

#### **04 NCAC 03C .1002 LEASING OF PERSONAL PROPERTY**

Each bank acquiring and leasing personal property or, acquiring personal property that is subject to an existing lease together with the lessor's interest therein and incurring such additional obligations as may be incident to becoming an owner and lessor of such property, may do so only when subject to the following restrictions:

- (1) Before the acquisition, upon the specific request and for the use of the customer, the prospective lessee shall execute an agreement to lease such property;
- (2) During the minimum period of the lease, the terms of the lease shall require payment to the bank by the lessee of rentals that, in the aggregate shall exceed the total expenditures by the bank for or in connection with the ownership, maintenance, and protection of the property. In determining the total expenditures under this Rule, a bank may deduct a realistic residual value in determining the rentals to be charged during the term of a lease agreement. Any unguaranteed portion of the estimated residual value relied upon by the bank to calculate total expenditures under this Rule may 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 that is not an affiliate of the bank may exceed 25 percent of the original cost of the property where the bank determines and provides supporting documentation that the guarantor has the resources to meet the guarantee;
- (3) The total leasing obligations or rentals to any bank of any person, partnership, association, corporation, or limited liability company shall at no time exceed the legal limit permitted by G.S. 53C-6-1;
- (4) The overall investment of the bank in such property leased to all lessees shall at no time exceed 200 percent of its capital;
- (5) The bank shall at all times maintain protection by way of insurance or indemnity provided by the lessee;
- (6) No lease or other agreement shall obligate the bank to maintain, repair, or service personal property in connection with any lease held by it;
- (7) No personal property acquired pursuant to the ownership or lease of personal property shall be included in the computable investment in fixed assets under G.S. 53C-5-2;
- (8) Rental payments collected by the bank under lease arrangements shall be rent and shall not be deemed to be interest or compensation for the use of money loaned;
- (9) Upon expiration of any lease, whether by virtue of the lease agreement or by virtue of the retaking of possession by the bank, such personal property shall be re-let, sold, otherwise disposed of, or charged off within one year from the time of expiration of such lease; and
- (10) Upon written request, the Commissioner of Banks may waive or modify any of the foregoing restrictions. In evaluating such a request, the Commissioner of Banks shall consider the following factors:
  - (a) the bank's size, profitability, capital sufficiency, risk profile, market, and operational capabilities, especially with a view towards the bank's involvement in lease financing;
  - (b) current best practices of financial institutions engaged in lease financing;
  - (c) the nature, size, duration, aggregate amount, and other risks attendant to the bank's lease financing transactions; and
  - (d) the risk of significant loss to the bank if the Commissioner of Banks does not grant the request.

*History Note:* Authority G.S. 53C-2-5; 53C-5-2; 53C-8-1;  
Eff. February 1, 1976;  
Amended Eff. October 1, 2014; January 1, 2013; April 1, 2007; September 1, 1990; September 1, 1983; May 1, 1982;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017.