
Rules of
Department of Economic
Development
Division 140–Division of Finance
Chapter 2–Banks and Trust Companies

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**Title 4—DEPARTMENT OF
ECONOMIC DEVELOPMENT
Division 140—Division of Finance
Chapter 2—Banks and Trust Companies**

4 CSR 140-2.010 Credit Insurance
(Rescinded February 11, 1978)

4 CSR 140-2.020 Legal Reserves

PURPOSE: The Monetary Control Act of 1980 (Title I of H.R. 4986) and corresponding regulations impose, for the first time, reserve requirements which must be met by state nonmember banks. Those reserve requirements ignore and, in many cases, conflict with the reserve provisions of Missouri state law. Those conflicts render computation of reserves by state nonmember banks unduly burdensome and, in many cases, these conflicts place state nonmember banks at a disadvantage with member banks as to the amount of reserves which must be kept. This inequality suggests the need for an alteration in the interpretation of state policy on reserves. It is believed that this rule provides the alteration needed and that this proposal is justified on a number of grounds. Reserve requirements imposed by state law are not designed for monetary purposes and, therefore, have been commonly considered to be held for liquidity purposes. However, to the degree that they are needed to pay incoming cash letters and other obligations and to compensate for correspondent services, the demand balances due from other banks are, in reality, the least liquid assets of a commercial bank. Furthermore, balances would be maintained at fairly constant levels even in the absence of reserve requirements. The Monetary Control Act of 1980 and Regulations A and D suggest that a bank's short-term liquidity needs are to be satisfied through the money markets, established borrowing sources and the Federal Reserve discount window. A reduction in the officially required level of reserves will not adversely affect the liquidity of any bank. In addition, the inequality between state and national banks deriving from the Monetary Control Act suggests the need for action on the part of the commissioner of finance and the State Banking Board under section 362.105.3., RSMo to eliminate the disadvantage accruing to state nonmember banks. Some equality in the

area of reserves appears to have been the intention of the general assembly as evidenced by sections 362.215 and 362.217, RSMo. Indeed, under the latter section, the treatment accorded by this rule appears to have been mandated by the general assembly since, for reserve purposes, all state-chartered banks have been inducted into the Federal Reserve System. Finally, although no express language is contained in the Monetary Control Act of 1980, the conflicts between that Act and the Missouri reserve requirements suggest the possibility that the state reserve requirements have been legally preempted and are of no further effect.

(1) A bank or trust company may satisfy the requirements of sections 362.210 and 362.215, RSMo by maintaining that amount of reserves and in the form as it is directed to keep by the Federal Reserve Bank located in the district in which the bank or trust company is located. For purposes of this rule and section 362.225.2., RSMo, the Federal Reserve Banks located in this state are designated as approved depositories for all banks and trust companies.

*AUTHORITY: sections 361.105, RSMo (1986) and 362.105.3., RSMo (Cum. Supp. 1992). * Emergency rule filed Sept. 26, 1980, effective Nov. 1, 1980, expired Feb. 28, 1981. Original rule filed Sept. 26, 1980, effective Feb. 28, 1981.*

**Original authority: 361.105, RSMo (1967) and 362.105.3., RSMo (1939), amended 1949, 1963, 1965, 1967, 1977, 1983, 1986, 1990, 1991, 1992.*

4 CSR 140-2.030 Agricultural Credit Corporation

PURPOSE: To the extent that a state-chartered bank or trust company has the ability to form an agricultural credit corporation capable of making loans to farmers and ranchers for agricultural purposes and discounting these loans to the Federal Intermediate Credit Bank in its district, that bank or trust company will be better able to serve the credit needs of its community. National banks are authorized by federal law (12 U.S.C. 24(7)) to form these corporations. State chartered banks and trust companies should be granted the same power to permit them to compete with their federally-chartered counterparts.

(1) A bank or trust company, subject to the provisions of this rule, may invest in the stock of an agricultural credit corporation.

(2) An agricultural credit corporation is a corporation whose stock is owned entirely by one (1) or more banking organizations and which is formed solely to make loans to farmers and ranchers for agricultural purposes.

(3) A bank which owns less than eighty percent (80%) of the stock of an agricultural credit corporation shall—

(A) Not invest in the stock of an agricultural credit corporation more than an amount equal to its legal loan limit; and

(B) Obtain the approval of the commissioner of finance before investing in the stock of an agricultural credit corporation.

(4) No bank or trust company or agricultural credit corporation, eighty percent (80%) or more of whose voting stock is owned by a bank or trust company, shall extend credit to any borrower if the aggregate of all extensions of credit to that borrower, by the bank and its agricultural credit corporations, will exceed the bank's legal loan limit.

*AUTHORITY: sections 361.105, RSMo (1986), 362.105.3., RSMo (Cum. Supp. 1992) and 362.170, RSMo (Cum. Supp. 1989). * Original rule filed July 15, 1981, effective Oct. 15, 1981.*

**Original authority: 361.105, RSMo (1967); 362.105.3., RSMo (1939), amended 1949, 1963, 1965, 1967, 1977, 1983, 1986, 1990, 1991, 1992; and 362.170, RSMo (1939), amended 1941, 1943, 1945, 1959, 1963, 1967, 1977, 1981, 1983, 1985, 1986, 1989.*

4 CSR 140-2.035 Purchase of Federal Home Loan Bank Stock by State-Chartered Banks

PURPOSE: National banks are permitted to purchase shares in federal home loan banks and have access to the loan funds available through the federal home loan bank system; that gives national banks a competitive advantage. This rule restores competitive equality by permitting state-chartered banks to purchase shares in the Federal Home Loan Bank of Des Moines.

