

#### **04 NCAC 16E .0403 RECORDS WITH RESPECT TO LOANS**

Each savings institution shall maintain 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 acknowledged by the maker;
  - (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 savings institution; and
  - (e) include information reflecting the assets, liabilities, net worth, and income of the borrower.
- (2) **Financial Statement Exceptions.** A savings institution 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 savings institution may substitute a current credit bureau report for the financial statement required by Item (1) of this Rule. A credit bureau report shall be within 18 months 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 provided by Sub-item (3)(c) of this Rule, a written appraisal of personal property used to collateralize any loan shall be made or approved.
  - (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 two people making the appraisal;
    - (v) a brief description of the property;
    - (vi) the amount of any senior lien and the holder of the lien, if any; and
    - (vii) the original amount or outstanding balance of the loan that 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 savings institution maintaining the loan account; or
    - (iv) on loans fully secured by the cash surrender or loan value of life insurance policies.
  - (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)(c) 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 savings institution 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:
    - (i) two members of the board of directors who are familiar with real estate values in the community where the property is located;
    - (ii) two savings institution 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; or
- (iii) a state-licensed real estate appraiser, state-certified real estate appraiser, or a person certified as a real estate appraiser by an appraisal trade organization approved by the savings institution to perform an appraisal.
- (c) Appraisals prepared pursuant to Sub-item (4)(b) of this Rule shall be in writing and shall be signed and dated by the person or persons making the appraisal. The appraisal shall identify the loan transaction for which it was made; identify the current balance of any senior 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 identifiable. If a professional appraisal form is used that does not include this information, the savings institution shall complete and attach to the 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 shall be the following:
- (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 including 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=cb59b820da3e668ebb333139d429ce0c&node=pt12.5.323&rgn=div5> at no cost.
- (5) Certificate of Title. A title opinion furnished by an attorney at law, a title report or title insurance policy issued by a company licensed by the Commissioner of Insurance, or other insurance coverage that provides the savings institution with similar protection against loss from title defects, errors, or omissions at closing or other loan-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) 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 either endorsed and witnessed or accompanied by a stock power signed and witnessed. 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 savings institution written authority from the collateral owner permitting the hypothecation of the collateral.
- (7) Corporate Resolutions. A loan made 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) Partnership Declaration. A loan made 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) Limited Liability Company Certification. A loan made 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) Unlisted Securities. Full credit information on all unlisted securities, now owned or hereafter acquired, shall be kept on file in the savings institution.

*History Note: Authority G.S. 54C-53; 54C-128; Temporary Adoption Eff. October 2, 1991 for a period of 180 days to expire on March 31, 1992;*

*Eff. February 15, 1992;*

*Amended Eff. November 1, 2017;*

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 22, 2018.*