

CR 89-175

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STATE OF WISCONSIN )  
 ) SS  
OFFICE OF THE COMMISSIONER OF CREDIT UNIONS )

I, RICHARD OTTOW, Commissioner of the Office of the Commissioner of Credit Unions and custodian of the official records of said commission to hereby certify that the annexed rule relating to real estate mortgage loans in Wisconsin credit unions was duly approved and adopted by this commissioner on March 15, 1990.

I further certify that said copy has been compared by me with the original on file in this agency and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Commissioner of Credit Unions in the City of Madison, this 15th Day of May, 1990.

  
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Richard Ottow, Commissioner

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ORDER OF THE OFFICE OF THE COMMISSIONER OF CREDIT UNIONS  
ADOPTING, AMENDING OR REPEALING RULES

The Wisconsin office of the commissioner of credit unions proposes an order to repeal and recreate CU 54 relating to real estate mortgage loans in Wisconsin credit unions.

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Analysis prepared by the Office of the Commissioner of Credit Unions

Statutory authority: s. 186.23, Stats.  
Statutes interpreted: s. 186.098(10), Stats.

This proposed rule repeals the existing rule and recreates a version more attuned to the changing real estate loan market. The proposed rule would (1) clarify the requirements concerning appraisals, (2) make a distinction between purchase money and equity loans, and (3) raise the dollar threshold of loans exempt under this chapter.

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Pursuant to authority vested in the office of the commissioner of credit unions by s. 186.23, Stats., the office of the commissioner of credit unions hereby adopts rules interpreting s. 186.098(10), Stats. as follows:

SECTION 1. Chapter CU 54 is repealed and recreated to read:

CHAPTER CU 54

REAL ESTATE MORTGAGE LOANS IN CREDIT UNIONS

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 establishes the minimum requirements. The circumstances of individual loans may demand adherence to more stringent

standards than these minimum requirements prescribe. Compliance with the requirements of this chapter is not to be considered a substitute for safe and sound business judgment. The commissioner may require corrective actions be taken if it is determined lending practices are imprudent, even though individual loans may comply with the minimum requirements. Loans of \$25,000 or less, or loans less than 20% of the regular reserve, whichever amount is smaller, are exempt from the requirements of this chapter.

CU 54.02 DEFINITIONS. In this chapter:

(1) "Borrower's equity" means the net value of the subject real estate determined by multiplying the market value by 80%, minus outstanding indebtedness.

(2) "Commissioner" means the commissioner of credit unions or an authorized representative of the commissioner.

(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, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and not acting under duress.

(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.

(7) "Real estate" means land on which residential, farm, or commercial buildings of a permanent nature are erected, or land which is served by public access roads or public utilities. Builder's lots on which construction of residential or commercial property is intended are considered real estate.

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) The aggregate of real estate secured loans, subject to this chapter, may not exceed 50% of total assets.

(2) Purchase money loans, excluding amounts financed for accident, health and credit life insurance premiums, may not exceed 80% of the market value or purchase price of the subject real estate, whichever is less, except if:

(a) The part of the loan that exceeds the 80% limitation is insured or guaranteed by a qualified private mortgage insurer;

(b) The loan or the part of the loan that exceeds the 80% 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.

(3) 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 property, the value of which can be supported by authoritative evidence.

(4) 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 monthly payment 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.

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, type and in total.

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

(4) Interest rates and maturities of real estate mortgage loans.

(5) Standards of creditworthiness applicable to real estate loan approvals.

(6) Monitoring and quality control standards.

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) Reasonable 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;

2. A title insurance policy;

3. A short form title search; or

4. A signed report of title opinion by an attorney.

(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 certified 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, refinance charges and costs for insurance premiums are not considered additional advances.

(3) An appraisal indicating separately the market value of the land and improvements securing each real estate mortgage loan.

(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 insurable value of the improvements or the outstanding balance of the loan.

(5) A copy of written evidence 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.

CU 54.06 APPRAISAL. (1) To meet the requirements of s. CU 54.05(3), an appraisal shall be performed by a qualified appraiser selected by the credit union as competent and knowledgeable about relevant markets, and subscribing to the uniform standards of professional appraisal practices.

(2) The appraiser may not be involved in lending and collection functions of the credit union, and may have no interest, financial or otherwise, in the transaction.

(3) An appraisal is not required for loans less than 60% of the fair market value of the real estate, as shown on the recent tax bill or bills. Loans in this category shall be supported by a written report indicating the property has been inspected by a person authorized by the board of directors. The inspector shall express an opinion of the acceptability of the property as security for the loan in question.

(4) The appraisal report shall be no more than 2 years old, except this requirement does not pertain to refinancing a loan on which no additional funds are advanced. Accrued interest debits, refinance charges and costs for insurance premiums are not considered additional advances.

(5) The credit union shall maintain a resume for each appraiser indicating, at a minimum, educational background, years of experience, types of clientele served, and professional memberships, certification or licenses.

(6) Any person who has a direct or indirect ownership interest in the property to be appraised, or an interest in the loan applied for, may not qualify as an appraiser under this section.

CU 54.07 DISCRETIONARY AUTHORITY RETAINED BY COMMISSIONER. The commissioner may limit, restrict, or prohibit a credit union from making any type, category, or classification of loan governed by this chapter

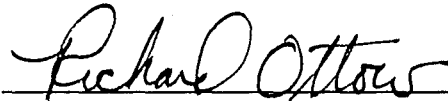


if examination results indicate the credit union is conducting its business in an unauthorized or unsafe manner or is violating the provisions of this chapter.

The rule contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

Dated: March 15, 1990

OFFICE OF THE COMMISSIONER OF CREDIT UNIONS



Richard Ottow, Commissioner of Credit Unions

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