(1) Any state-chartered bank may purchase the minimum number of shares of stock necessary to become a member of and to borrow from the Federal Home Loan Bank of Des Moines; provided, however, that in no case



may that purchase be in an amount which exceeds the bank's legal lending limit.

*AUTHORITY: sections 362.105.3., RSMo (Cum. Supp. 1992). * Original rule filed April 16, 1991, effective Aug. 30, 1991.*

**Original authority 1939, amended 1949, 1963, 1965, 1967, 1977, 1983, 1986, 1990, 1991, 1992.*

4 CSR 140-2.040 Reserve Requirements/Unimpaired Capital

PURPOSE: Senate Bill 331, which was effective September 28, 1983, changed the definition of "unimpaired capital" as it appears in section 362.170, RSMo, by deleting the word "capital" from the phrase "capital reserves." This rule indicates that state-chartered banks may include the amount in "allowance for possible loan losses," as reflected in their official report of condition (Call Report), in the calculation of "unimpaired capital" for legal loan limit purposes. This inclusion gives state-chartered banks loan limit parity with national banks.

(1) When calculating unimpaired capital for legal loan limit purposes, banks and trust companies, effective September 28, 1983, may add the line designated as allowance for possible loan losses on the bank's official report of condition (Call Report) to those lines previously permitted: "total equity capital" and "capital notes."

(2) The allowance for possible loan losses will not be considered unimpaired capital for purposes of capital adequacy.

*AUTHORITY: sections 361.105, RSMo (1986) and 362.170, RSMo (Cum. Supp. 1989). * Original rule filed Aug. 15, 1983, effective Nov. 11, 1983. Amended: Filed Aug. 18, 1987, effective Nov. 12, 1987.*

**Original authority: 361.105, RSMo (1967); and 362.170, RSMo (1939), amended 1941, 1943, 1945, 1959, 1963, 1967, 1977, 1981, 1983, 1985, 1986, 1989.*

4 CSR 140-2.050 Disposition of Credit Insurance Income

PURPOSE: The practice in state-chartered banks where persons or entities other than the bank receive compensa-

tion for the sale of credit life or credit accident and health insurance can be an unsafe and unsound banking practice in that it tends to erode the fiduciary relationship between that person or entity and the bank, encourages the making of loans which are imprudent and may lead to undue pressuring of borrowers to purchase insurance. This rule assures that the bank receives the benefit from the sale of credit life or credit accident and health insurance to loan customers.

(1) Definitions.

(A) Bank means a state-chartered bank or trust company.

(B) Interest shall include:

1. Ownership through a spouse or minor child(ren);

2. Ownership through a broker, nominee or agent; or

3. Ownership through a corporation, partnership, association, joint venture or proprietorship controlled by a director, officer, employee or principal shareholder of the bank.

(C) Principal shareholder means any share holder who, directly or indirectly, owns or controls an interest of more than five percent (5%) in the bank's outstanding shares.

(D) The terms officer, director, employee and principal shareholder shall include the spouse and minor child(ren) of that officer, director, employee or principal shareholder.

(2) Distribution of Credit Life and Credit Accident and Health Insurance Income.

(A) Except as provided in subsection (2)(B) of this rule, no bank employee, officer, director or principal shareholder may retain or receive commissions or other income from the sale of credit life or credit accident and health insurance in connection with any loan made by the bank, nor receive or retain any bonus, salary, premium or other compensation contingent upon sales of credit life or credit accident and health insurance. This income must be paid directly to the bank or trust company, to a trust of which the beneficiaries are entitled to share the proceeds in exact proportion to their ownership of the bank or trust company, to a holding company which owns all of the stock of the bank of trust company except for directors' qualifying shares or to an affiliate of that bank which is also wholly owned by the bank's holding company.

(B) Notwithstanding the prohibition contained in subsection (2)(A), bank employees and officers may participate in a bonus or incentive plan under which payments based

on credit life insurance sales are made in cash or in kind out of the bank's funds not more frequently than quarterly and in an amount not exceeding in any one (1) year, five percent (5%) of the recipient's annual salary. Alternatively, bonuses paid to any one (1) individual during the year for credit life sales may not exceed five percent (5%) of the average salary of all loan officers participating in the plan and may not be paid more frequently than quarterly. All compensation under this rule shall be by board resolution which shall contain sufficient detail to permit a determination that the limits of this rule have not been exceeded. Copies of this resolution(s) shall be maintained separately for review by the Division of Finance.

(3) Responsibilities of Directors. The selection of an insurance company and the agreements between the company and the bank shall be approved by an appropriate resolution of the bank's board of directors.

*AUTHORITY: section 361.105, RSMo (1986). * Original rule filed July 15, 1981, effective Jan. 1, 1982. Amended: Filed Feb. 25, 1986, effective June 1, 1986.*

**Original authority 1967.*

4 CSR 140-2.051 Insurance Agencies Operated by State-Chartered Banks

PURPOSE: National banks in places with populations of five thousand persons or fewer are permitted by virtue of the National Banking Act to operate insurance agencies which can sell all types of insurance. State-chartered banks have not been given specific authority for this activity leaving them at a competitive disadvantage especially where state and national banks occupy the same place with populations of five thousand persons or fewer. Expanding the authority will serve the public by providing convenient insurance services at competitive prices. This rule also clarifies permissible insurance-related activities for banks located in places with populations over five thousand. Section 362.105, RSMo explicitly empowers the director of finance, with the approval of the State Banking Board, to issue rules granting powers and authorities to state-chartered banks which would give competitive equality with federally-chartered institutions. This rule authorizes insur-

ance agencies in state-chartered banks on the same basis as national banks are authorized.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by law.

(1) State-chartered banks or their facilities in any place having a population of five thousand (5000) persons or fewer according to the last decennial census are authorized to operate insurance agencies to the extent national banks are so authorized by 12 U.S.C. 92.

