

## **ARTICLE 20:07**

### **BANKING**

#### Chapter

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**Declaratory Ruling:** In the matter of the Petition of the H-D Electric Cooperative Inc., Clear Lake, South Dakota, the Banking Commission was asked to determine if the receipt and return of security deposits is the business of banking. The Commission determined that an electric cooperative's receipt of a security deposit to ensure payment of a customer's monthly bill and the subsequent return of that deposit with interest after the customer establishes a timely payment history does not constitute the business of banking. South Dakota Banking Commission Declaratory Ruling dated April 20, 2004.

## CHAPTER 20:07:03

### INTERNAL MANAGEMENT OF BANKS

#### Section

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- 20:07:03:18.01        Number and frequency of board meetings -- Exception.
- 20:07:03:19 to 20:07:03:22    Repealed.
- 20:07:03:23        Loans made with the assistance of third parties.
- 20:07:03:24        Investment in federal home loan bank.
- 20:07:03:25        Time limit allowed on overdrafts.
- 20:07:03:26        Bank borrowings.

**20:07:03:12.01. Investment in mutual funds.** A bank may purchase or hold shares of registered mutual funds that invest ~~exclusively in securities of the United States or its agencies~~ in authorized general investments as provided in ARSD 20:07:03:12(1). Those funds that engage in financial futures, options, or repurchase agreements may be purchased if they meet the following criteria:

- (1) The fund is subject to investment guidelines that limit its investment in hedging and yield enhancement activities to 25 percent of the fund; and
- (2) No more than 5 percent of the fund is invested in any single issue.

A bank may invest up to 100 percent of the bank's capital stock and surplus in mutual funds.

**Source:** 13 SDR 21, effective August 25, 1986; 14 SDR 46, effective September 28, 1987; 21 SDR 36, effective August 31, 1994.

**General Authority:** SDCL 51A-2-13, 51A-4-25.

**Law Implemented:** SDCL 51A-4-25.

## CHAPTER 20:07:19

### MORTGAGE LENDERS AND MORTGAGE BROKERS

#### Section

- 20:07:19:01 Repealed.
- 20:07:19:02 Licensing fees.
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- 20:07:19:03.01 Nationwide mortgage licensing system and registry fees.
- 20:07:19:04 Application -- Prescribed form and required information.
- 20:07:19:04.01 Change of control -- Application required.
- 20:07:19:05 Application -- Grounds for denial.
- 20:07:19:06 Repealed.
- 20:07:19:07 Surety bonds.
- 20:07:19:08 Records required to be kept -- Duration.
- 20:07:19:09 Examination of licensees.
- 20:07:19:10 ~~Proof of experience~~ Repealed.
- 20:07:19:11 Continuing education for mortgage loan originators.
- 20:07:19:12 Pre-licensing education of mortgage loan originators.
- 20:07:19:13 Testing of mortgage loan originators.
- 20:07:19:14 Challenge process.
- 20:07:19:15 Reports of condition.

**20:07:19:10. Proof of experience.** ~~Satisfactory proof of experience as required by SDCL~~

~~54-14-22 includes:~~

~~—— (1) Valid copies of W-2 or 1099 tax forms verifying employment; or~~

~~—— (2) Valid copies of form 1120, 1120S, or 1065 tax returns signed by the broker or manager as owner of the business; and~~

~~—— (3) A signed letter from the lender or broker who employed the applicant, on the lender or broker's letterhead, identifying the applicant's job duties and verifying that the individual has competently performed his or her duties for the required time period; or~~

~~—— (4) Such other information that the director finds satisfactory to verify that an applicant has satisfied the experience requirement in SDCL 54-14-22.~~

**Source:** 33 SDR 226, effective July 1, 2007.

**General Authority:** ~~SDCL 54-14-22.~~

**Law Implemented:** ~~SDCL 54-14-14, 54-14-22, 54-14-23.~~

**20:07:19:12. Pre-licensing education of mortgage loan originators.** In order to meet the pre-licensing education requirement in SDCL 54-14-13.1(4), an individual shall complete at least twenty hours of education approved according to the standards established in 12 U.S.C. 5104 (c) as of January 1, 2009.

