

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Office of the Commissioner of Banks

RULE CITATION: 04 NCAC 03C .1001

**DEADLINE FOR RECEIPT: Friday, March 9, 2018**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Line 5, consider adding "include the following" after "that"*

*Lines 6 thru 12, please correct the line spacing to 1.5, as set forth in [26 NCAC 02C .0108\(1\)\(g\)](#)*

*Line 6, delete the clause "as necessary"*

*Line 9, define or delete "timely" If the term "timely" is not defined, then please delete the entire clause "in a timely manner"*

*Line 10, what is meant by "legally enforceable"?*

*Line 11, define or delete "appropriate"*

*Line 13, replace "should be applied consistently" with "shall comply"*

*Page 4, line 12, add a comma after "errors"*

*Page 4, lines 32 thru 33, what is meant by the clause "now owned or hereafter acquired"? Is there a date specific, as this Rule has been in existence since 1976. Please review and clarify.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Abigail M. Hammond  
Commission Counsel

Date submitted to agency: Thursday, February 22, 2018

## Permanent Amendment for Publication in the NCAC

04 NCAC 03C .1001 is amended with changes as published in 32:12 1182 as follows:

### **04 NCAC 03C .1001      LOAN DOCUMENTATION**

(a) ~~Unless otherwise provided, each~~ Each bank shall establish and maintain ~~on file the following~~ loan ~~documentation:~~ documentation practices that:

- (1) enable the institution to make an informed lending decision and to assess risk, as necessary, on an ongoing basis;
- (2) identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner;
- (3) ensure that any claim against a borrower is legally enforceable;
- (4) demonstrate appropriate administration and monitoring of a loan; and
- (5) take account of the size and complexity of a loan.

Requirements for loan documentation should be applied consistently with the requirements of the Interagency Guidelines Establishing Standards for Safety and Soundness, 12 C.F.R. **Part 364** Appendix A, as applied by the Federal Deposit Insurance Corporation or the Federal Reserve System, which are hereby incorporated by reference including subsequent amendments or additions. This information is available at <https://www.ecfr.gov/> at no cost.

(b) Each bank shall maintain on file the following loan documentation:

- (1) ~~Financial Statements. Financial statements shall be required from any person who is a maker, co-maker, guarantor, endorser, or surety on any unsecured loans or other unsecured extensions of credit in an amount of fifty thousand dollars (\$50,000) or more in the aggregate. Financial statements required by this Item shall:~~
  - ~~(a) be signed or otherwise properly executed;~~
  - ~~(b) be dated within 18 months preceding the origination date of the credit obligation;~~
  - ~~(c) be renewed within 18 months after the date of the last financial statement on file;~~
  - ~~(d) be addressed to, or made for the lending bank; and~~
  - ~~(e) include information reflecting the assets, liabilities, net worth, and income of the borrower.~~
- (2) ~~Financial Statement Exceptions. A bank may waive the financial statement required by Item (1) of this Rule for credit granted under a credit card. For an individual whose unsecured obligations consist of consumer loans scheduled to be repaid in at least quarterly installments, a bank may substitute a current credit bureau report for the financial statement required by Item (1) of this Rule. A credit bureau report shall be current if not more than 18 months have passed from its date of issue.~~
- (3) ~~Personal Property Appraisals. Appraisals on personal property used as collateral for a loan shall be obtained and shall be completed as follows:~~
  - ~~(a) Except as otherwise provided below, a written appraisal of personal property used to collateralize any loan shall be made or approved by the executive committee or loan~~

committee of the bank or any branch thereof, branch, or other reliable persons familiar with the value of the property. Except as provided, all appraisals shall be renewed every 24 months.

(b) Requirements. The appraisal required by this Item shall include:

- (i) the name of the borrower;
- (ii) the date the appraisal was made;
- (iii) the value of the collateral;
- (iv) the signatures of at least two persons making the appraisal;
- (v) a brief description of the property;
- (vi) the amount of any prior lien and holder of the lien, if any; and
- (vii) the original amount or outstanding balance of the loan which the property is used to secure.

(c) Appraisal Exceptions. No appraisal shall be required under the following circumstances:

- (i) on collateral to notes of less than fifty thousand dollars (\$50,000);
- (ii) on loans fully secured by obligations of the United States or the State of North Carolina;
- (iii) on loans fully secured by deposits in the bank maintaining the loan account;
- (iv) on loans fully secured by the cash surrender or loan value of life insurance policies;
- (v) on loans fully secured by bonded warehouse receipts;
- (vi) on floor plan loans to dealers fully secured by motor vehicles;
- (vii) on discounted notes for a dealer where the note is given as the purchase price of a motor vehicle or other consumer goods; or
- (viii) on loans fully secured by listed securities, unless such loans are within the provisions of the Securities Exchange Act of 1934 as defined by Regulation "U," as amended from time to time by the Board of Governors of the Federal Reserve System. On loans secured by such collateral, the appraisal shall be made and kept on file until the loan is paid in full.

(d) Renewal Exceptions. Appraisals need not be renewed biennially where a motor vehicle or mobile home is the sole or partial collateral for a loan.

(e) Single Signature Exception. An appraisal may be performed and signed by only one person where a motor vehicle or mobile home is the sole collateral for a loan.