(2) A state-chartered bank may lease a portion of its premises to insurance agents or agencies. Where the lease involves an officer, director, employee affiliate or principal shareholder as defined in 4 CSR 140-2.050, those lease arrangements may not be for a period longer than one (1) year and must provide reasonable compensation to the bank; a minimum of twenty percent (20%) of the commissions generated shall be considered reasonable. A full accounting of the calculation of that compensation must be made to and approved by the bank's board of directors at the board's organization meeting following the annual stockholders' meeting; the details of the compensation, including gross commissions received by the agency, the portion received by the bank as compensation, and any fees or other payments made by the agency to the officers, directors, and principal shareholders, shall be entered into the board's minutes and disclosed to the shareholders at the annual shareholders' meeting.

(3) Income from the sale of any credit-related insurance shall be treated as though it were income from the sale of credit life insurance according to 4 CSR 140-2.050.

AUTHORITY: sections 361.105, RSMo (1986) and 362.105, RSMo (Cum. Supp. 1992). * Original rule filed June 12, 1984, effective Nov. 11, 1984.

*Original authority: 361.105, RSMo (1967); 362.105, RSMo (1939), amended 1949, 1963, 1965, 1967, 1977, 1983, 1986, 1990, 1991, 1992.

4 CSR 140-2.053 Fees Per Section 408.052, RSMo

PURPOSE: This rule draws attention to the provisions of section 408.052, RSMo as they relate to fees taken by insiders in connection with real estate secured loans.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) Section 408.052, RSMo, which concerns loans secured by first mortgages on residential real estate, prohibits a lender from charging, requiring or receiving fees of any nature with certain exceptions. Those exceptions include actual expenses paid to any person or entity other than an officer, employee or director of the lender or a business in which an officer, employee or director owns any substantial interest. Accordingly, a bank may not make a separate identifiable charge to a customer for any services performed by it or any of its officers, directors or employees or any business in which any officer, director or employee has a substantial interest.

(2) It should be noted that P.L. 96-221, 12 U.S.C. 1735f-7 eliminated the limitation on the number of points as well as interest rates which may be assessed on first mortgage residential real estate loans which are federally related mortgages. As all Missouri banks are insured by the Federal Deposit Insurance Corporation (FDIC), all first mortgage residential real estate loans made by Missouri banks, by definition, are federally related. Accordingly, it would be acceptable for a bank to permit services, such as abstract and appraisal services, to be performed by an officer, director or employee or business in which these persons hold a substantial interest and then add the cost to the points so that the finance charge and annual percentage rate reflect these costs. In this way, no separate identifiable charge is assessed and section 408.052, RSMo will not be violated, in our opinion.

AUTHORITY: sections 361.105, RSMo (1986) and 408.052, RSMo (Cum. Supp. 1989). * Original rule filed June 12, 1990, effective Nov. 30, 1990.

*Original authority: 361.105, RSMo (1967) and 408.052, RSMo (1974), amended 1979, 1989.

4 CSR 140-2.055 Purchase of Key-Man Insurance

PURPOSE: The Division of Finance routinely receives inquiries about the purchase of single premium life insurance as an investment. Some bankers indicate they have considered purchasing large single premium life insurance policies and treating the cash surrender value as a significant portion of the bank's capital account. This rule sets guidelines for the purchase of Key-Man life insurance.

(1) The powers and authorities of banks and trust companies (bank) are set out in section 362.105, RSMo. This statute is specific in the type of investments authorized by banks and it does not include the purchase of life insurance for the bank's own account as an investment. Accordingly, any purchase of insurance is allowed only if it is within the incidental powers of a bank or it is reasonably related to a legitimate bank interest such as the interest in protecting itself against loss.

(2) A bank may purchase life insurance to indemnify itself against the loss of key management personnel. The amount of insurance purchased must be reasonable in relation to the size and needs of the bank. Also, the board of directors must document the basis upon which it determines who qualifies to be covered by the insurance. The board must document the basis for determining the amount of insurance needed to indemnify the bank against the death of each individual.

(3) Accounting for these insurance policies must be consistent with the requirements of generally accepted accounting principles. However, in no event may a bank carry the value of that policy as an asset on its books in an amount which exceeds the current cash surrender value of the policy.

(4) The cash surrender value of the policy represents funds due from a corporation and therefore may not exceed the limit on loans to one (1) borrower set by section 362.170, RSMo. The legal loan limit also will apply to the aggregate book value of all policies, including subsequent earnings, which are purchased from the same company. Finally, if the aggregate cash surrender value of all these policies owned by the bank is large in relation to the bank's total capital account,

these amounts will be considered a concentration of credit.

*AUTHORITY: sections 361.105, RSMo (1986) and 362.105, (Cum. Supp. 1992). * Original rule filed Aug. 22, 1991, effective Feb. 6, 1992.*

**Original authority: 361.105, RSMo (1967) and 362.105, RSMo (1939), amended 1949, 1963, 1965, 1967, 1977, 1983, 1986, 1990, 1991, 1992.*

4 CSR 140-2.060 Investment in Fixed Assets

PURPOSE: Section 362.105.1(9), RSMo requires banks and trust companies to obtain the approval of the commissioner of finance before acquiring real estate for use as bank premises. The Division of Finance has consistently followed two informal policies under this statute. First, a bank is normally required to limit its investment in fixed assets to fifty percent of its capital accounts. Second, a bank seeking to expend funds to remodel, refurbish or reequip its existing banking premises has been required to obtain approval from the commissioner. This rule formalizes the former policy and modifies the latter policy.

(1) An application under section 362.105.1(9), RSMo to purchase real property ordinarily will be approved if the applicant's investment in fixed assets, including real estate, building and furniture and fixtures, after the proposed expenditure, will be less than fifty percent (50%) of its unimpaired capital as defined in section 362.170, RSMo. Each application will be decided after an analysis of safety and soundness factors including capital, assets, management, earnings and liquidity.

