

Title 45 - DEPARTMENT OF BANKING AND FINANCE

Chapter 26 - BANKS: LEASING OF PERSONAL PROPERTY

001 A state bank may:

001.01 Become the legal or beneficial owner and lessor of specific personal property or otherwise acquire such property at the request of the lessee who wishes to lease it from the bank; or

001.02 Become the owner and lessor of personal property by purchasing the property from another lessor in connection with its purchase of the related lease (this does not include an interest in a syndicated limited partnership or joint venture which would be considered a security under the Nebraska Securities Act); and

001.03 Incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property;

if the lease is a net, full-payout lease representing a noncancelable obligation of the lessee, notwithstanding the possible early termination of that lease.

002 For the purposes of this ruling:

002.01 A "net lease" is a lease under which the bank will not, directly or indirectly, provide or be obligated to provide for:

002.01A the servicing, repair or maintenance of the leased property during the lease term;

002.01B the purchasing of parts and accessories for the leased property; however, improvements and additions to the leased property may be leased to the lessee upon its request in accordance with the full-payout requirements of this ruling;

002.01C the loan of replacement or substitute property while the leased property is being serviced;

002.01D the purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance; or,

002.01E the renewal of any license or registration for the property unless such action by the bank is clearly necessary to protect its interest as an owner or financier of the property.

002.02 A "full-payout" lease is one from which the lessor can reasonably expect to realize a return of its full investment in the leased property plus the estimated cost of financing the property over the term of the lease from:

002.02A rentals;

002.02B estimated tax benefits; and,

002.02C the estimated residual value of the property at the expiration of the initial term of the lease.

The estimate by the lessor of the total cost of financing the property over the term of the lease should reflect, among other factors, the term of the lease, the modes of financing available to the lessor, the credit rating of the lessor and/or the lessee if a factor in the financing, and prevailing rates in the money and capital markets. Where the calculation of the cost of financing according to this formula is not reasonably determinable, a lease may be considered to have met the test for recovering the cost of financing if the bank's yield from the lease is equivalent to what the yield would be on a similar loan. Any unguaranteed portion of the estimated residual value relied upon by the bank to yield a full return under this subsection shall not exceed 25 percent of the original cost of the property to the lessor. The amount of any estimated residual value guaranteed by a manufacturer, the lessee, or a third party which is not an affiliate of the bank, may exceed 25 percent of the original cost of the property where the bank has determined, and can provide full supporting documentation that the guarantor has the resources to meet the guarantee. In all cases, both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstance so that realization of the lessor's full investment plus the cost of financing the property primarily depends on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual market value of the leased item.

002.03 Leasing tangible personal property or acting as agent, broker, or advisor in leasing such property, in which the lessor relies on an estimated residual value of the property in excess of the 25 percent limitation described in subsection 002.02 is allowed, if the following conditions are met:

002.03A The activity otherwise meets the requirements of section 001, and subsections 002.01 and 002.02 of this rule;

002.03B The lessor in no case relies on an estimated residual value of the property in excess of 100 percent of the acquisition cost of the property to the lessor;

002.03C The aggregate book value of all personal property described in 002.03D of this subsection does not exceed 10 percent of the bank's assets;

002.03D For purposes of calculation of the limit provided in 002.03C of this subsection, the bank shall include all tangible personal property held for lease in transactions in which the bank relies on an estimated residual value in excess of 25 percent of the acquisition cost of the property;

002.03E The term of the lease is at least 90 days;

002.03F Each company that conducts leasing transactions under subsection 002.03 maintains capitalization fully adequate to meet its obligations and support its activities and commensurate with industry standards for companies engaged in comparable leasing activities; and

002.03G The bank maintains separately identifiable records of the leasing activities conducted under sections 001 and 002, where it conducts leasing activities under the authority of both sections 001 and 002 of this rule.

003 Full-payout calculations on leases of personal property to domestic governmental entities may be based on reasonably anticipated future transactions or renewals.

004 If, in good faith, a state bank believes that there has been an unanticipated change in condition which threatens its financial position by significantly increasing its exposure to loss, the limitations contained in sections 001 and 002 shall not prevent the bank,

004.01 As the owner and lessor under a new full-payout lease, from taking reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease; or,

004.02 As the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interests arising under the lease.

005 The limitations contained in sections 001 and 002 do not prohibit a state bank from including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstance set forth in subsections 004.01 and 004.02 of this ruling.

006 Nothing in this section shall be construed to be in conflict with the duties, liabilities and standards imposed by the Consumer Leasing Act of 1976, 15 U.S.C. 1667 et. seq.

007 Leases permissible under this ruling are subject to the limitations on loans under 8-141, on loans and investments under 8-141. The dollar amount of the lease for these purposes will be determined by using the following formulas:

007.01 Bank cost of acquisition of personal property minus investment credit realized minus the balance of any nonrecourse debt; or,

007.02 Sum of the present value of both the lease payments and the residual value of the property.

The Department of Banking and Finance reserves the right to determine that such leases are also subject to the limitations of any other law, regulation or ruling which limits potential financial risks associated with other forms of bank financing.

008 This section shall not apply to any leases executed prior to May 1, 1982. With respect to the applicability of section 007, when making new extensions of credit, including leases, to a customer, state banks must consider all outstanding leases regardless of the date they were entered into. Any lease which was entered into in good faith prior to such date which does not satisfy the requirements of the ruling may be renewed without violation of this section only if there is a binding agreement in the expiring lease which requires the bank to renew it at the lessee's option, and the bank cannot otherwise reasonably or properly avoid its commitment to do so, or the bank, in good faith, determines and demonstrates by full documentation that renewal of the lease is necessary to avoid significant financial loss and recover its total investment plus the cost of financing.

009 The Board of Directors of the bank must adopt leasing policies, procedures, objectives and internal controls which adequately protect the bank and provide customer services. Such leasing policies must recognize that leasing is a form of term debt financing and, as such, shall include adequate credit standards.

010 The lease must be accounted for under Financial Accounting Standards Board Statement L13 - Accounting for Leases, as amended and interpreted, incorporated herein by reference and available for viewing at the Nebraska Department of Banking and Finance, 1200 N Street, Suite 311, The Atrium, Lincoln, Nebraska 68508.