

## **Texas Administrative Code**

<b>TITLE 7</b>	<b>BANKING AND SECURITIES</b>
<b>PART 2</b>	<b>TEXAS DEPARTMENT OF BANKING</b>
<b>CHAPTER 12</b>	<b>LOANS AND INVESTMENTS</b>
<b>SUBCHAPTER D</b>	<b>INVESTMENTS</b>
<b>RULE §12.91</b>	<b>Other Real Estate Owned</b>

(a) Definitions. Words and terms used in this subchapter that are defined in the Finance Code, §31.002, have the same meanings as defined in the Finance Code. The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates the contrary.

(1) Appraisal--A written report by a state certified or licensed appraiser containing sufficient information to support the state bank's evaluation of **OREO** taking into consideration market value, analyzing appropriate deductions or discounts, and conforming to generally accepted appraisal standards unless principles of safe and sound banking require stricter standards.

(2) Appraiser--A state certified or licensed staff appraiser or a state certified or licensed third party fee appraiser with relevant and competent experience and background as related to a particular appraisal assignment.

(3) Bank facility--Real property, including improvements, owned or leased to the extent of the lease by a state bank if the real estate is held for the purposes set forth in the Finance Code, §34.001, and is not disqualified under the Finance Code, §34.002(b). The term also includes capitalized leasehold improvements if held for the same purposes.

(4) Coterminal sublease--A lease with the same duration as the remainder of the master lease.

(5) Evaluation--A written report prepared by an evaluator describing the **OREO** and its condition, the source of information used in the analysis, the actual analysis and supporting information and the estimate of the **OREO**'s market value, with any limiting conditions.

(6) Evaluator--An individual who has related real estate training or experience and knowledge of the market relevant to the **OREO** but who has no direct or indirect interest in the **OREO**. An appraiser may be an evaluator.

(7) Generally accepted appraisal standards--The Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board, Appraisal Foundation, Washington, D.C.

(8) Market value--The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(A) buyer and seller are typically motivated;

(B) both parties are well informed or well advised, and acting in what they consider their own best interests;

(C) a reasonable time is allowed for exposure in the open market;

(D) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(E) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(9) Non-coterminous sublease--A lease with a duration shorter than the remainder of the master lease.

(10) Other Real Estate Owned (**OREO**)--Real estate, including improvements, mineral interests, surface, and subsurface rights, owned in whole or in part or leased by a state bank, no matter how acquired, which is not a bank facility as defined by paragraph (3) of this subsection or leasehold property as permitted under the Finance Code, §34.204(a), but excluding nonworking royalty interests classified as personal property pursuant to Finance Code, §34.004.

(11) Staff appraiser--An appraiser on the staff of a state bank who has no direct or indirect interest in the **OREO**.

(12) Third party fee appraiser--An appraiser who has an independent contractor relationship with a state bank and has no direct or indirect interest in the **OREO**.

(13) Year--For the purposes of this section, a calendar year.

(b) Prohibition on real estate ownership. A state bank may not acquire or hold real estate except as specifically provided under the Finance Code, §§34.001-34.003 and 34.204(a), and this section.

(c) Acquisition of **OREO**. A state bank may hold **OREO** only if acquired by:

(1) purchase under judicial or nonjudicial foreclosure, or through a deed in lieu of foreclosure, of real estate that is security for a debt or debts previously contracted in good faith;

(2) purchase to protect its interest in a debt or debts previously contracted if prudent and necessary to avoid or minimize loss;

(3) purchase of an employee's principal residence to facilitate a change of duty assignment or relocation upon employment;

(4) with prior written approval of the banking commissioner, an exchange of **OREO** or personal property for real estate to avoid or minimize loss on the real estate exchanged or to facilitate the disposition of **OREO**;

(5) with prior written approval of the banking commissioner, purchase of additional real estate to avoid or minimize loss on **OREO** currently held;

(6) involuntary acquisition of an ownership interest or leasehold interest in real estate as a result of or incidental to a judicial or nonjudicial foreclosure, or by adverse possession, or by operation of law without any action on the part of the state bank to obtain such interest; or

(7) loss of designation of real estate owned or leased by the state bank as a bank facility.

(8) purchase for the purpose of providing temporary housing for employees if:

(A) a bank has two or more locations of sufficient distance that overnight travel is required in connection with business at either location; and

(B) the board has certified that the cost of purchasing and maintaining the property is

reasonable in comparison to other options for temporarily housing employees.

(d) Appraisal requirements.

(1) Subject to paragraph (2) of this subsection, when **OREO** is acquired, a state bank must substantiate the market value of the **OREO** by obtaining an appraisal within 60 days of the date of acquisition. An evaluation may be substituted for an appraisal if the recorded book value of the **OREO** is less than \$250,000.