(2) Investments in programs to remodel previously acquired bank premises or to purchase furniture or equipment for use in the bank's premises will not require the approval of the commissioner unless the aggregate of all investment in fixed assets, including real estate, building, furniture and fixtures, after the planned investment, will exceed fifty percent (50%) of unimpaired capital as defined in section 362.170, RSMo.

(3) Whether or not an application is required as described above, no bank or trust company may, without the approval of the commissioner, make any acquisition of real property which will result in its investment in fixed

assets exceeding fifty percent (50%) of its unimpaired capital.

*AUTHORITY: sections 361.105, 362.170 and 362.105, RSMo (Supp. 1995). * Original rule filed Dec. 10, 1981, effective April 1, 1982. Amended: Filed Sept. 15, 1995, effective March 30, 1996.*

**Original authority: 361.105, RSMo (1967; 362.105, RSMo (1939), amended 1949, 1963, 1965, 1967, 1977, 1983, 1986, 1990, 1991, 1992, 1995; and 362.170, RSMo (1941), amended 1943, 1945, 1959, 1963, 1967, 1977, 1981, 1983, 1985, 1989, 1993, 1994, 1995.*

4 CSR 140-2.065 Bank Investment in Real Estate Development Corporations

PURPOSE: Senate Bill 52 was approved by the governor and took effect on September 28, 1985. The bill amended section 362.106, RSMo to permit banks and trust companies to make certain investments in real estate development corporations. This rule establishes guidelines under section 362.106, RSMo which permit banks and trust companies to make certain investments in real estate development corporations and clarifies unclear provisions of the law.

Editor's Note: The secretary of state has determined that the publication of this rule in its entirety would be unduly cumbersome or expensive. The entire text of the material referenced has been filed with the secretary of state. This material may be found at the Office of the Secretary of State or at the headquarters of the agency and is available to any interested person at a cost established by state law.

(1) For purposes of this rule, a real estate development corporation (REDC) shall mean any corporation whose activities are limited to managing or owning agricultural property, subdividing and developing real property and building residential housing or commercial improvements on that property and owning, renting, leasing, managing, operating for income and selling property which the REDC has developed and improved.

(2) A bank may invest in the stock of an REDC; provided—

(A) Within thirty (30) days of investing, the bank advises the office of the commissioner of finance of the name of the REDC, the amount of this investment and related loans, lines of credit and guarantees and the

location and general description of the principal projects of the REDC;

(B) The REDC shall not engage in a joint venture with any executive officer or principal shareholder of the bank or any related interest of the bank as those terms are defined in Regulation O of the Federal Reserve Board (12 CFR 215);

(C) The bank's total of investments and extensions of credit in all REDCs shall not exceed five percent (5%) of the bank's assets;

(D) The bank's total equity investment in any one (1) real estate project shall not exceed twenty percent (20%) of its unimpaired capital; for purposes of this subsection, the investments in all REDC joint ventures on a given project shall be aggregated;

(E) The real estate owned by the REDC shall be located—1) in the same county or a county adjoining that county where the main banking house of the bank is located or 2) in the bank's local community as defined by the Community Reinvestment Act (12 U.S.C. 2901); provided, however, that this real estate may be located anywhere in Missouri or in any state adjoining Missouri with the prior approval of the director of the Division of Finance; and

(F) The REDC shall obtain proper documentation and perfected security interests on all projects.

(3) Subject to the provisions of section (4) of this rule, a bank may extend credit up to its legal loan limit to each REDC in which it has invested.

(4) Extensions of credit by a bank to an REDC shall be subject to the attribution and aggregation rules contained in 4 CSR 140-2.080.

(5) A bank's investment in an REDC will be subject to the same review standards as any other investment. Examiners will be reviewing for solvency of the corporation and all other factors which might be pertinent to determining the value of the investment.

AUTHORITY: sections 361.105, RSMo (1986), 362.106, RSMo (Cum. Supp. 1990) and 362.170, RSMo (Cum. Supp. 1989). Original rule filed Aug. 2, 1985, effective Oct. 11, 1985. Amended: Filed June 12, 1990, effective Nov. 30, 1990.

**Original authority: 361.105, RSMo (1967); 362.106, RSMo (1981), amended 1985, 1990; and 362.170, RSMo (1939), amended 1941, 1943, 1945, 1959, 1963, 1967, 1977, 1983, 1985, 1986, 1989.*

4 CSR 140-2.067 Community Development Corporations

PURPOSE: Senate Bill 688 of the 86th General Assembly added subdivision (14) to subsection 1. of section 362.105, RSMo authorizing banks to make limited investments in community development corporations. This rule sets guidelines for these investments.

(1) A bank or trust company may invest in the debt or equity instruments of a community development corporation. Unless this investment meets the requirements of section (2) of this rule, it should be treated as a charitable contribution and charged off the bank's books.

(2) A bank may carry an investment as is described in section (1) as an asset on its books; provided—

(A) The total amount invested by the bank in any one (1) community development corporation project does not exceed two percent (2%) of the bank's unimpaired capital and the aggregate amount invested by the bank's unimpaired capital and the aggregate amount invested by the bank in all these projects does not exceed five percent (5%) of the bank's unimpaired capital;

(B) The project must be of civic, community or public nature and should not be exclusively private or entrepreneurial; and

(C) The bank shall account for these investments as other assets.

