

SAVINGS BANK ACT (EXCERPT)
Act 354 of 1996

487.3501 Impairment of capital.

Sec. 501. (1) If, in the opinion of the commissioner, the capital of a savings bank has become impaired, the commissioner shall notify the savings bank of his or her determination and require the directors to meet the deficiency in the capital within a 2-month period. The directors shall meet the deficiency by either making a pro rata assessment upon the stock held by each shareholder, or taking steps to dissolve the bank. The 2-month period may be extended by order of the commissioner, if in his or her discretion an extension is necessary to allow the directors to meet the deficiency.

(2) Before an assessment may be made by the directors, each shareholder, secured party, and pledgee indicated on the books of the savings bank as holding an interest in the stock shall be provided with written notice in a manner reasonably calculated to give actual notice of the determination made by the commissioner that the capital of the savings bank is impaired and the amount of the assessment that each shareholder must pay.

(3) If a shareholder refuses or neglects to pay an assessment levied by the directors within 30 days from the date notice was provided, the directors shall sell all or part of the shareholder's shares to the highest bidder in a manner provided in this section. Upon expiration of the 30-day period and refusal or neglect by a shareholder to pay the assessment, a security interest in favor of the savings bank in the amount of the assessment shall attach to all of the shareholder's shares for the sole purpose of satisfying the assessment levied. The security interest shall have priority over any other security interests perfected by a creditor or otherwise granted by the shareholder in shares issued after the effective date of this act.

(4) If the directors fail to restore the capital of the savings bank or take steps to dissolve the savings bank during the 2-month period following notice from the commissioner and any extension granted under subsection (1), the commissioner may appoint a receiver for the savings bank in accordance with this act.

(5) If any part of the capital of a savings bank consists of preferred stock, the determination of whether the capital of the savings bank is impaired and the amount of the impairment shall be based upon the par value of its stock even though the amount that the holders of the preferred stock shall be entitled to receive in the event of retirement or dissolution shall be in excess of the par value of the preferred stock.

(6) The holders of preferred stock shall not be liable for assessments to restore impairment in the capital of a savings bank.

(7) If, 30 days after notice as provided in this section, a shareholder has refused or neglected to pay an assessment levied on the shares held by the shareholder, the directors may sell any or all of the shareholder's shares to satisfy the assessment. The proceeds of the sale shall be distributed in the following order:

(a) The reasonable expenses of holding for sale and selling the stock in a manner not prohibited by law, including reasonable attorney fees and legal expenses incurred by the savings bank.

(b) The satisfaction of the assessment levied by the directors.

(c) The satisfaction of an indebtedness secured by any security interest in the stock if written notification demanding proceeds is received by the savings bank before distribution of the proceeds is completed. Unless the holder of a security interest provides reasonable proof of the interest, the savings bank does not have to comply with this subdivision.

(d) Any remaining surplus shall be distributed to the shareholder.

(8) Disposition of the stock may be at a public or private sale at any time and on any terms, but every aspect of the disposition including the method, manner, time, place, and terms shall be commercially reasonable and reasonably calculated to meet the deficiency.

(9) A sale of stock as provided in this section shall effect an absolute cancellation of any outstanding certificates evidencing the stock sold and any security interest granted or pledge made in stock issued after the effective date of this act. Upon full payment of the stock sold, the savings bank shall issue new certificates to the purchaser.

(10) The purchaser takes the stock free of any rights or interests the shareholder may have based on an unintentional failure by the savings bank to comply with this section if all of the following apply:

(a) The purchaser has no knowledge of any defect in the proceedings.

(b) The purchaser does not act in collusion with any shareholders of the savings bank, a secured party, other bidders, or the savings bank.

(c) The purchaser makes the purchase in good faith.

(11) The ability of a savings bank to make an assessment under this section or to sell the stock of a shareholder under this section is not limited by the uniform commercial code.

History: 1996, Act 354, Imd. Eff. July 1, 1996;—Am. 2000, Act 482, Imd. Eff. Jan. 11, 2001.