(2) An additional appraisal or evaluation is not required when a state bank acquires **OREO** if a valid appraisal or appropriate evaluation was made in connection with the real estate loan that financed the acquisition of the **OREO** and the appraisal or evaluation is less than one year old.

(3) An evaluation shall be made on all **OREO** at least once a year. An appraisal shall be made at least once every three years on **OREO** with a recorded book value in excess of \$250,000.

(4) Notwithstanding another provision of this section, the banking commissioner may require an appraisal of **OREO** if the banking commissioner considers an appraisal necessary to address safety and soundness concerns.

(e) Additional expenditures on **OREO**. A state bank may re-fit **OREO** for new tenants or make normal repairs and incur routine maintenance costs to preserve or protect the value of the **OREO** or to render the **OREO** in saleable condition without prior notification to or approval by the banking commissioner. Other advances or additional expenditures on **OREO** must have the prior written approval of the banking commissioner, and must not be:

(1) made for the purpose of speculation in real estate;

(2) made for the purpose of changing or altering the current status or intended use of the **OREO**; and

(3) inconsistent with safe and sound banking practices.

(f) Holding period.

(1) A state bank must dispose of **OREO**, except for real estate which became **OREO** pursuant to the Finance Code, §34.002(b), no later than five years after it was acquired or ceases to be used as a bank facility, unless an extension of time for disposing of the real estate is granted in writing by the banking commissioner pursuant to the Finance Code, §34.003(d). A bank must dispose of real estate which becomes **OREO** pursuant to the Finance Code, §34.002(b), within two years of the date it ceases to be a bank facility, unless a delay in the improvement and occupation of the property is approved in writing by the banking commissioner pursuant to the Finance Code, §34.002(b).

(2) The holding period commences on the date that:

(A) ownership is acquired by the state bank pursuant to subsection (c)(1) - (5) of this section;

(B) **OREO** is acquired by a state bank through merger/consolidation, conversion or purchase and assumption;

(C) the bank first learns of its ownership interest in real estate which has devolved to the bank by operation of law under subsection (c)(6) of this section;

(D) the bank ceases to use a former bank facility or completes its relocation from a former bank facility to a new bank facility; or

(E) is three years following the acquisition of real estate as a bank facility for future expansion or relocation of the bank if the real estate has not been occupied by the bank,

unless the banking commissioner has granted written approval to a further delay in the improvement and occupation of the real estate.

(3) The banking commissioner may grant one or more additional extensions of time for disposing of **OREO** if the banking commissioner finds that the state bank has made a good faith effort to dispose of the **OREO** or that disposal of the **OREO** would be detrimental to the safety and soundness of the state bank.

(g) **Disposition Efforts; Documentation.** A state bank must make diligent and ongoing efforts to dispose of **OREO** and must maintain documentation adequate to reflect those efforts. Such documentation must be available for inspection by the banking commissioner.

(h) **Disposition of OREO.** A state bank may dispose of **OREO** by:

(1) selling the **OREO** in a transaction that qualifies as a sale under regulatory accounting principles;

(2) selling the **OREO** pursuant to a land contract or contract for deed;

(3) retaining the property for its own use as a bank facility, subject to the approval of the banking commissioner;

(4) transferring the **OREO** to a majority-owned subsidiary in compliance with 12 C.F.R. §362.4(b)(5)(i);

(5) transferring the **OREO** for market value to an affiliate, subject to the Finance Code, §33.109, and applicable federal law, including 12 U.S.C. §§371c, 371c-1, and 1828(j);

(6) if the **OREO** is a master lease, obtaining a coterminous sublease or an assignment of a coterminous sublease, provided that if the bank acquires or obtains assignment of a non-coterminous sublease, the holding period during which the master lease must be divested is suspended for the duration of the sublease and will commence running again upon termination of the sublease; or

(7) entering into a transaction that does not qualify for disposal under paragraphs (1) - (5) of this section; provided that its obligation to dispose of the **OREO** is not met until the bank receives or accumulates from the purchaser an amount in cash, principal and interest payments, and private mortgage insurance totaling 10% of the sales price, as measured in accordance with regulatory accounting principles.

(i) **Accounting for OREO.** Investment in **OREO**, and disposition of **OREO**, must be accounted for in accordance with regulatory accounting principles.

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**Source Note:** The provisions of this §12.91 adopted to be effective March 1, 1996, 21 TexReg 1527; amended to be effective November 13, 1997, 22 TexReg 10954; amended to be effective July 10, 2003, 28 TexReg 5149; amended to be effective September 6, 2007, 32 TexReg 5655