*AUTHORITY: sections 361.105, RSMo (1986) and 362.105.1., RSMo (Cum. Supp. 1992). * Emergency rule filed May 20, 1992, effective June 1, 1992, expired Sept. 29, 1992. Emergency rule filed Sept. 10, 1992, effective Sept. 29, 1992, expired Jan. 26, 1993, Emergency rule filed Jan. 15, 1993, effective Jan. 27, 1993, expired May 8, 1993. Original rule filed July 30, 1992, effective Feb. 26, 1993.*

**Original authority: 361.105, RSMo (1967) and 362.105.1., RSMo (1939), amended 1949, 1963, 1965, 1967, 1977, 1983, 1986, 1990, 1991, 1992.*

4 CSR 140-2.070 Accounting for Other Real Estate

PURPOSE: For years this division has required banks and trust companies to charge off other real estate over a period of six years. The policy was based on an incorrect interpretation of section 362.165, RSMo. This rule replaces that policy with one requiring banks and

trust companies to account for other real estate in a manner which conforms to generally accepted accounting principles.

(1) For the purposes of this rule, other real estate shall include real property which is purchased by the bank under judicial or non-judicial foreclosure where the real property was security for debts previously contracted, which is purchased by the bank to protect its interest in debts previously contracted, which is acquired by the bank in partial or complete satisfaction of debts previously contracted, or which is owned by the bank and which has been, but is no longer, used or intended to be used as bank premises.

(2) Other real estate should be booked or accounted for at the lower of—a) the book value of the real estate (or the loan to which it is attributable, plus allowable expenses and less any previous direct write-down unearned interest) or b) the fair market value of the real property at the date of the transfer to that category. Where the other real estate is attributable to debts previously contracted, any excess of the bank's investment in the loan over the fair market value of the real property must be charged against the reserve for loan losses. Additional charge-offs after foreclosure should be charged to other operating expenses. Examiners may classify any portion of the other real estate carried on the bank's books.

(3) At the time real property is transferred to the other real estate category, if the recorded value of the real estate exceeds the lesser of five percent (5%) of the bank's unimpaired capital or fifty thousand dollars (\$50,000), the bank shall obtain a current appraisal prepared by an independent qualified appraiser to substantiate the fair market value of the real property. For the purpose of this section, the bank will be considered to be in compliance if—a) the bank has obtained an appraisal within six (6) months prior to acquisition or b) within thirty (30) days after foreclosure, the bank has documented an agreement with an individual or company to perform the appraisal; however, the appraisal shall be completed and in the bank's files within ninety (90) days of foreclosure.

(4) Section 362.165, RSMo provides for a six (6)-year maximum holding period for other real estate with no more than two (2) extensions of not more than twenty-four (24) months, each available with the approval of the commissioner. In applying for an extension, the bank must demonstrate a good faith effort has been made to dispose of the prop-

erty and that this extension is in the best interests of the bank. In addition, if the property was originally booked at a value of fifty thousand dollars (\$50,000) or more, and is not being carried at a value less than fifty thousand dollars (\$50,000) pursuant to a subsequent valid appraisal, the application must be accompanied by an appraisal prepared by an independent, qualified appraiser made within six (6) months of the application. Should the new appraisal reflect a lower value than that on the books of the bank, the carrying value shall be reduced accordingly.

*AUTHORITY: sections 361.105, 362.165, RSMo (1986) and 362.105, RSMo (Cum. Supp. 1992). * Original rule filed Dec. 10, 1981, effective April 1, 1982. Amended: Filed May 17, 1988, effective Aug. 26, 1988 Amended: Filed Jan. 12, 1993, effective June 7, 1993.*

**Original authority: 361.105, RSMo (1967); and 362.165, RSMo (1939), amended 1949, 1963, 1965, 1967, 1977, 1983, 1986, 1990, 1991, 1992; and 362.165, RSMo (1939), amended 1967, 1983.*

4 CSR 140-2.080 Legal Loan Limit

PURPOSE: Section 362.170, RSMo limits the amount which may be loaned to "any individual, partnership, corporation, or body politic." Section 362.170.2(c), RSMo requires that certain loans be aggregated for the purpose of determining whether the limit on loans to a certain entity has been exceeded. Thus, the law states that liabilities of an individual, partnership or corporation must be aggregated with all loans made for the benefit of that individual, partnership or corporation. This office will attempt to effectuate the strong public policy evidenced by the law which is to prevent a bank from becoming overextended to any single concern. Recently, we have witnessed several departures from this public policy and sound banking principles with potentially disastrous results. In order to comply with this section of law, a bank must know which loans should be aggregated and treated as a single line of credit and which loans may be treated separately. This rule establishes some guidelines for compliance with the statute and formalizes the existing policy of the Division of Finance.

(1) Rule. The obligations of two (2) or more corporations, partnerships or individuals, or

a combination, shall be aggregated pursuant to the following guidelines:

(A) If the proceeds of loans to two (2) or more entities were used for the benefit of a single individual or enterprise, the loans shall be aggregated; and

(B) If two (2) or more entities are effectively operating as separate departments or divisions of a single enterprise, loans to these entities shall be aggregated.

(2) Factors. The decision to aggregate two (2) or more loans under this rule shall be made after considering all relevant factors, including the following:

(A) The extent to which the loans are made to borrowers controlled by the same shareholder or group of shareholders;

(B) The degree to which the bank is relying on a single entity as the source of repayment;

(C) The degree to which one (1) individual, or small group of individuals, dominates management decisions of two (2) or more borrowers;

(D) The proportionate dependence of one (1) borrower upon another as a market for, or supplier of, goods or services;

(E) The extent to which proceeds of a loan to one (1) obligor will flow to the obligor of other loans; and

(F) The degree to which repayment of one (1) loan is secured by or dependent upon moneys to be paid by the obligor of other loans.

(3) Examples.

