

## CHAPTER 13-03-19 LEASING

### Section

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### **13-03-19-01. Authorization.**

A state-chartered credit union may engage in direct leasing, indirect leasing, open-end leasing, or closed-end leasing subject to the limitations prescribed under this chapter.

**History:** Effective January 1, 2007.

**General Authority:** NDCC 6-01-04

**Law Implemented:** NDCC 6-06-06

### **13-03-19-02. Definitions.**

For purposes of this rule, the following definitions will apply:

1. "Closed-end lease" means the credit union assumes the risk and responsibility for any difference in the estimated residual value and the actual value of the property at lease end. However, the member is responsible for any excess wear and tear and excess mileage charges as established under the lease.
2. "Direct lease" means the credit union purchases personal property from a vendor, becoming the owner of the property at the request of a member of the credit union and then leases the property to that member.
3. "Full payout lease" means a lease in which the lessor's service is limited to the financing of the asset, with the lessee paying all other costs, including maintenance and taxes, and has the option of purchasing the asset at the end of the lease for a nominal price. The lease shall be fully amortized over the term of the lease or lifetime of the asset, whichever is less.
4. "Inception of the lease" means the date of the lease agreement or commitment, if earlier, or the date the lease is purchased by the credit union. For purposes of this definition, a commitment shall be in writing, signed by the parties in interest to the transaction, and shall specifically set forth the principal terms of the transaction.
5. "Independent third-party appraiser" means an individual not involved with the lease transaction, except as the appraiser, with no direct or indirect interest, financial or otherwise, in the property appraised or the parties involved with the transaction. The credit union shall take appropriate steps to ensure the appraiser exercises independent judgment and that the appraisal is adequate.
6. "Indirect lease" means a third party leases property to a member of the credit union and the credit union then purchases the lease from the third party for the purposes of leasing the property to the member.
7. "Lease servicer" means the entity that collects monthly principal and interest payments from the lessee and then forwards the payments to the purchasing credit union or maintains lease records for a fee.

8. "Leasing company" means the enterprise that makes leases or assembles leases for resale to a credit union.
9. "Lessee" means the party using the leased property.
10. "Lessor" means the party owning the leased property.
11. "Open-end lease" means the member of the credit union assumes the risk and responsibility for any difference in the estimated residual value and the actual value of the property at lease end.
12. "Residual value" means the estimated fair value of the leased property at the end of the lease term.

**History:** Effective January 1, 2007.

**General Authority:** NDCC 6-01-04

**Law Implemented:** NDCC 6-06-06

**13-03-19-03. Lease requirements.**

1. The lease must be a net lease. In a net lease, your member assumes all the burdens of ownership, including maintenance and repair, licensing and registration, taxes, and insurance.
2. The lease must be a full payout lease. In a full payout lease, you must reasonably expect to recoup your entire investment in the leased property, plus the estimated cost of financing, from the lessee's payments and the estimated residual value of the leased property at the expiration of the lease term.
3. The amount of the estimated residual value to satisfy the full payout lease requirement shall not exceed twenty-five percent of the original cost of the leased property unless the amount above twenty-five percent is guaranteed. Estimated residual value must be reasonable in light of the leased property and all circumstances relevant to the leasing arrangement.
4. When the credit union does not own the leased property in an indirect leasing arrangement, the credit union must:
  - a. Obtain a full assignment of the lease. A full assignment is the assignment of all the rights, interests, obligations, and title in the lease.
  - b. Be named as the sole lienholder of the leased property.
  - c. Receive a security agreement, signed by the leasing company, granting the credit union a sole lien in the leased property and the right to take possession and dispose of the leased property in the event of a default by the lessee, a default in the leasing company's obligations to the credit union, or a material adverse change in the leasing company's financial condition.
  - d. Take all necessary steps to record and perfect the credit union's security interest in the leased property.
5. The credit union must retain salvage powers over the leased property.
6. The credit union must maintain a contingent liability insurance policy with an endorsement for leasing or be named as the coinsured if the credit union does not own the leased property. The credit union must use an insurance company with a nationally recognized industry rating of at least a B+.

7. The credit union member must carry the normal liability and property insurance on the leased property. The credit union must be named as an additional insured on the liability insurance policy and as loss payee on the property insurance policy.

**History:** Effective January 1, 2007.

**General Authority:** NDCC 6-01-04

**Law Implemented:** NDCC 6-06-06

### **13-03-19-04. Lease policy required.**

The board of directors of the credit union will formulate and maintain a written lease policy. At a minimum, the lease policy should address the following:

1. Identify acceptable lease servicers and lessors, for purchased leases only.
2. Establish aggregate volume of paper to be purchased from approved servicers and lessors, for purchased leases only.
3. Identify the geographic area where the credit union will consider purchasing or originating leases.
4. Establish lease portfolio diversification standards.
5. Set appropriate terms and conditions by type of leases.
6. Establish lease approval and origination procedures.
7. Establish prudent underwriting standards.
8. Establish lease administration procedures.
9. Establish appraisal and evaluation programs.
10. Monitor the lease portfolio and provide timely reports to the board of directors.
11. Set forth permitted exceptions to policy.
12. Require an independent credit analysis of the lessee.
13. Require the credit union to obtain collateral values, lien status, lease agreements, participation agreements, and title documentation within forty-five calendar days from the date of inception with original documentation to be maintained in the credit file.
14. Require a credit union officer or an independent third-party appraiser to conduct at inception, and annually thereafter, an inspection of the leased tangible property for all leases greater than one hundred thousand dollars and to document the credit file with the inspection report.
15. Require rental payments to be made on a periodic basis no less frequently than annually.
16. Require the term of the lease not to exceed seven years.
17. Require an annual analysis of the financial condition of the leasing company or lease servicer. This will include the review of an annual opinion audit by a certified public accountant.

**History:** Effective January 1, 2007.

**General Authority:** NDCC 6-01-04

**Law Implemented:** NDCC 6-06-06

**13-03-19-05. Limitations.**

A credit union's investment in purchased leases from a single leasing company or affiliated leasing companies shall not exceed ten percent of the net worth of the credit union.

**History:** Effective January 1, 2007.

**General Authority:** NDCC 6-01-04

**Law Implemented:** NDCC 6-06-06

**13-03-19-06. Appeal to state credit union board.**

A credit union may appeal to the state credit union board for an increase in the limitation in purchased leases under section 13-03-19-05.

**History:** Effective January 1, 2007.

**General Authority:** NDCC 6-01-04

**Law Implemented:** NDCC 6-06-06