

This rule was filed as 12.20.38 NMAC.

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 20 SAVINGS AND LOAN ASSOCIATIONS
PART 38 TIME-SHARE LOANS

12.20.38.1 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. [10/13/83; 8/30/97; Recompiled 10/15/01]

12.20.38.2 SCOPE: All savings and loan associations chartered by the state of New Mexico. [8/30/97; Recompiled 10/15/01]

12.20.38.3 STATUTORY AUTHORITY: Sections 58-10-72, 58-10-73, 58-10-83 NMSA 1978. [5/16/83; 8/30/97; Recompiled 10/15/01]

12.20.38.4 DURATION: Permanent. [8/30/97; Recompiled 10/15/01]

12.20.38.5 EFFECTIVE DATE: October 13, 1983, unless a later date is cited at the end of a section or paragraph. Reformatted in NMAC format effective August 30, 1997. [10/13/83; 8/30/97; 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[Compiler's note: The words *or paragraph*, above, are no longer applicable.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.]

12.20.38.6 OBJECTIVE: The objective of this sub-part [now part] is to bring to state savings and loan associations the authority to originate, purchase, sell, service and participate in time-share loans that conform to the provisions of this part and the association's written underwriting standards. [8/30/97; Recompiled 10/15/01]

12.20.38.7 DEFINITIONS:

- A. "Consumer loan" means a consumer loan as defined in 12 NMAC 20.3.8 [now 12.20.38 NMAC].
- B. "Dealer" means any person or group of persons acting in concert who is in the business of selling active time-share notes or contracts.
- C. "Developer" means any person or group of persons acting in concert who:
 - (1) as part of a common promotional plan, offers to dispose of its interest in a unit not previously disposed of; or
 - (2) reserves or succeeds to any special developer rights in a time-share project.
- D. "Independent appraisal" means an appraisal performed by an appraiser other than a dealer or developer and other than an appraiser chosen by or affiliated with a dealer or developer.
- E. "Person" means any individual, firm, partnership, corporation, association or any other group or combination acting as a unit.
- F. "Purchaser" means any person other than a developer who, by means of a voluntary transfer, acquires a legal or equitable interest in a time-share other than as security for an obligation or a leasehold interest.
- G. "Time-share estate" means a right to occupy a time-share unit or units during specified periods of time coupled with the conveyance to each time-share purchaser of a percentage undivided interest in fee simple in such unit or units.
- H. "Time-share loan" means a loan secured by a time-share estate.
- I. "Time-share property" means one or more time-share units subject to the same time-share instrument, together with any other real estate or rights therein appurtenant to those units.
- J. "Time-share project" means real property containing one or more units which is subject to a project instrument consisting of one or more recordable documents applying to the whole of a project and containing restrictions or covenants regulating the use, occupancy or disposition of units in a project, including any amendment to the document but excluding any law, ordinance or governmental regulation.
- K. "Unit" means real property, or a portion thereof, designated for separate use.

[10/13/83; 8/30/97; Recompiled 10/15/01]

[Compiler's note: Subsection A of 12.20.38.7 refers to 12 NMAC 20.3.8 NMAC; the reference should be to 12 NMAC 20.3.4 [now 12.20.34 NMAC] as evidenced by the attachment to the filed rule.]

12.20.38.8 TIME-SHARE LOANS:

A. An association may make direct or indirect time-share loans provided that: (1) at any one time the total investment made under this sub-part [now part] and in any consumer loans in aggregate shall not exceed 30 percent of any association's assets; and (2) the requirements of this section are met. The authority to make a time-share loan includes the authority to originate, purchase, sell, service and participate in such loans provided that such loans conform to the provisions of this sub-part [now part] and the association's written underwriting standards.

B. If a loan that may be made under this sub-part [now part] is also authorized to be made under another regulation or statutory provision, which may have different percentage-of-assets and other limitations or requirements, an association shall have the option of choosing under which applicable provision the loan shall be made.

C. The total balances of all outstanding time-share loans to one borrower, or on which any other person may become obligated directly or indirectly, is limited to the lesser of ten percent of an association's savings accounts or 100 percent of its net worth, reduced by the amount of other loans to that same borrower.

D. In no event shall an association make, purchase, sell, service or enter into any participation transaction, directly or indirectly, in a time-share loan unless the association first obtains the following:

(1) an individual credit analysis of each time-share loan purchaser which establishes the purchaser's creditworthiness;

(2) an analysis of the time-share project which includes:

(a) the identity of the developer; a report on the principals comprising the developer, including resumes of the principals; previous time-share experience; and financial statements of the principals and any guarantors of the developer;

(b) sales history of the project which includes a description of the sales program; copies of advertising, mailers and brochures; sales projections for the next two years, and pricing structure for units;

(c) a report on any litigation pending against the project or developer;

(d) an independent appraisal of the value of any time-share unit which is the security for the note or contract being purchased;

(e) a title opinion from an attorney in the state where the project is located that the time-share estate being purchased by the purchaser meets the definition of "time-share estate" provided herein;

(f) legal documentation on the project which includes copies of the deed to the project and any other documents indicating ownership; articles of incorporation or partnership agreement; any condominium or time-share filings, if required, with the state where the project is located; by-laws of the time-share owners' association; and the project's management agreement.

(3) the original purchaser documents for each loan including the purchase and sale agreement, note, deed of trust or mortgage, credit application, any additional disclaimers or disclosures given customers; or a non-negotiable trust receipt issued by a federally insured institution indicating that the association is the true owner of the note and the security instruments; or certified or conformed copies of documents where the originals are required to be maintained in a public registry;

(4) an insurance policy issued by an insurance company with at least an "A" rating as listed in a nationally recognized insurance rating guide such as Best's. The policy shall insure with no deductibles the unpaid balance of the notes or contracts against default by the purchaser and against fraud, forgery and the mysterious disappearance of said notes or contracts;

(5) proof from the developer or dealer that it has a fidelity bond in excess of the total amount of all notes or contracts transferred from said dealer or developer to the association;

(6) a current aging schedule on each note or contract reflecting collections experience by month for the past twelve months. No association shall purchase any notes or contracts which are less than 90 days old or are more than 30 days delinquent;

(7) a copy or copies of any collection and servicing agreements and contracts for any notes or contracts which the association intends to purchase from, or take as security for any loan to, a developer or dealer. Any servicing or collection agency utilized by the association shall be independent from the developer or dealer.

E. In no event shall an association make, purchase, sell, service or enter into any participation transaction, directly or indirectly, in a time-share loan unless the time-share estate being purchased by the purchaser meets the definition of "time-share estate" as provided herein.

F. Prior to making, purchasing, participating in or accepting as security any time-share notes or contracts, the association shall have established by resolution of its board of directors underwriting standards which include, at a minimum, the requirements of Subsection 8.4 of this Sub-part [now Subsection D of 12.20.38.8 NMAC].

G. An association shall not purchase or accept as security any time-share notes or contracts unless a minimum of five percent down payment has been made by the original purchaser.

H. In making, purchasing, selling, participating in or obtaining as security any time-share notes or contracts, an association shall comply with all applicable regulations of the supervisor, the federal home loan bank board and the federal savings and loan insurance corporation.
[10/13/83; 8/30/97; Recompiled 10/15/01]

HISTORY OF 12.20.38 NMAC:

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

Regulation 83-3, Time-Share Loans, filed 5/16/83.

Regulation 83-8, Time-Share Loans, filed 10/13/83.

History of Repealed Material: [RESERVED]