(A) Corporation A derives all of its income from the production of sausage. Its entire production is sold each year to corporation B whose income is one hundred percent (100%) derived from the retail marketing of this sausage. A is B's sole supplier of this sausage. A and B are owned or controlled by the same individual or group of individuals. The Division of Finance would treat A and B as a single enterprise and loans to A would be aggregated with loans to B to determine compliance with the legal loan limit.

(B) A and B corporations are owned by the same individuals but operated independently. A is engaged in the dental supply business and B is exclusively engaged in farm machinery. A loan to A would not be attributed to B unless the proceeds were loaned or paid over to B by A or unless the bank looks primarily to one (1) corporation for repayment of both debts.

(C) One (1) individual owns three (3) corporations which are primarily engaged in the construction business. Corporation A holds title to real estate (a warehouse), corporation

B holds title to construction equipment and corporation C is an operating company which borrows for inventory, receivables, payroll (work in progress). Loans to these three (3) corporations would be combined since they are effectively operating as separate departments or divisions of a single enterprise.

(D) Corporation A has substantial indebtedness and needs additional capital funds. Corporation B is formed by the principals of corporation A for the single purpose of acquiring certain assets from corporation A and leasing them back to A. The Division of Finance would treat A and B as a single enterprise and loans to A would be aggregated with loans to B to determine compliance with the legal loan limit.

(E) Assume all the same facts that are set forth in subsection (3)(D), with the exception that the entity acquiring the property to be leased back is a large independent corporation in the leasing business. Loans to B would not be attributed to A if it is determined the sale lease back is an arms-length business transaction.

(F) An individual borrows money to purchase stock or indebtedness in a closely held corporation. The credit would be attributed to the corporation if the corporation, directly or indirectly, receives the proceeds and if there were no source of repayment other than the successful operation of the corporation.

(G) Assume the same situation as set forth in subsection (3)(F), except the loan to the individual is secured by readily marketable stock of a publicly held corporation. Obligations of individuals which are secured by readily marketable securities of a publicly held corporation will not be aggregated with indebtedness of the corporation which issued the securities.

(4) Effect on Existing Credit. This rule, until January 1, 1984, shall not affect any credit in existence on September 11, 1982 which, absent this rule, would have been in compliance with the previous policy toward attribution of loans; provided that an extension to January 1, 1985 may be obtained from the Division of Finance upon the bank's demonstration, in writing, that an undue hardship would result.

*AUTHORITY: sections 361.105, RSMo (1986) and 362.170, RSMo (Cum. Supp. 1989). * Original rule filed June 14, 1982, effective Sept. 11, 1982.*

**Original authority: 361.105, RSMo (1967) and 362.170, RSMo (1939), amended 1941, 1943, 1945, 1959, 1963, 1967, 1977, 1981, 1983, 1985, 1986, 1989.*

4 CSR 140-2.081 Legal Loan Limit—Limited Partnerships

PURPOSE: This rule removes the confusion surrounding the legal loan limit as it relates to limited partnerships and certain joint ventures, eliminates any lingering effects of earlier interpretations (rulings number 19 and 37) and states this division's policy toward this subject.

(1) While loans to general partnerships shall be considered, for legal loan limit purposes, loans to each member of the partnership, this rule does not apply to limited partners in limited partnerships unless limited partners act as general partners by undertaking duties or responsibilities associated with running the business.

(2) This rule shall not be construed to limit attribution which would be required by application of 4 CSR 140-2.080 Legal Loan Limit.

(3) A corporation or other entity serving as a general partner in any limited or general partnership shall be attributed any loan made to or for the benefit of the partnership.

*AUTHORITY: sections 361.105, RSMo (1986) and 362.170, RSMo (Cum. Supp. 1989). * Original rule filed June 12, 1984, effective Nov. 15, 1984.*

**Original authority: 361.105, RSMo (1967) and 362.170, RSMo (1939), amended 1941, 1943, 1945, 1959, 1963, 1967, 1977, 1981, 1983, 1985, 1986, 1989.*

4 CSR 140-2.082 Legal Loan Limit as Amended by HB 408

PURPOSE: Effective September 28, 1985 section 362.170, RSMo was amended by HB 408. This rule restates the law and declares this office's position concerning the amendment.

(1) The Legal Loan Limit as Amended. Section 362.170, RSMo provides that the legal loan limits will not apply to loans “. . . to the extent they are secured by a segregated deposit account in the lending bank if the lending bank has obtained a perfected security interest in such account.” Stated differently, a bank does not count against its legal loan limit the portion of any loan which is one hundred percent (100%) secured by a perfected security interest in deposits in the bank. For example, consider a bank with a

one (1) million dollar legal loan limit. If a borrower pledges a certificate of deposit (CD) in the lending bank in the amount of one hundred thousand dollars (\$100,000), the bank could lend up to one million one hundred thousand dollars (the one (1) million legal loan limit plus the one hundred thousand dollars (\$100,000) which is fully secured by the CD).

(2) Perfected Security Interest. In order to expand the legal loan limit per the amendment of section 362.170, RSMo, the bank must perfect the security interest. This will ordinarily require actual possession of any CDs or passbooks and the bank will be expected to complete any other steps in the perfection process.

*AUTHORITY: sections 361.105, RSMo (1986) and 362.170, RSMo (Cum. Supp. 1989). * Original rule filed Aug. 2, 1985, effective Oct. 11, 1985.*

**Original authority: 361.105, RSMo (1967) and 362.170, RSMo (1939), amended 1941, 1943, 1945, 1959, 1963, 1967, 1977, 1981, 1983, 1985, 1986, 1989.*

4 CSR 140-2.090 Originating Trustees

PURPOSE: Section 362.116, RSMo permits a state-chartered bank, with the approval of the commissioner of finance, to become an originating trustee which can originate trust accounts to be administered by a bank or trust company with full fiduciary powers, known as the contracting trustee. This rule sets out the information which the commissioner will require of an applicant and declares the criteria the commissioner will use in considering the application.

