

AN ACT

RELATING TO BANKING; AMENDING SECTION 58-1-21 NMSA 1978
(BEING LAWS 1963, CHAPTER 305, SECTION 21, AS AMENDED) TO
AUTHORIZE STATE BANKS TO MAKE NONCONFORMING LOANS USING A
MORTGAGE INSTRUMENT THAT PERMITS UNSCHEDULED PAYMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-1-21 NMSA 1978 (being Laws 1963,
Chapter 305, Section 21, as amended) is amended to read:

"58-1-21. LOANS. --

A. A state bank may lend on the security of the
personal obligation of the borrower.

B. A state bank may lend on the security of
personal property but shall not make any loan on the
security of its own stock, of stock of another bank where
the borrower owns, controls or holds with the power to vote
ten percent or more of the outstanding voting securities of
both that bank and the lending bank or of its obligation
subordinate to deposits.

C. A state bank may make real estate loans
secured by liens upon unimproved real estate, upon improved
real estate, including improved farmland and improved
business and residential properties, and upon real estate to
be improved by a building to be constructed or in the
process of construction in an amount that when added to the

amount unpaid upon prior mortgages, liens and encumbrances, if any, upon the real estate does not exceed the respective proportions of appraised value as provided in this section. A loan secured by real estate within the meaning of this section shall be in the form of an obligation secured by a mortgage, trust deed or other instrument, which shall constitute a lien on real estate in fee or under such rules and regulations as may be prescribed by the director, and any state bank may purchase or sell any obligations so secured in whole or in part. The amount of any such loan made shall not exceed sixty-six and two-thirds percent of the appraised value if the real estate is unimproved; eighty percent of the appraised value if the real estate is improved by off-site improvements such as streets, water, sewers or other utilities; seventy-five percent of the appraised value if the real estate is in the process of being improved by a building to be constructed or in the process of construction; or ninety percent of the appraised value if the real estate is improved by a building. If any such loan exceeds sixty-six and two-thirds percent of the appraised value of the real estate or if the real estate is improved with a one- to four-family dwelling, installment payments shall be required that are sufficient to amortize the entire principal of the loan within a period of not more than thirty years. However:

(1) the limitations and restrictions set forth in this subsection shall not prevent the renewal or extension of loans and shall not apply to real estate loans that are guaranteed or insured by the United States or an agency thereof or by a state or agency or instrumentality thereof; and

(2) loans that are guaranteed or insured as described in Paragraph (1) of this subsection shall not be taken into account in determining the amount of real estate loans that a state bank may make in relation to its capital and surplus or its time and savings deposits or in determining the amount of real estate loans secured by other than first liens. Where the collateral for any loan consists partly of real estate and partly of other security, only the amount by which the loan exceeds the value as collateral of such other security shall be considered a loan upon the security of real estate. In no event shall a loan be considered as a real estate loan where there is a valid and binding agreement that is entered into by a financially responsible lender or other party directly with the bank that is either for the benefit of or has been assigned to the bank and pursuant to which agreement the lender or other party is required to advance to the bank within sixty months from the date of the making of the loan the full amount of the loan to be made by the bank upon the security of real

estate. The amount unpaid upon any real estate loan secured by other than a first lien, when added to the amount unpaid upon prior mortgages, liens and encumbrances, shall not exceed in an aggregate sum twenty percent of the amount of the capital stock of the bank paid in and unimpaired plus twenty percent of the amount of its unimpaired surplus fund.

D. A state bank may make real estate loans secured by liens upon forest tracts that are properly managed in all respects. The loans shall be in the form of an obligation secured by mortgage, trust deed or other such instrument, and a state bank may purchase or sell any obligations so secured in whole or in part. The amount of any such loan, when added to the amount unpaid upon prior mortgages, liens and encumbrances, if any, shall not exceed sixty-six and two-thirds percent of the appraised fair market value of the growing timber, lands and improvements thereon offered as security. The loan shall be made upon such terms and conditions as to assure that at no time shall the loan balance, when added to the amount unpaid upon prior mortgages, liens and encumbrances, if any, exceed sixty-six and two-thirds percent of the original appraised total value of the property then remaining. No such loan shall be made for a longer term than three years, except that a loan may be made for a term not longer than fifteen years if the loan is secured by an amortized mortgage, deed of trust or other

such instrument under the terms of which the installment payments are sufficient to amortize the principal of the loan within a period of not more than fifteen years and at a rate of at least six and two-thirds percent per year. All such loans secured by liens upon forest tracts shall be included in the permissible aggregate of all real estate loans and, when secured by other than first liens, in the permissible aggregate of all real estate loans secured by other than first liens prescribed in Paragraph (2) of Subsection C of this section, but no state bank shall make forest tract loans in an aggregate sum in excess of fifty percent of its capital stock paid in and unimpaired plus fifty percent of its unimpaired surplus fund.

E. Loans made to finance the construction of a building and having maturities of not to exceed sixty months where there is a valid and binding agreement entered into by a financially responsible lender or other party to advance the full amount of the bank's loan upon completion of the building and loans made to finance the construction of residential or farm buildings and having maturities of not to exceed forty-two months may be considered as real estate loans if the loans qualify under this section, or such loans may be classed as commercial loans whether or not secured by a mortgage or similar lien on the real estate upon which the building is being constructed, at the option of each state

bank that may have an interest in the loan. No state bank shall invest in or be liable on any such loans classed as commercial loans under this subsection in an aggregate amount in excess of one hundred percent of its actually paid-in and unimpaired capital plus one hundred percent of its unimpaired surplus fund.

F. Notes representing loans made pursuant to provisions of this section to finance the construction of residential or farm buildings and having maturities of not to exceed nine months shall be eligible for discount as commercial paper if accompanied by a valid and binding agreement to advance the full amount of the loan upon the completion of the building, entered into by an individual, partnership, association or corporation acceptable to the discounting bank.

G. Loans made to any borrower where the bank looks for repayment by relying primarily on the borrower's general credit standing and forecast of income, with or without other security, or loans secured by an assignment of rents under a lease and where the bank wishes to take a mortgage, deed of trust or other instrument upon real estate, whether or not constituting a first lien, as a precaution against contingencies and loans in which the small business administration cooperates through agreements to participate in an immediate or deferred or guaranteed

basis under the Small Business Act shall not be considered as real estate loans within the meaning of this section but shall be classed as commercial loans.

H. A state bank may make loans upon the security of real estate that do not comply with the limitations and restrictions in this section if the total unpaid amount loaned, exclusive of loans that subsequently comply with those limitations and restrictions, does not exceed five percent of the amount that a state bank may invest in real estate loans. The total unpaid amount so loaned shall be included in the aggregate sum that the bank may invest in real estate loans.

I. A loan made by a state bank as a noncomplying loan pursuant to Subsection H of this section may be evidenced by a debt instrument and a security instrument consisting of a mortgage, deed of trust, or similar instrument that contain the following provisions:

(1) either fixed rate or adjustable rate interest accrual on the debt;

(2) an authorization for the borrower to make unscheduled payments to reduce the principal amount of the loan without relieving the borrower from continuing to make payments of installments in the amounts specified in the original debt and security instruments;

(3) the frequency of unscheduled payments

shall not exceed the frequency of scheduled payments; and

(4) authorization for the borrower to retrieve by withdrawal part or all of the amount of an unscheduled payment previously made.

J. Loans made pursuant to this section shall be subject to such conditions and limitations as the director may prescribe by rule or regulation. " _____