



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

MINISTRY OF FINANCE

No. 334

2019

REGULATIONS RELATING TO RESTRICTIONS ON LOAN-TO-VALUE RATIOS: BANKING INSTITUTIONS ACT, 1998

Under section 71(1) of the Banking Institutions Act, 1998 (Act No. 2 of 1998), on the recommendations of the Bank of Namibia, I have -

- (a) made the regulations set out in the Schedule; and
- (b) repealed the Regulations Relating to Restrictions on Loan-To-Value Ratios, published under Government Notice No. 229 of 20 September 2016.

C. G. SCHLETTWEIN
MINISTER OF FINANCE

Windhoek, 22 October 2019

SCHEDULE**ARRANGEMENT OF REGULATIONS**

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Definitions

1. In these regulations a word or expression to which a meaning has been assigned in the Act has that meaning, and unless the context otherwise indicates -

“customer” means a person applying for a mortgage loan from a banking institution;

“equity” means the residual market value of the property, net of any loans used to finance the property;

“financial institution” means an entity that renders financial service as a regular feature of its business;

“loan value” means the amount of money borrowed from a banking institution against an asset used as collateral to secure the loan;

“loan-to-value ratio” means the ratio of the amount of money borrowed from a banking institution to purchase a property in relation to the purchase price of the property or the valuation of the property, whichever is the lowest;

“mortgage loan” means a loan financing the construction or purchase of a residential property, usually with specified instalments and interest rates;

“residential property” means any immovable property in Namibia used for dwelling, suitable for the use as a dwelling or is in the process of being constructed or adapted for use as a dwelling; and

“the Act” means the Banking Institutions Act, 1998 (Act No. 2 of 1998).

Purpose and scope of regulations

2. (1) The purpose of these regulations is to set out the procedures for determining the loan-to-value restrictions when banking institutions extend mortgage loans to customers for the purchase of residential properties in Namibia.

(2) Banking institutions must comply with the prudential requirements, contemplated in regulation 4, regarding the imposition of loan-to-value ratios on residential properties.

(3) These regulations only apply to residential properties with active mortgage bonds and outstanding balances, and residential properties which are not encumbered with a mortgage bond and without any outstanding balance are not subjected to these regulations.

(4) If a banking institution extends an additional mortgage loan for an existing residential property already financed with a mortgage loan with an outstanding balance, and the additional mortgage loan is used to acquire an additional residential property with a different title deed, the additional mortgage loan is regarded as financing a second, third and subsequent residential property and is subjected to these regulations.

- (5) An individual with -
 - (a) a member's interest of 50 percent or more in a close corporation; or
 - (b) a shareholding and voting rights of 50 percent or more in a company,

and the close corporation or company owns the residential property, the individual is considered as the owner of that residential property for the purposes of these regulations.

(6) For the purposes of these regulations a banking institution must treat spouses making a joint application as one person, and existing residential properties at the time of the application must be accounted for cumulatively.

Responsibility to ensure compliance

3. (1) The Board of Directors of a banking institution must establish adequate policies and procedures to ensure that all requirements of these regulations are complied with by the banking institution.

- (2) A banking institution must -
 - (a) establish, assess and approve the loan-to-value ratio restrictions on mortgage loans as part of the credit risk management policy of the banking institution; and
 - (b) develop and implement procedures to ensure adherence to the loan-to-value restrictions set out in these regulations.

(3) The Bank must assess the policies and procedures put in place by banking institutions as contemplated in subregulations (1) and (2) to ensure compliance with these regulations by the banking institutions.

Prudential requirements

4. (1) A banking institution must apply the loan-to-value ratio set out in the Annexure when extending a mortgage loan to a customer for the purchase of a residential property.

(2) The loan-to-value ratio referred to in subregulation (1) must be calculated based on the loan value of the property in relation to the market value of the property or purchase price, whichever is lowest.

(3) A banking institution may only disburse a loan for the purchase of a residential property if a customer pays a deposit based on the applicable loan-to-value ratio set out in the Annexure.

(4) Despite subregulation (3), a banking institution may not disburse a loan for the purchase of a residential property if the deposit referred to in that subregulation is financed through -

- (a) equity resulting from the difference between the current value of the existing property of the customer and the amount owed on that property; or
- (b) any funds borrowed from the financial institution, including financial institutions not regulated by the Bank.

(5) A banking institution may not extend any credit or financing facility for fulfilment of down payment or to top up for the purchase of second, third and subsequent residential properties to fulfill the requirements of these regulations.

Declaration by customer

5. (1) For the purpose of determining appropriate loan-to-value ratios to be imposed, a banking institution must request a customer to submit a written declaration -

- (a) on whether the customer is applying for the loan for the purchase of a first, second or third and subsequent residential property; and
- (b) stating that the customer has not secured any loan from other financial institutions, including financial institution not regulated by the Bank as a source for the required deposit.

(2) A banking institution must conduct a reasonable verification to validate the accuracy of the declaration made by the customer in terms of subregulation (1).

Offences and penalties

6. (1) A banking institution that fails or contravenes these regulations commits an offence and on conviction is liable to a fine not exceeding N\$100 000 or imprisonment for a period not exceeding two years and six months or both such fine and such imprisonment.

(2) If a banking institution is convicted of an offence under subregulation (1), a person who at the time of the commission of the offence -

- (a) was or purported to act as an officer, a director or substantial shareholder of the banking institution; and
- (b) was in any manner or to any extent responsible for or assisting in the management of any of the affairs of the banking institution and -
 - (i) is proven to have given instructions for the commission of the offence; or
 - (ii) is proven to have consented to or connived in the commission of the offence,

commits the same offence and is subject to the same penalty as the banking institution.

ANNEXURE

LOAN-TO-VALUE RATIOS

Categorisation of mortgage loan	Loan-to-value ratios
First residential property	Not applicable
Second residential property	90 percent
Third and subsequent residential properties	80 percent