(1) Application. Applications for the commissioner's approval to become an originating trustee are available from the offices of the Division of Finance, P.O. Box 716, Jefferson City, MO 65102. The application will require, as minimum information, the name and address of the applicant institution, the name of the employee of the applicant institution who will be designated as trust officer, the name and address of the proposed contracting trustee, a certified copy of the contracting trustee's authorization to act as a trustee, a copy of the contract between the originating trustee and the contracting trustee and a copy of the board resolution calling for the establishment of the contract.

(2) Criteria. In considering an application to become an originating trustee, the commissioner will consider the following:

(A) Whether the contracting trustee is supervised by either a state or federal bank regulatory agency; and

(B) Whether termination provisions in the contract will protect the customer which, for purposes of this rule, shall mean the grantor, known beneficiaries or any other interested party. These provisions shall include prohibiting termination unless—1) a successor trustee has accepted appointment as trustee, 2) the customer has rescinded the trust, 3) a court has appointed a successor trustee or 4) any other provision providing comparable protections.

(3) Affidavit of Originating Trustees. Upon request of the contracting trustee, the originating trustee may provide an affidavit declaring that the contracting trustee has authority to act concerning a specific trust. The affidavit shall be signed by an officer of the originating trustee and shall be in essentially the following form: (Name of Officer), first being sworn, states that s/he is an officer in (Name of Originating Trustee) which has authority to act as originating trustee per section 362.116, RSMo, and that said institution has contracted with (Name of Contracting Trustee) to provide trust services in connection with the trust of (Name of Trust). Further affiant saith not.

*AUTHORITY: sections 361.105 and 362.116, RSMo (1986). * Original rule filed Aug. 15, 1983, effective Nov. 11, 1983.*

**Original authority: 361.105, RSMo (1967) and 362.116, RSMo (1983), amended 1984.*

MISSOURI DIVISION OF FINANCE



APPLICATION TO BECOME AN ORIGINATING TRUSTEE

I. Name of Bank (Applicant)

Street and Number

City and County

State

Zip Code

II. Applicant Employee Designated as Trust Officer

Name

Title

III. PROPOSED CONTRACTING TRUSTEE

Name of Bank or Trust Company

Street and Number

City and County

State

Zip Code

IV. Attach a "certified" copy of proposed Contracting Trustee's authorization to act as a trustee.

- V. Attach a "certified" copy of the contract between the Originating Trustee and the Contracting Trustee.

- VI. Attach a "certified" copy of a board resolution authorizing the agreement with the Contracting Trustee.

Signature of Authorized Officer

Name of Officer Authorized to Make Application

Title

Telephone Number

Date

INFORMATION FOR THE APPLICANT

One originally signed copy of the completed application is to be forwarded to the Missouri Division of Finance, Post Office Box 716, Jefferson City, Missouri 65102, and a copy to the Federal Deposit Insurance Corporation or the appropriate Federal Reserve Bank. A complete copy should be retained by the Bank.

You may provide any information in addition to that requested in this application which, in your opinion, might aid in the disposition of your proposal. Additional information may be required of the applicant after review of the application.

All information submitted by the applicant will be treated as confidential by this Division.



SAMPLE RESOLUTION OF BOARD OF DIRECTORS OF APPLICANT BANK

The Board of Directors of the Applicant Bank, at a meeting duly called and held on _____ adopted the following Resolution: (date)

RESOLVED, that the President or Vice President and the Cashier or Secretary of the Bank are hereby authorized and directed to enter into a contract, in the form attached hereto as Exhibit A, with

_____ pursuant to which said bank will act as a contracting trustee for this Bank;

FURTHER RESOLVED, that said officers are authorized and directed to make application to the Commissioner of Finance for approval of this bank's proposal to act as originating trustee according to the terms of the contract with

_____ and to submit, in support of such application, such information as shall be necessary to induce the Commissioner of Finance to approve said application.

The undersigned, _____, hereby certifies that the foregoing resolutions were approved by the Board of Directors of

_____ at a meeting duly held on _____ and that such resolution has not been rescinded or modified and is duly entered in the minutes books of

(S E A L)

(Secretary or Cashier)

(Date)

4 CSR 140-2.090 Originating Trustees

Section 362.116, RSMo (1986) permits a state chartered bank, with the approval of the commissioner of finance, to become an "originating trustee" which can originate trust accounts to be administered by a bank or trust company with full fiduciary powers, known as the "contracting trustee." The purpose of this rule is to set out the information which the commissioner will require of an applicant and to declare the criteria the commissioner will use in considering the application.

(1) Application. Applications for the commissioner's approval to become an originating trustee are available from the offices of the Division of Finance, P. O. Box 716, Jefferson City, MO 65102. The application will require, as minimum information, the name and address of the applicant institution, the name of the employee of the applicant institution who will be designated as trust officer, the name and address of the proposed contracting trustee, a certified copy of the contracting trustee's authorization to act as a trustee, a copy of the contract between the originating trustee and the contracting trustee and a copy of the board resolution calling for the establishment of the contract.

(2) Criteria. In considering an application to become an originating trustee, the commissioner will consider the following:

(A) Whether the contracting trustee is supervised by either a state or federal bank regulatory agency; and

(B) Whether termination provisions in the contract will protect the customer which, for purposes of this rule, shall mean the grantor, known beneficiaries, or any other interested party. Such provisions shall include prohibiting termination unless 1) a successor trustee has accepted appointment as trustee, 2) the customer has rescinded the trust, 3) a court has appointed a successor trustee, or 4) any other provision providing comparable protections.

