

9-1136. Powers; authority to lease certain personal property; definitions. In addition to powers and limitations conferred or imposed on any bank by K.S.A. 9-1101, and amendments thereto, any bank is hereby authorized to exercise by its board of directors or duly authorized officers or agents, subject to law, all such powers including incidental powers as shall be necessary or convenient to do what is authorized by this section:

(a) (1) A bank may become the legal or beneficial owner of tangible personal property for the purpose of leasing such property;

(2) to obtain an assignment of a lessor's interest in a lease of such property; or

(3) to incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property; so long as each lease entered into by the bank is a net, full-payout lease.

(b) A bank may acquire specific property to be leased only after the bank has entered into either:

(1) A legally binding written agreement to lease the property on terms which comply with this section; or

(2) a legally binding written agreement which indemnifies the bank against loss in connection with its acquisition of the property.

(c) In the event of the lessee's default, early termination of a lease or at the expiration of the lease, the bank's interest in the property shall be liquidated or re-leased in accordance with this section as soon as practicable, but in no case shall the off-lease property be carried on the bank's books for a period exceeding one year.

(d) Each lease financing transaction entered into by the bank pursuant to this section shall be considered a loan for the purposes of applying all legal lending limitations and prior approval requirements contained in K.S.A. 9-1104, and amendments thereto.

(e) For purposes of this section:

(1) (A) "Net lease" means a lease under which the bank will not, directly or indirectly, provide or be obligated to provide for:

(i) The servicing, repair or maintenance of the leased property during the lease term;

(ii) the purchasing of parts and accessories for the leased property, except that improvements and additions to the leased property may be leased to the lessee upon such lessee's request in accordance with the full-payout requirements of this section;

(iii) the loan of replacement or substitute property while the leased property is being serviced;

(iv) the purchasing of insurance for the lessee, except where the lessee has failed to discharge a contractual obligation to purchase or maintain insurance; or

(v) the renewal of any license, registration or filing for the property unless such action by the bank is necessary to protect the bank's interest as an owner or financier of the property;

(B) if, in good faith, a bank believes there has been an unanticipated change in conditions which threaten its financial position by significantly increasing its exposure to loss, the provisions of (e)(1)(A) shall not prevent the bank:

(i) As the owner and lessor under a net, full-payout lease, from taking reasonable and appropriate action to salvage or protect the value of the property of its interest arising under the lease;

(ii) as the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease; or

(iii) from including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in provisions (i) or (ii).

(2) (A) "Full-payout lease" means a lease from which the lessor can 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 rentals, estimated tax benefits and the estimated residual value of the property at the expiration of the initial term of the lease.

(B) Except as provided in subsection (f), the estimated residual value of the property shall not exceed 25% of the original cost of the property to the lessor unless the estimated residual value is guaranteed by a manufacturer, a lessee or a third party not an affiliate of the bank and the bank properly documents that the guarantor has the resources to meet the guarantee. In all cases both 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 a full-payout lease 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 primarily on the creditworthiness of the lessee and of any guarantor of the residual value, and not on the residual market value of the leased property.

(f) Notwithstanding the limit on residual value contained in (e)(2)(B), the bank may enter into lease financing transactions in which the residual value relied upon for realization of a return of its full investment plus costs of financing exceeds 25% of the original cost of the property provided:

(1) The lease financing transaction conforms with all other requirements of this section;

(2) the lease financing transaction has a term in excess of 90 days;

(3) the records relating to lease financing transactions entered into pursuant to this provision are clearly segregated and specifically identified to distinguish them from the records relating to lease financing transactions entered into pursuant to the other provisions; and

(4) the aggregate book value of all tangible personal property held for lease pursuant to this subsection does not exceed 10% of the consolidated assets of the bank.

(g) This section shall not apply to any leases executed by a bank prior to the effective date of this act. Any lease which was entered into in good faith prior to the effective date of this act that does not comply with the provisions of this section may be renewed only if there is a binding agreement in the expiring lease which requires the bank to renew the lease at the lessee's option, and the bank cannot otherwise reasonably or properly avoid its commitment to renew. Except for those leases renewed pursuant to such a binding agreement, any prior lease renewed after the effective date of this act shall be included for purposes of determining compliance with the legal lending limitations contained in K.S.A. 9-1104, and amendments thereto, and subsection (d).

History: L. 1995, ch. 19, § 3; Mar. 9.