Namibia

Banking Institutions Act, 1998

Regulations relating to Restrictions on loan-to-value ratios, 2016

Government Notice 229 of 2016

Legislation as at 15 November 2017

FRBR URI: /akn/na/act/gn/2016/229/eng@2017-11-15

Regulations relating to Restrictions on loan-to-value ratios, 2016

Contents

Republic of Namibia
Annotated Statutes

Banking Institutions Act, 1998

Regulations relating to Restrictions on loan-to-value ratios, 2016

Government Notice 229 of 2016

Published in Government Gazette 6130 on 20 September 2016

Commenced on 20 September 2016

[This is the version of this document at 15 November 2017.]

[Note: The version of this legislation as at 15 November 2017 was revised and consolidated by the Legal Assistance Centre and the Government of the Republic of Namibia. All subsequent amendments have been researched and applied by Laws.Africa for NamibLII.]

1. Definitions

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

"**customer**" means any natural person applying for a mortgage loan from a banking institution;

"**equity**" means the residual market value of the property after the deduction of the outstanding amount of any loans used to finance the property;

"**financial institution**" means an entity that renders a 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 to finance the purchase of residential property, usually with specified payment periods and interest rates;

"**non-primary residence**" means a residence which is not the primary residence of an individual and is used for, but not limited to, holidays, leasing, renting and has a separate title deed than the primary residence;

"**primary residence**" means a residence where an—

(a) individual lives or is deemed to live; or

(b) individual and his or her family live or are deemed to live,

for most part of the year; and

"**the Act**" means the Banking Institutions Act, 1998 (Act No. 2 of 1998).

2. Purpose and scope of regulations

(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 non-primary 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 secondary and subsequent mortgage loans.

(3) Only one property is considered as a primary residence for the purposes of these regulations.

(4) An individual with a member's interest of more than 50 percent in a close corporation which owns property is considered to be the owner of the property for the purposes of these regulations.

(5) A banking institution must treat spouses married in community of property as one customer for the purposes of these regulations.

3. Responsibility to ensure compliance

(1) The board of directors of a banking institution are responsible for establishing adequate policies and procedures to ensure that all requirements set out in these regulations are complied with.

(2) A banking institution must—

(a) establish, assess and approve the loan-to-value restrictions for 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.

4. Prudential requirements

(1) The loan-to-value ratio when extending a loan to a customer for the purchase of non-primary residential property is set out in the Annexure.

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

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

(4) Despite subregulation (3), a banking institution may not disburse a loan for the purchase of a non-primary 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 any financial institution, including financial institutions not regulated by the Bank.

(5) Banking institutions may not extend any credit or financing facility for fulfilment of down payment or to top up for the purchase of secondary residential properties.

(6) If a banking institution extends a mortgage loan in addition to the current mortgage loan, and the extended mortgage loan is used to acquire an additional property with a different title deed, the extended mortgage loan is regarded as an additional mortgage loan and subjected to these regulations.

5. Declaration by customer

(1) For the purpose of determining the appropriate loan-to-value ratio to be imposed, a banking institution must request a customer to submit a written declaration on whether—

(a) the customer is applying for the loan for the purchase of a primary, first non-primary or subsequent property;

(b) the customer has secured loans from other financial institutions, including those not regulated by the Bank as a source for the required deposit; and

(c) the loans referred to in paragraphs (a) and (b) were extended for the purpose of purchasing a first property or additional property.

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

6. Transitional provision

(1) Banking institutions that have written policies and procedures concerning the loan-to-value restrictions prior to coming into effect of these regulations must adjust their policies and procedures in line with these regulations.

(2) Banking institutions must comply with the provisions of these regulations within six months from the date of publication of these regulations in the *Gazette*.

7. Offences and penalties

(1) A banking institution that contravenes the provisions of these regulations commits an offence and is liable to a fine not exceeding N$100 000 or imprisonment for a period not exceeding two and a half years 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 a substantial shareholder of the banking institution; or

(b) was—

(i) in any manner or to any extent responsible for; or

(ii) assisting in,

the management of any of the affairs of the banking institution and—

(aa) is proven to have given instruction for the commission of the offence; or

(bb) is proven to have consented to or connived in the commission of the offence, is guilty of the same offence and subject to the same penalty as the banking institution.

Annexure

LOAN-TO-VALUE RATIOS

Categorization of mortgage loan	Percentage points of loan-to-value
First non-primary residence	80 percent
Second non-primary residence	70 percent
Third non-primary residence	60 percent
Fourth and all subsequent non-primary residences	50 percent