(3) Affidavit of Originating Trustees. Upon request of the contracting trustee, the originating trustee may provide an affidavit declaring that the contracting trustee has authority to act concerning a specific trust. The affidavit shall be signed by an officer of the originating trustee and shall be in essentially the following form:

(Name of Officer), first being sworn, states that he is an officer in (Name of Originating Trustee) which has authority to act as originating trustee per section 362.116, RSMo, and that said institution has contracted with (Name of Contracting Trustee) to provide trust services in connection with the trust of (Name of Trust). Further affiant saith not.

Auth: sections 361.105 and 362.116, RSMo (1986).
Original rule filed Aug. 15, 1983, effective Nov. 11, 1983.



4 CSR 140-2.095 Standards for Certain Fiduciary Investments

PURPOSE: House Bill 105/480 of the 87th General Assembly amended section 362.550.5., RSMo to allow a bank or trust company to purchase, in a fiduciary capacity, state or political subdivision securities underwritten by it, its parent or affiliated companies, but subject to investment standards set by the director of the Division of Finance. The purpose of this rule is to set those standards.

(1) The standards of prudence and care established by subsection 456.520.1., RSMo, must be followed by a bank or trust company when purchasing, in a fiduciary capacity, state or political subdivision securities (securities) underwritten by it, its parent or affiliated companies.

(2) This prudence and care will require such determinations as are appropriate for the type of transaction involved including a consideration of the resource and liabilities of the obligor and a determination that the obligor possesses the capacity to make all required payments.

(3) The securities must be general obligations or revenue bonds of the issuing entity.

(4) These securities, at the time of purchase, must be rated in the two (2) highest grades by a nationally recognized bond rating service.

Auth: sections 361.105 (1986) and 362.550, RSMo (Cum. Supp. 1991).* Emergency rule filed Aug. 6, 1993, effective Aug. 28, 1993, expired Dec. 25, 1993. Original rule filed Aug. 23, 1993, effective Jan. 31, 1994.

*Original authority: 361.105, RSMo (1967) and 362.550, RSMo (1967), amended 1972, 1983, 1991.

4 CSR 140-2.100 Reports of Condition (Call Reports)

PURPOSE: Sections 361.130 and 362.295, RSMo together require regular periodic Reports of Condition (Call Reports) be made to the commissioner of finance, that these reports be published by the reporting institution and that this publication be certified to the commissioner. This rule eliminates unnecessary duplications of effort by declaring the Reports of Conditions required by the Federal Deposit Insurance Corporation or the Federal Reserve System acceptable

for state reporting purposes.

(1) A state bank may satisfy the Report of Condition (Call Report) filing requirement by filing with the commissioner of finance an originally signed copy of the Report of Condition filed with the Federal Deposit Insurance Corporation (FDIC) or the Federal Reserve System provided that report corresponds with the date of the commissioner's request.

(2) Requirements that the report be published and that the publication be certified to the commissioner according to section 362.295, RSMo remain unchanged.

Auth: sections 361.105 and 362.295, RSMo (1986) and 361.130, RSMo (Supp. 1988).* Original rule filed Oct. 8, 1982, effective Jan. 15, 1983.

*Original authority 361.105, RSMo (1967); 361.130, RSMo (1939), amended 1949, 1988; and 362.295, RSMo (1939), amended 1967.

4 CSR 140-2.110 Management and Other Fees Paid by State-Chartered Banks

PURPOSE: This rule formalizes the policy of the Division of Finance toward bonuses, management fees, consultant's fees and other fees paid by state-chartered banks to officers, directors, shareholders or their related interests which do not provide commensurate services. This rule is not intended to establish salary policy for active salaried officers.

(1) Payments of bonuses, other than to full-time salaried employees, management fees, consultant's fees and other fees which bear little or no relationship to the type, level, quality or value of services received, when paid to officers, directors, shareholders or their related interest are unsafe and unsound as they can result in dissipation of earnings and capital, have adverse effects on the financial interests of minority shareholders and, in some cases, may result in a finding by the Internal Revenue Service or preferential dividends with the bank being held liable for additional income taxes.

(2) The cash-flow requirements of the stock holder, whether to service the acquisition debt or otherwise, may not be considered in establishing management fees, consultant's fees or other fees. These cash-flows, instead, should be generated from outside sources or from a prudent dividend policy which must be consistent with the bank's need for an adequate capital structure.

(3) Management fees, consultant's fees and other fees paid by state-chartered banks must be based on and bear a direct relationship to the fair market value of the services received. The bank may purchase and pay for only the services that meet the legitimate needs of the bank. The provider must possess the necessary expertise to deliver the services. The provider may recover overhead costs to the extent that the costs represent a legitimate and integral part of the services provided.

(4) State-chartered banks which pay management and consultant fees to insiders or related interests will be required to maintain permanent records in sufficient detail to indicate to the directors and bank examiners the specific services which were performed and the basis upon which the costs were assessed. State bank examiners will review all these fees to identify instances where they are excessive. In those cases where the fees are not properly documented, where the amounts cannot be justified, or both, it will be the responsibility of the directors to obtain appropriate documentation or to seek reimbursement.

(5) Banks in chain banking organizations or owned by multibank holding companies frequently pay management fees, consulting fees or other fees to insiders and their interests on a pro rata basis. However, the pro rata method is not an appropriate method of allocation in all cases. To assist in allocating these fees, this rule includes a list of some of the more common types of services which may be rendered. Opposite each of these services is a classification indicating how the expense normally should be billed. These guidelines are not absolutes but deviations will be reviewed on a case-by-case basis for compliance with the intention of this rule.

Classification of Holding Company Expenses

Table with 2 columns: Service Provided and Expense Classification. Lists various services like Electronic data processing, Corporate audit, Loan review, etc., and their corresponding billing methods like Individual subsidiary billing or Pro rata basis.