lending policy that is appropriate to the size of the institution and the nature and scope of its individual operations. Loans for which a lien on real estate is taken through an abundance of caution where the terms of the loan as a consequence have not been made more favorable than they would have been in the absence of the lien are exempt from the requirements of this chapter. The director may limit, restrict or prohibit a credit union from making any type, category, or classification of loan governed by this chapter if examination results indicate the credit union is conducting its business in an unauthorized or unsafe manner or is violating the provisions of this chapter.

History: Cr. Register, June, 1990, No. 414, eff. 7-1-90; am. Register, October, 1997, No. 502, eff. 11-1-97.

DFI-CU 54.02 Definitions. In this chapter:

(1) "Borrower's equity" means the market value of the subject real estate minus outstanding indebtedness.

(2) "Director" means the director of credit unions or an authorized representative of the director.

(3) "Equity loan" means any loan secured in whole or in part by a first or subordinate lien on real estate and whose purpose is anything other than to purchase the secured real estate.

(4) "Indebtedness" means the balances of all outstanding closed-end loans, maximum approved lines of credit of all open-end loans, unpaid taxes due and any other unsatisfied liens or encumbrances applicable to the subject real estate.

(5) "Market value" means the most probable price, which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(a) Buyer and seller are typically motivated;

(b) Both parties are well informed or well advised, and acting in what they consider their own best interests;

(c) A reasonable time is allowed for exposure in the open market;

(d) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(e) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(6) "Purchase money loan" means any loan secured in whole or in part by a first or subordinate lien on real estate and whose sole

purpose, as stated in the written loan application, is to purchase or acquire the subject property.

History: Cr. Register, June, 1990, No. 414, eff. 7-1-90; am. (1) (2) (5) r. (7), Register, October, 1997, No. 502, eff. 11-1-97.

DFI-CU 54.03 Limitations on real estate mortgage loans. A credit union may grant purchase money and equity mortgage loans to members secured with real estate, subject to the following limitations:

(1) Purchase money loans, excluding amounts financed for accident, health and credit life insurance premiums, may not exceed 90% of the market value of the subject real estate except if:

(a) The part of the loan that exceeds the 90% limitation is insured or guaranteed by a qualified private mortgage insurer;

(b) The loan or the part of the loan that exceeds the 90% limitation is insured or guaranteed by an agency or instrumentality of a local, state or federal government;

(c) The loan is to facilitate the sale of real estate owned by the credit union or real estate in foreclosure; or

(d) The loan, excluding accident, health and credit life insurance premiums, does not exceed \$30,000.

(2) Equity loans, excluding amounts financed for accident, health and credit life insurance premiums, may not exceed the borrower's equity in the subject real estate, except to the extent the excess is secured by other collateral, the value of which can be supported by authoritative evidence.

(3) The term of a mortgage loan may not exceed 30 years commencing the latter of:

(a) The date of closing;

(b) The date of the first contractual principal and interest payment;

(c) The date of any additional advance;

(d) The date of any properly executed loan modification agreement; or

(e) The date of any interest rate increase under the terms of a note permitting or requiring changes in the interest rate.

History: Cr. Register, June, 1990, No. 414, eff. 7-1-90; r. (1) renum (2) to (4) to be (1) to (3) and am., Register, October, 1997, No. 502, eff. 11-1-97.

DFI-CU 54.04 Loan policies. The board of directors shall adopt written policies to direct the real estate lending activities. The loan policies shall be reviewed at least annually. The policies shall address, at a minimum, the following:

(1) Types of real estate mortgage loans that will be offered.

(2) Percentage of assets to be invested in real estate loans by category.

(3) The trade area for real estate mortgage loans.

(4) Maturities of real estate mortgage loans.

(5) Appropriate limits and standards of creditworthiness applicable to real estate loan approvals.

(6) Monitoring and quality control standards.

(7) Appraisal and valuation standards.

(8) Loan to value limitations on equity loans.

(9) Asset liability/funds management issues.

History: Cr. Register, June, 1990, No. 414, eff. 7-1-90; am. (2) (4) (5) cr. (7) to (9), Register, October, 1997, No. 502, eff. 11-1-97.

DFI-CU 54.05 Required documentation. Each real estate loan shall be supported by the following documents and information:

(1) A note properly executed, together with the related mortgage properly executed and recorded.

(2) Documentation establishing the quality and validity of the credit union's lien position by one of the following:

(a) For purchase money loans:

1. A title policy in favor of the credit union covering its interest as mortgagee in the property; or

2. An abstract showing title in the borrower's name and the credit union's mortgage, together with an attorney's opinion indicating the credit union's lien position.

(b) For equity loans, one of the following:

1. An abstract of title and a signed report of title opinion by an attorney;

2. A title insurance policy; or

3. A title letter report.

(c) If the credit union has obtained the supporting documentation in accordance with par. (a) or (b), a subsequent extension of credit secured with the same real estate mortgage may be supported by a letter report from the title or abstract company, or a cer-

tified abstract showing the credit union's interest in the property as of the most recent extension of credit. No additional title documentation is required in connection with refinancing a loan on which no additional funds are advanced. Accrued interest debits, refinancing charges and costs for insurance premiums are not considered additional advances.

(3) An appraisal or a valuation if required by NCUA rules and regulations 12 CFR Part 722.

(4) A copy of insurance policies, with a mortgage clause payable to the credit union, indicating all improvements on the real estate are insured against fire and casualty loss. The required insurance coverage shall be the lesser of the full replacement value of the improvements or the outstanding balance of the loan. Proof of insurance may be maintained through a third party contract.

(5) Evidence of the status of the payment of real estate taxes acceptable to the board of directors as defined by policy.

(6) Documentation of types of existing closed-end or open-end mortgages and balances or potential balances outstanding from all other lenders holding liens senior to the credit union mortgage.

(7) The credit union shall maintain a general ledger accounting system which clearly segregates real estate loans for reporting and statutory calculation purposes.

History: Cr. Register, June, 1990, No. 414, eff. 7-1-90; am. (2) (intro.), (b), (3) to (5), Register, October, 1997, No. 502, eff. 11-1-97.