

## GUIDANCE DOCUMENT

This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

## STATEMENT OF POLICY #14

### OTHER REAL ESTATE

The Nebraska Department of Banking and Finance ("Department") sets forth Statement of Policy #14 regarding a bank's acquisition of other real estate ("ORE"). ORE is real estate acquired by a bank due to loan collection efforts. ORE is also known as OREO (Other Real Estate Owned).

Neb. Rev. Stat. § 8-150 provides, with regard to real estate conveyed to the bank for previously existing debts and real estate purchased to secure debts, that the amount entered on the records of the bank shall not be greater than the lesser of the following:

- (a) The unpaid balance of the debts due the bank plus the bank's out-of-pocket expenses incurred in acquiring clear title to the real estate;
- (b) Its judgments or decrees with costs; or
- (c) The appraised value of such real estate, except that a bank may expend funds as necessary for repairs or to complete a project in order to market such property.

### APPRAISAL

Section 8-150(3)(a – c) requires that an appraisal be available on the date that the ORE is booked. In recognition of the fact that it may not always be possible to have an appraisal performed by an independent, licensed appraiser on hand at the time a parcel of property is deeded to the bank, and that such appraisals on property of nominal value may constitute a burdensome expense to the bank in relationship to the value that the bank is likely to receive, the Department hereby establishes the following procedures to be used at the time the bank receives ORE for previously contracted for debt(s).

The requirement for an appraisal is determined by the ORE's value and the type of use of the real estate. The use determination is based on whether the value of the property is predominantly residential or agricultural and/or commercial.

### INITIAL APPRAISAL TO BE MADE WHEN BANK RECEIVES ORE

An appraisal is required at the time a parcel of ORE is booked. This appraisal may be done by any person who is familiar with real estate values in the area where the property is located. That person could be a realtor or lending officer of the bank, regardless of whether such person is licensed as an appraiser. Such appraisal cannot be performed by the same officer who originated any loan related to the ORE.

## RESIDENTIAL REAL ESTATE

### PROCEDURE WHERE INITIAL APPRAISAL FOR RESIDENTIAL REAL ESTATE IS UNDER \$250,000 OR 5% OF BANK'S EQUITY CAPITAL, WHICHEVER IS LESS

If the initial appraisal made at the time the residential ORE is booked is under \$250,000 or 5% of the bank's equity capital, whichever is less, no further appraisal is necessary for the duration of the time the property is held by the bank, unless the property is held for five years.

### PROCEDURE WHERE INITIAL APPRAISAL FOR RESIDENTIAL REAL ESTATE IS OVER \$250,000 OR 5% OF BANK'S EQUITY CAPITAL, WHICHEVER IS LESS

If the initial appraisal made at the time residential ORE is booked is over \$250,000 or 5% of the bank's equity capital, whichever is less, and such appraisal was not performed by an independent, licensed real estate appraiser, the bank will be required to obtain an appraisal performed by an independent, licensed real estate appraiser within 60 days of the time the property is initially booked.

If the bank chooses to book the residential property in an amount less than \$250,000 or 5% of the bank's equity capital, whichever is less, even though the initial appraisal would suggest a greater value, no further appraisal is necessary, unless the property is held for five years.

### ANNUAL APPRAISALS ON RESIDENTIAL PROPERTY IN EXCESS OF \$250,000 OR 5% OF BANK'S EQUITY CAPITAL, WHICHEVER IS LESS

Banks will be required to maintain an annual appraisal by an independent, licensed appraiser on each parcel of residential ORE booked in excess of \$250,000 or 5% of the bank's equity capital, whichever is less. Updates that are made by the same appraiser who performed the original appraisal, if independent and licensed, will be considered to meet the requirements of the annual appraisal.

## COMMERCIAL REAL ESTATE

Agricultural land has the same meaning as Commercial Real Estate for the purposes of this Statement of Policy.

### PROCEDURE WHERE INITIAL APPRAISAL FOR COMMERCIAL REAL ESTATE IS \$500,000 OR UNDER 5% OF BANK'S EQUITY CAPITAL, WHICHEVER IS LESS

If the initial appraisal made at the time the commercial ORE is booked is \$500,000 or under 5% of the bank's equity capital, whichever is less, no further appraisal is necessary for the duration of the time the property is held by the bank, unless the property is held for five years.