(4) Real Estate Appraisals. Unless otherwise provided, all real estate taken as security for loans shall be appraised in the form and manner set forth in Sub-item (4)(a) through (4)(e) of this Rule. In addition, the appraisal shall be independent in that the appraiser shall not be involved in the loan transaction secured by the property being appraised and shall have no interest, financial or otherwise, in the property.

- (a) ~~The bank may elect to waive the requirement for an appraisal of real estate given as security for loans of fifty thousand dollars (\$50,000) or less.~~
- (b) Appraisals of real estate given as security for loans over fifty thousand dollars (\$50,000), but not exceeding two hundred fifty thousand dollars (\$250,000), whether directly or indirectly pledged as collateral shall be prepared by one of the following methods:
- (i) Two members of the executive or loan committee who are familiar with real estate values in the community where the property is located;
  - (ii) Two bank employees who are familiar with real estate values in the community where the property is located, provided that one of the two employees shall not be involved in the loan transaction secured by the property being appraised;
  - (iii) A state licensed real estate appraiser or state certified real estate appraiser, or a person certified as a real estate appraiser by an appraisal trade organization approved by the bank to perform the appraisal; or
  - (iv) In lieu of an appraisal as provided by Sub-items 4(b)(i) through (iii) of this Rule, for loans less than two hundred fifty thousand dollars (\$250,000), a bank may elect to accept a copy of the most recent real property tax notice from the tax administrator's office in the county in which the property is located provided that such notice states the assessed ad valorem tax value of the real estate, and any improvements thereon, separate from the personal property; and the loan officer shall include with the tax notice a memorandum to file that he or she has obtained the notice from the county tax administrator and is of the opinion that such notice reflects the real property values.
- (c) Except as noted, appraisals required by Sub-items (4)(b)(i), (ii), and (iii) of this Rule shall be in writing, and signed and dated by the person or persons making the appraisal. Additionally, the appraisal shall identify the loan transaction for which it was made; identify the current balance of any prior lien and the identity of the holder of the lien, if any; segregate values of improvements from values of the land; and describe the property so as to make it easily identifiable. If a professional appraisal form is used that does not include this information, the bank shall complete and attach to such appraisal its own appraisal summary form disclosing the required information. The appraisal shall state the basis or approach used to determine the value of the property. Acceptable approaches to determining the value of real property are:
- (i) ~~the current cost of replacing a property, less depreciation relating to deterioration from functional or economic obsolescence;~~
  - (ii) ~~the value indicated by recent sales of comparable properties in the market and other market factors such as listings and offers to sell; or~~
  - (iii) ~~the value that the property's net earning power will support, based on a capitalization of net income.~~

- (d) ~~All real estate given as security for loans in an amount over two hundred fifty thousand dollars (\$250,000), whether directly or indirectly pledged as collateral shall be appraised and such appraisal shall be subject to the provisions of 12 C.F.R. 323.1 through 12 C.F.R. 323.7, which are hereby incorporated by reference and includes subsequent amendments or additions. This information is available at the U.S. Printing Office website at <http://www.ecfr.gov/cgi-bin/text-idx?SID=cb59b820da3e668ebb333139d429ce0e&node=pt12.5.323&rgn=div5> at no cost at the time of adoption of this Rule.~~
- (5) (1) Certificate of Title. A title opinion furnished by an attorney at law, a title ~~report or report~~, a title insurance policy issued by a company licensed by the Commissioner of Insurance, or other insurance coverage that provides the bank similar protection against loss from title defects, errors or omissions at closing, or ~~other loan-related~~ related risks, shall be obtained in connection with each deed of trust or mortgage given as security on each real estate-secured loan when:
- (a) the loan is primarily secured by real property and only secondarily by the borrower's general credit-worthiness; and
- (b) the amount of the loan secured by the real property is ~~fifty thousand dollars (\$50,000)~~ one hundred thousand dollars (\$100,000) or more.
- (6) ~~Stock Certificate and Stock Powers. Where stock certificates, or similar negotiable securities, are accepted as collateral for a loan, each certificate shall be endorsed and witnessed in ink, or accompanied by a stock power signed and witnessed in ink. Where such collateral is in the name of someone other than the maker or endorser of the note, there shall be on file in the bank written authority from the collateral owner permitting the hypothecation of the collateral.~~
- (7) (2) Corporate Resolutions. A loan made ~~directly~~ to a corporation shall be supported by a certified copy of a resolution of the board of directors of the corporation, authorizing the loan transaction.
- (8) (3) Partnership Declaration. A loan made ~~directly~~ to a partnership shall be supported by a declaration of the general partners showing the composition of the partnership and unless all partners sign the note, the authority of the partner(s) executing the note to bind the partnership.
- (9) (4) Limited Liability Company Certification. A loan made ~~directly~~ to a limited liability company shall be supported by a certification of a manager thereof that the loan has been duly authorized by the limited liability company.
- (10) (5) ~~Unlisted Securities. Securities Held as Collateral.~~ Full credit information on all unlisted securities, now owned or hereafter acquired, shall be kept on file in the bank.

*History Note: Authority G.S. 53C-6-1; 53C-8-1;*

*Eff. February 1, 1976;*

*Amended Eff. April 1, 2018; October 1, 2014; December 1, 2011; April 1, 2007; June 1, 1995; May 1, 1992; September 1, 1990; September 1, 1983;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.*