

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

Form #6

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1992 APR 22 AM 7:45

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: West Virginia Division of Banking TITLE NUMBER: 106

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 16

TITLE OF RULE BEING PROPOSED: Lease Financing Transactions

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 1

SECTION 64-3-2(g), PASSED ON March 14, 1992

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: April 24, 1992

Sharon S. Bias

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TITLE 106  
LEGISLATIVE RULES  
WEST VIRGINIA DIVISION OF BANKING

SERIES 16  
LEASE FINANCING TRANSACTIONS

SECTION 106-16-1. GENERAL.

1.1 Scope and Purpose. -- The purpose of this regulation is to set forth the manner in which state chartered banking institutions may engage in lease financing transactions.

1.2 Authority. -- West Virginia Code 31A-4-38.

1.3 Filing Date. --

1.4 Effective Date. --

SECTION 106-16-2. DEFINITIONS.

2.1 "BANK", as used in this regulation, means a corporation heretofore or hereafter chartered to conduct a banking business under the laws of West Virginia and embraces and includes a trust company or an institution combining banking and trust company facilities, functions and services chartered or authorized to conduct such business in this state and includes industrial banks as authorized by West Virginia Code 31-7-1 et seq.

2.2(a) "NET LEASE", as used in this regulation, means a lease which is the functional equivalent to a loan of money secured by the leased properties and under which a bank will not directly or indirectly, provide or be obligated to provide for:

(1) The servicing, maintenance or repair of the lease property during the lease term.

(2) The purchasing of parts and accessories for the leased property; however, the bank may lease improvements and additions to the leased property to the lessee upon its request in accordance with any applicable requirements for maximum estimated rental value.

(3) The loan of replacement or substitute property while the leased property is being serviced.

(4) The purchasing of insurance for the lessee, except where the lessee has failed in its contractual obligation to purchase or maintain the required insurance.

(5) The renewal of any license or registration for the leased property unless such action by the bank is necessary to protect its interest as owner or financier of the leased property.

(b) The limitations contained in subdivision 2.2(a) of this section do not prohibit a bank from arranging for any of the services enumerated in that subdivision to be provided to the lessee by a third party (at the expense of the lessee) with respect to property leased by the lessee.

(c) If, in good faith, a bank believes that there has been an unexpected change in conditions which threatens its financial position by significantly increasing its exposure to loss, the limitations contained in subdivision 2.2(a) of this section shall not prevent the bank as owner and lessor under a net lease, from taking reasonable and appropriate action to salvage or protect the value of the leased property or its interests arising under the lease.

2.3 "PERSONAL PROPERTY", as used in this regulation, means tangible, personal property including, vehicles, machinery, equipment, furniture and fixtures.

#### SECTION 106-16-3. AUTHORITY TO ENGAGE IN LEASING TRANSACTIONS.

##### 3.1 Investment in Personal Property

(a) A bank may (1) become the legal or beneficial owner and lessor of specific, personal property or otherwise acquire property only after the bank has entered into a legally binding written commitment to lease the personal property on terms which comply with the provisions of this regulation; (2) become the owner and lessor of personal property by purchasing the property from another lessor in connection with the purchase of the related lease; and (3) incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property; provided the lease is a net basis lease representing a noncancelable obligation of the lessee, notwithstanding the possible early termination of the lease.

(b) Prior to entering into a lease financing transaction, a bank must reasonably expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease from:

- (1) Rentals;
- (2) Estimated tax benefits; and
- (3) The estimated residual value of the leased property at the expiration of the initial term of the lease.

(c) The aggregate book value of all tangible personal property held for lease by a bank pursuant to the provisions of this regulation shall not exceed ten (10) percent of the consolidated assets of the bank.

(d) At the expiration of the lease (including any renewals or extensions with the same lessee), or in the event of a default on a lease agreement prior to the expiration of the lease term, all of the bank's interest in the property shall either be liquidated or re-leased in conformance with this regulation as soon as practicable, but in any event no later than one year from the expiration of the lease. Provided, that under exceptional circumstances and in response to a written request by the bank, the Commissioner of Banking may extend the time for the liquidating or re-leasing the leased property. Property which the bank retains in anticipation of re-leasing must be re-valued at the lower of current fair market value or book value prior to any subsequent lease, for the purpose of determining the applicable maximum estimated residual value.

(e) Notwithstanding the provisions of paragraph (d) of this section, on the return of leased property, at the expiration of a conforming lease term, or on the default of a lessee, a short term bridge or interim lease is permissible if it otherwise conforms with the requirements of this section. Banks may only use short term bridge or interim leases to facilitate conforming long term lease financing transactions.

#### **SECTION 106-16-4. LEASE TERM, LEGAL LENDING LIMITS.**

##### **4.1 Term of Initial Lease Transaction.**

Lease financing transactions entered into pursuant to this regulation must have an initial term of not less than ninety (90) days and not more than ten (10) years.