~~An individual who has successfully completed continuing education courses approved by the division for any renewal period up to and including the renewal period that closes on~~

~~December 31, 2009, may satisfy the twenty hour pre-licensing education requirement if the individual is able to document the successful completion of twenty hours of course work approved by the division prior to January 1, 2010. Each continuing education course and course provider must have been approved by the division.~~

**Source:** 36 SDR 99, effective December 10, 2009.

**General Authority:** SDCL 54-14-31.

**Law Implemented:** SDCL 54-14-13.1(4).

## CHAPTER 20:07:22

### TRUST COMPANIES

#### Section

- 20:07:22:01 Supervision fee schedule.
- 20:07:22:02 Remittance.
- 20:07:22:03 Private trust company defined.
- 20:07:22:04 Trust administration defined.

**20:07:22:01. Supervision fee schedule.** A state-chartered trust company shall pay an annual fee for supervision at the rate of ~~six~~ seven cents per \$10,000 of total assets under management, administration, or custody, as reported as of the end of December. However, the minimum annual fee is ~~\$3,000~~ 3,750 and the maximum annual fee is \$20,000 for private trust companies and the minimum annual fee is \$4,500 and the maximum annual fee is \$30,000 for public trust companies. Trust companies shall also pay the actual cost for each on-site examination and the additional supervision costs for any trust company operating under an enforcement action. For purposes of this section, the term enforcement action does not include a resolution adopted by a trust company to implement findings identified through an examination conducted by the division.

The division shall maintain on its website a separate fee calculator for public and private trust companies to be used for the purpose of calculating the annual supervision fee owed by each trust company. The formulas used to operate the fee calculator shall be available upon request.

**Source:** 30 SDR 193, effective June 15, 2004; 31 SDR 87, effective December 19, 2004;  
36 SDR 99, effective December 10, 2009.

**General Authority:** SDCL 51A-2-36, 51A-6A-33.

**Law Implemented:** SDCL 51A-6A-33.

**20:07:22:04. Trust administration defined.** For purposes of SDCL 51A-6A-11.1, trust administration in South Dakota means that ~~any~~ at least three of the following are performed wholly or partly ~~at the chartered trust company's registered place of business in South Dakota for~~ the accounts under ~~it's~~ the management, administration, or custody of the trust company:

(1) Annual account reviews;

(2) Annual investment reviews;

~~(2)~~(3) Trust accountings;

~~(3)~~(4) ~~Correspondence~~ Account correspondence;

~~(4)~~(5) ~~Audits physically performed in South Dakota~~ Completing trust account tax returns;

or

~~(5)~~(6) ~~Tax reports sent from South Dakota~~ Distributing account statements; ~~or~~

~~(6) Governing board, committee, or other trust administration meetings with a quorum physically present in South Dakota.~~

~~The director shall review the administration being performed in South Dakota to determine if it is sufficient given the size, number of accounts, number of employees, and degree of fiduciary risk of each public trust company. A public trust company with at least one employee located in South Dakota who performs any of the activities listed in this section in South Dakota,~~

~~for a majority of the public trust company's accounts, establishes a rebuttable presumption of compliance with this section and SDCL 51A-6A-11.1.~~

Notwithstanding the definition above, trust administration as set forth in SDCL 51A-6A-11.1(4) may be satisfied by other means if the director determines the nature and degree of risks presented by the trust company are low based upon a review of the size, nature, and number of accounts administered by the trust company and the number of employees or persons performing services for the trust company in South Dakota.

If the size, risk profile, or rate of growth of a trust company changes, the director may, to the extent it is deemed necessary, require additional administration be performed in South Dakota to satisfy the requirement in § 51A-6A-11.1(4) as defined by this section.

**Source:** 36 SDR 208, effective June 30, 2010.

**General Authority:** SDCL 51A-6A-11.1.

**Law Implemented:** SDCL 51A-6A-11.1, 55-3-39.