

Title 46 - DEPARTMENT OF BANKING AND FINANCE

Chapter 2 - INVESTMENT OF ASSETS OF AN INDUSTRIAL LOAN & INVESTMENT COMPANY

001 Allowable investments (other than loans made in the normal course of business):

001.01 Unlimited investments in debt securities of the U.S. Government and its Agencies;

001.02 Investment in marketable debt securities of other than U.S. Government or its agencies with ratings accorded by a recognized rating service in the four highest categories;

Ratings on Nebraska municipal obligations are not required. These investments are subject to the company's lending limit except general obligations of a political subdivision having taxing authority. Sanitary Improvement District warrants are subject to the lending limits.

001.03 Investment in stocks or corporate securities convertible to stock having an established public market and traded on an exchange or over the counter;

These investments shall not exceed in aggregate ten percent of the company's assets. The aggregate obligations of each such corporate investment shall not exceed the company's lending limit.

001.04 Investment in personal property for lease purpose;

001.04A Any industrial loan and investment company may become the owner or lessor of personal property acquired upon the specific request and for the use of a customer and may incur such additional obligations as may be incident to becoming an owner and lessor of such property provided such investment in personal property acquired for use of any one customer shall not exceed an amount equal to the company's paid-in capital stock, and provided the aggregate of all such investments for the use of all customers shall not exceed the company's total capital, including capital notes and debentures.

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001.04B Personal property acquired for the use of a customer is owned by the company, and the lease payments are in the nature of rent rather than interest, so these investments are not loans and are not subject to the limitations of Section 8-409.

001.05 Investments in stock of a corporation, either wholly or partially owned, for the following purposes or related to the activities of an industrial loan & investment company;

001.05A Operating facility, including parking facility with other retail and office rental spaces, and insurance agency, casualty or life;

These investments shall not exceed the company's equity capital without Departmental approval. The operating facility can be held directly rather than in corporate form.

001.05B Investment in the stock or capital notes or debentures of another industrial loan & investment company subject to the specific approval of the Nebraska Department of Banking and Finance.

001.05C Any other such activity as the Director of Banking and Finance may permit.

001.06 Investment in stock of a corporation or limited partnership interest in a limited partnership, either wholly or partially owned, for the purpose of acquiring real estate, other than the operating facility, or in direct ownership of real estate;

These investments shall be limited in the aggregate to the equity capital of the company. Non-operating investments in real estate may include the following:

001.06A Commercial or residential real estate held for rental or subdivision and sale; and

001.06B Agricultural Land.

Any investments in excess of this limit shall be subject to the approval of the Nebraska Department of Banking & Finance.

None of the foregoing regulations shall prohibit ownership of property or assets received in satisfaction or forbearance of obligations previously contracted for in the ordinary course of business. Real estate or such other assets acquired in satisfaction of debts or at sale upon judgment or decree shall be sold at private

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or public sale within five years unless authority shall be given in writing by the Department of Banking and Finance to hold it for a longer period. The total amount of such real estate or assets held of this nature (representing equity investment including the booked value of the real estate held plus any acquired obligations assumed through foreclosure and not booked) shall not at any one time exceed twenty-five percent of total equity capital excluding capital notes or debentures without written notice to the Department of Banking and Finance.

002 Other Permitted Activities. An industrial loan & investment company may take, as consideration for a loan, a share in the profit, income, or earnings from a business enterprise of a borrower or a shared appreciation in a mortgage loan; the latter of which the borrower agrees to share the property's appreciation with the company in return for a preferential interest rate. The specified share of the property's appreciation due the industrial company (the lender) is to be classified as "contingent interest." (That is, the lender may assess a contingent interest charge equal to a specific percent of the property's appreciation over the life of the loan in exchange for lending at a preferential rate.)

Shared profits or shared appreciation mortgages may not exceed a term of ten years; however, monthly payments on shared appreciation mortgages may be based on an amortization schedule of up to 40 years, with guaranteed long-term refinancing. At the sale or transfer of property on a shared appreciation mortgage or at maturity of the note, contingent interest must be collected. If the property taken as collateral on a shared appreciation mortgage is not sold within the ten-year term allowed, the industrial company (the lender) must guarantee to refinance the outstanding indebtedness and contingent interest with a long-term mortgage made at the then-prevailing market rate. The borrower must have the right to prepay the loan at any time without penalty. The aggregate amount of loans made under shared profits or shared appreciation mortgages may not exceed 10% of the company's total assets without the Department's approval, nor may they individually exceed 40% of equity or appreciation in the property.

Contingent interest must be based upon net appreciation (that is, appreciation net of the cost of improvements and certain costs associated with buying and selling the property). Such interest shall not be taken upon the books until realized, either at the sale of property or when refinanced in accordance with this rule.

The borrower's obligation to repay the principal amount of such loans made under this rule shall not be conditioned upon profit, income, earnings, or sale of property. However, this provision does not prohibit the lender from

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foreclosing upon its security. An industrial company (the lender) shall not participate in management of any business enterprise of a borrower except as required in the management of the loan portfolio or incur guarantees of indebtedness or other liabilities.

003 Excluded Investment.

003.01 Any investment held in the form of equity in a partnership or trust, unless represented by a true limited partner's interest without management involvement;

003.02 Investment in stock of a private corporation, either wholly or partially owned, encompassing any operating business unrelated to the activities of an industrial loan and investment company;

All activities such as retailing, manufacturing, wholesaling, distributing services or any other activity not previously permitted shall be prohibited unless otherwise approved by the Nebraska Department of Banking and Finance.

004 Implementation of Regulations & Compliance:

004.01 Any existing investments of an industrial loan and investment company that would be prohibited under any of the aforementioned regulations shall be "Grandfathered" and be permitted to be retained by the company for a period of ten years at which time all such investments must comply with this rule.

004.02 Any new investments of an industrial loan and investment company shall not be permitted, unless, with its existing investment, the industrial loan and investment company will be in compliance based on the foregoing regulations. Such investments are subject to approval by the Nebraska Department of Banking and Finance.

NOTE:

1. "Total capital," when used in this rule, shall mean: paid-up capital stock, surplus, undivided profits, capital reserves, and capital notes and debentures.
2. "Equity capital," when used in this rule, shall mean: paid-up capital stock, surplus, undivided profits, and capital reserves. It shall not include any debt capital such as capital notes and debentures.