##### **4.2 Application of Legal Lending Limits.**

Lease financing transactions entered into pursuant to this regulation are subject to the limitations on loans and extensions of credit under West Virginia Code §31A-4-26 and regulations promulgated thereunder. The Commissioner of Banking reserves the right to determine that such leases are also subject to the limitations of any other law, regulation or ruling.

#### **SECTION 106-16-5. RESIDUAL VALUE.**

##### **5.1 Maximum Estimated Residual Value.**

(a) Any unguaranteed portion of the estimated residual value relied upon by the bank to yield a return of its full investment shall not exceed twenty-five (25) percent of the original cost of the property to the lessor. The amount of the estimated residual value guaranteed by the manufacturer, the lessee or a third party may exceed twenty-five (25) percent of the original cost of the property, where the bank has determined, and can provide full, supporting documentation, that the guarantor, which is not an affiliate, as that term is defined by 12 USC 371C, has the resources to meet the guarantee.

(b) A bank may base calculations of estimated residual value on leases or personal property to Federal, state or local governments entities may be based on reasonably anticipated future transactions or renewals.

(c) In all cases, the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of subdivision 3.1(b) of this rule must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the bank's full investment plus the cost of financing the property depends on the creditworthiness of the lessee and any guarantor of the residual value, and not on the residual market value of the leased property.

**SECTION 106-16-6. MAINTENANCE AND RETENTION OF RECORDS.**

Whenever a bank enters into a lease financing transaction, the bank must identify any and all records associated with the lease financing transaction to distinguish them from those records maintained by the bank on its loans. A bank shall maintain all records associated with a bank's lease financing transactions separately from those records associated with a bank's loan transactions.

**SECTION 106-16-7. CONFLICTS.**

Nothing in this regulation shall be construed to be in conflict with the duties, liabilities and standards imposed by the Consumer Leasing Act of 1976, 15 USC 1667 et seq.

Bill Banking, Lease 106-16

H. B. 4263

(By Delegate Grubb)

(Introduced January 27, 1992; referred to the

Committee on the Judiciary)

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10 A BILL to amend and reenact section two, article three, chapter  
11 sixty-four of the code of West Virginia, one thousand nine  
12 hundred thirty-one, as amended, relating to authorizing the  
13 division of banking to promulgate legislative rules relating  
14 to lease financing transactions.

15 Be it enacted by the Legislature of West Virginia:

16 That section two, article three, chapter sixty-four of the  
17 code of West Virginia, one thousand nine hundred thirty-one, as  
18 amended, be amended and reenacted, to read as follows:

19 ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND

20 ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

21 §64-3-2. Division of banking.

22 (a) The legislative rules filed in the state register on the  
23 eleventh day of June, one thousand nine hundred eighty-two,

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1 relating to commissioner of banking (communication terminals and  
2 interchange systems), are authorized.

3 (b) The legislative rules filed in the state register on the  
4 fifteenth day of December, one thousand nine hundred  
5 eighty-three, relating to the commissioner of banking (consumer  
6 credit sales), are authorized.

7 (c) The legislative rules filed in the state register on the  
8 nineteenth day of August, one thousand nine hundred eighty-three,  
9 relating to the commissioner of banking (legal lending limit),  
10 are authorized.

11 (d) The legislative rules filed in the state register on the  
12 seventh day of November, one thousand nine hundred eighty-six,  
13 modified by the commissioner of banking to meet the objections of  
14 the legislative rule-making review committee and refiled in the  
15 state register on the eleventh day of December, one thousand nine  
16 hundred eighty-six, relating to the commissioner of banking  
17 (implementing the West Virginia community reinvestment act), are  
18 authorized.

19 (e) The legislative rules filed in the state register on the  
20 twenty-fifth day of October, one thousand nine hundred  
21 eighty-eight, modified by the commissioner of banking to meet the  
22 objections of the legislative rule-making review committee and  
23 refiled in the state register on the seventh day of December, one  
24 thousand nine hundred eighty-eight, relating to the commissioner

1 of banking (subsidiary bank holding the stock of its parent  
2 company as collateral), are authorized.

3 (f) The legislative rules filed in the state register on the  
4 ninth day of August, one thousand nine hundred ninety-one,  
5 modified by the division of banking to meet the objections of the  
6 legislative rule-making review committee and refiled in the state  
7 register on the fifteenth day of November, one thousand nine  
8 hundred ninety-one, relating to the division of banking (lease  
9 financing transactions), are authorized.

10

11 . . . NOTE: The purpose of this bill is to authorize the Division  
12 of Banking to promulgate legislative rules relating to lease  
13 financing transactions.

14

15 Strike-throughs indicate language that would be stricken from  
16 the present law, and underscoring indicates new language that  
17 would be added.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

A. RENEE COE  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

(Plus all the volunteer  
help we can get)

TO: Rick Lancianese

AGENCY: Banking

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: December 11, 1992

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 16 TITLE: 106 Banking

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

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\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Richard L. Lancianese

TITLE OF PERSON SIGNING: Deputy Commissioner / General Counsel

DATE: 12-15-92

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.