PROCEDURE WHERE INITIAL APPRAISAL FOR COMMERCIAL REAL ESTATE IS OVER \$500,000 OR 5% OF BANK'S EQUITY CAPITAL, WHICHEVER IS LESS

If the initial appraisal made at the time commercial ORE is booked is over \$500,000 or 5% of the bank's equity capital, whichever is less, and such appraisal was not performed by an independent, licensed real estate appraiser, the bank will be required to obtain an appraisal performed by an independent, licensed real estate appraiser within 60 days of the time the property is initially booked.

If the bank chooses to book the commercial property in an amount less than \$500,000 even though the initial appraisal would suggest a greater value, no further appraisal is necessary, unless the property is held for five years.

ANNUAL APPRAISALS ON COMMERCIAL PROPERTY IN EXCESS OF \$500,000 OR 5% OF THE BANK'S EQUITY CAPITAL, WHICHEVER IS LESS

Banks will be required to maintain an annual appraisal by an independent, licensed appraiser on each parcel of commercial ORE booked in excess of \$500,000 or 5% of the bank's capital, whichever is less. Updates that are made by the same appraiser who performed the original appraisal, if independent and licensed, will be considered to meet the requirements of the annual appraisal.

BANK'S BOOK VALUE OF RESIDENTIAL AND COMMERCIAL REAL PROPERTY

If at any time the appraisal value for residential or commercial property is less than the value currently carried on the bank's books, then the book value must be reduced to the appraisal value. If subsequent appraisals show the property has increased in value, a bank may not increase the value of the ORE on its books. The only time a financial gain will be realized is when the property is sold.

DEFINITION OF INDEPENDENT, LICENSED APPRAISER

An appraiser who is licensed through the Nebraska Real Property Appraiser Board will be considered independent if all of the following tests are met:

1. The appraiser is not connected with the bank or any of its affiliates as an officer, director, attorney, or employee. An appraiser is hired—employed—by the bank solely to ascertain the value of real property. Neither the appraiser, his or her spouse, nor a member of his or her firm, should be a member of the immediate family of any officer, director, attorney or employee of the bank or its affiliates.
2. The appraiser does not own, either directly or indirectly, any of the shares of stock of the bank or its affiliates.

3. The appraiser does not have any proprietary interest in any partnership, firm, corporation, syndicate, or other business or legal entity that, directly or indirectly, controls the bank or any of its affiliates.
4. Neither the appraiser nor any member of his or her immediate family is a borrower of the bank.
5. The appraiser does not have any conflict of interest, or the appearance thereof, because of business or personal relationships with management or its decisions or functions.

The foregoing points are not to be construed as all-inclusive criteria in judging the independence of a licensed appraiser, but rather set forth the most common conditions which contribute to a lack of independence. It is the responsibility of the bank to ensure that the appraisers which it uses are independent, and to resolve any question as to independence before engaging the appraiser.

Department examiners will determine, where appropriate, that real estate appraisers are both independent and licensed with the Nebraska Real Property Appraiser Board when the property is located in Nebraska, or by the comparable state agency in the respective state in which the property is located.

#### SALE OF ORE TO BANK INSIDER

Any sale of ORE to bank insiders must be fully documented, and must show that such sale is in the best interests of the bank. The bank must have an appraisal by a licensed, independent appraiser in the file prior to any such sale, regardless of the appraised value or book value of such property.

For the purposes of this Statement of Policy, insiders will be considered to include stockholders, directors, officers, and employees of the bank or the bank's holding company, and any related interests of the foregoing entities. Related interests include: 1) all affiliates of the bank or the bank holding company; and 2) corporations and business entities in which any shareholder or director of the bank or bank holding company has an interest.

#### APPRAISAL VALUES

It is imperative that the basis for such appraisals be specified, so that the "fair value" is accurately determined. "Fair value" will generally be defined as the amount, which can reasonably be expected to be received in a current sale, under current economic conditions, between a willing buyer and a willing seller. This further implies that the buyer and seller are prudent and knowledgeable, neither selling nor purchasing of necessity.

The appraiser should also be specifically instructed to consider the value of a given property in light of the anticipated exposure to the market for a "reasonable" length of time, taking into consideration both the property type and local market conditions.

ALL ORE TO BE DISPOSED OF WITHIN FIVE YEARS

Section 8-150 requires that real estate acquired in satisfaction of debts or at sale shall be disposed of within five years unless authority is given in writing by the Department to hold the property for a longer period. This extension is by no means automatic.

The Department expects the investment to be disposed of within five years, and will only consider exceptions if it can be clearly demonstrated that good faith efforts have been made to dispose of the property and that such efforts have not been successful. A request for extension should be submitted to the Department at least ninety (90) days prior to expiration of the five-year holding period.

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Revision Date:       November 30, 1989  
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