

This rule was filed as 12 NMAC 20.3.6.

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 20 SAVINGS AND LOAN ASSOCIATIONS
PART 36 REAL ESTATE LOANS

12.20.36.1 ISSUING AGENCY: Financial Institutions Division of the Regulation and Licensing Department, 725 St. Michael's Drive, Santa Fe, New Mexico 87504. Telephone No. (505) 827-7100.
[9/27/83; 9/15/97; Recompiled 10/15/01]

12.20.36.2 SCOPE: All savings and loan associations chartered by the state of New Mexico.
[9/15/97; Recompiled 10/15/01]

12.20.36.3 STATUTORY AUTHORITY: Section 58-10-33 through 58-10-49 NMSA 1978.
[9/15/97; Recompiled 10/15/01]

12.20.36.4 DURATION: Permanent.
[9/15/97; Recompiled 10/15/01]

12.20.36.5 EFFECTIVE DATE: September 27, 1983, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective September 15, 1997.
[9/27/83; 9/15/97; Recompiled 10/15/01]
[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

12.20.36.6 OBJECTIVE: The objective of this sub-part [now part] is to bring to state savings and loan associations the authority to originate, invest in, sell, purchase, service, participate or otherwise deal in (including brokerage or warehousing) loans made on the security of residential or nonresidential real estate, or interests in such loans, subject to the limitations of this sub-part [now part].
[9/27/83; 9/15/97; Recompiled 10/15/01]

12.20.36.7 DEFINITIONS: "Value" for a real estate loan means the market value of the real estate.
[9/27/83; 9/15/97; Recompiled 10/15/01]

12.20.36.8 GENERAL:

A. An association may make a real estate loan only after a qualified person designated by its board has submitted a signed appraisal of the security property, except that an insured or guaranteed loan may be made on the basis of a valuation of the security property furnished to the association by the insuring or guaranteeing agency. The association shall pay the cost of any appraisal of the security property obtained by the association after loan closing but prior to maturity of a loan, unless the borrower specifically requests the appraisal or the appraisal is made pursuant to the borrower's request to modify or refinance the loan.

B. Except as expressly authorized by this sub-part [now part], repayments on real estate loans shall begin not later than 60 days after the loan is disbursed, provided that if such loans are for construction, substantial alteration, repair or improvement, repayments may begin not later than 36 months (24 months for loans secured by real estate consisting solely of a home or combination of home and business property) after the date of the first disbursement, and interest shall be payable at least semiannually until regular periodic payments begin.

C. Subject to the limitations of OTS Regulations Section 545.33(c), an association may adjust the interest rate, payment, balance or term to maturity on any real estate loan as authorized by the loan contract, and may receive a portion of the consideration for making a real estate loan in the form of a percentage of the amount by which the current market value of the property, during the loan term or at maturity, exceeds the original appraised value.

[9/27/83; 9/15/97; Recompiled 10/15/01]

12.20.36.9 SECURITY PROPERTY: A loan is made on the security of real estate if:
A. the security property is real estate pursuant to the law of the state in which the property is located;

- B. the security interest of the association may be enforced as a real estate mortgage or its equivalent pursuant to the law of the state in which the property is located;
 - C. the security property is capable of separate appraisal;
 - D. the association relies substantially upon the real estate as the primary security for the loan.
 - E. with regard to a security property that is a leasehold or other interest for a period of years, the term of the interest extends or is subject to extension or renewal at the option of the association for a term of at least five years following maturity of the loan.
- [9/27/83; 9/15/97; Recompiled 10/15/01]

12.20.36.10 LOAN-TO-VALUE RATIOS:

A. At the time of origination, a real estate loan may not exceed one hundred percent of the market value of the security property. An association shall, by a vote of its board of directors, establish maximum loan-to-value ratios for loans made on the security of real estate, and the resolution adopting such ratios shall be included in the minutes of the directors' meeting. Home loans made on the combined security of real estate and savings accounts may be made in excess of the maximum loan-to-value ratios adopted pursuant to this Section 10 [now 12.20.36.10 NMAC] with such excess secured by the savings account, if the account consists only of funds belonging to the borrower, members of his family or his employer.

B. With respect to home loans originated or refinanced in excess of 90 percent of the appraised value of the security property, that part of the unpaid balance that exceeds 80 percent of the property's value shall be insured or guaranteed by a mortgage insurance company that the federal home loan mortgage corporation has determined to be a "qualified private insurer".

C. With respect to all other loans on the security of real estate originated in excess of 90 percent of the appraised value of the security property, an association's board of directors shall approve each such loan prior to its origination, and such approval shall be recorded in the minutes of its meeting.

D. In determining compliance with maximum loan-to-value ratio limitations for real estate loans, at the time of making a loan an association shall add together the unpaid amount, or in the case of a line-of-credit loan the approved credit limit, of all recorded loans secured by prior mortgages, liens or other encumbrances on the security property that would have priority over the association's lien, and shall not make such a loan unless the total amount of such loans (including the one to be made but excluding loans that will be paid off out of the proceeds of the new loan) does not exceed the applicable maximum loan-to-value ratio limitations prescribed in this Section 10 [now 12.20.36.10 NMAC]. In valuing the real estate security, an association shall use the current appraised value of the security property, which may include any expected value of improvements to be financed.

[9/27/83; 9/15/97; Recompiled 10/15/01]

HISTORY OF 12.20.36 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center under:

Regulation 83-6, Real Estate Loans, filed 9/28/83.

History of Repealed Material: [RESERVED]