

SAVINGS AND LOAN ACT OF 1980 (EXCERPT)

Act 307 of 1980

ARTICLE 4

491.400 Meetings of members generally.

Sec. 400. Meetings of members shall be held as provided in the association's bylaws at the principal office of the association or at another place as may be determined by the association's board. An annual meeting of members for election of directors and for the transaction of other business shall be held at the time and date provided in the association's bylaws. Failure to hold the annual meeting at the designated time, or to elect a sufficient number of directors at the meeting or an adjournment of the meeting shall not affect an otherwise valid corporate act or work a forfeiture or give cause for dissolution of the association. Special meetings of members may be called by the board, or by officers, directors, or members as provided in the bylaws.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.402 Meetings of members; notice; waiver.

Sec. 402. Unless provided otherwise in this act, written notice of the time, place, and purpose of a meeting of members shall be given not less than 10 nor more than 60 days before the date of the meeting to each member entitled to vote at the meeting. Notice shall be given either personally, by mail, or, in the case of a mutual association only, by publication in a newspaper of general circulation in the community in which the association's principal office is located once a week for the 2 weeks immediately preceding the meeting. Unless the bylaws provide otherwise, if a meeting is adjourned to another time or place, notice of the adjourned meeting is not required if the time and place to which the meeting is adjourned are announced when the adjournment is approved and at the adjourned meeting only the business that would have been transacted at the original meeting is transacted. If the board fixes a new record date for an adjourned meeting, additional notice of the adjourned meeting shall be given to each member on the new record date entitled to notice as provided in this section. Attendance in person or by proxy at a meeting of members constitutes waiver of notice of the meeting, except if a member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.404 Record date for determination of members' rights.

Sec. 404. For the purpose of determining members entitled to notice of and to vote at an annual or special meeting or at an adjournment of a meeting, or for the purpose of determining members entitled to receive payment of a dividend or allotment of a right, or for the purpose of any other action, the bylaws shall provide for fixing a date as the record date for any determination, which date shall not be more than 60 nor less than 10 days before the date of the meeting, nor more than 60 days before nor later than the date of the other action to be taken.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.406 List of members entitled to vote at meeting; requirements; noncompliance; challenge; adjournment.

Sec. 406. (1) The officer or agent having charge of the books and records pertaining to shares of a stock association shall make and certify a complete list of the members entitled to vote at a meeting, determined as of the record date prescribed by section 404. The list shall:

(a) Be arranged alphabetically and show the address of each member and the number of votes which each member is entitled to cast.

(b) Be made available at the time and place of the meeting.

(c) Be subject to inspection by any member during the whole time of the meeting.

(d) Be prima facie evidence as to the members who are entitled to examine the list or to vote at the meeting.

(2) If this section has not been complied with, on demand of a member, in person or by proxy, who in good faith challenges the existence of sufficient votes to carry any action at the meeting, the meeting shall be adjourned until this section is complied with. Inadvertent failure to comply with this section shall not affect the validity of an action taken at the meeting before a demand is made.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.408 Record of members entitled to vote at meeting; requirements.

Sec. 408. The officer having charge of the books and records pertaining to savings accounts of a mutual

association shall maintain a complete record of members entitled to vote at any meeting of the association. The record shall:

(a) Be available to the presiding officer of a meeting or the officer's delegate, but the contents shall remain confidential to the extent provided by section 428(2).

(b) Be prima facie evidence as to the members who are entitled to vote at the meeting.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.410 Quorum for meeting of members.

Sec. 410. (1) Unless a greater or lesser quorum is provided in the bylaws, in the case of meetings of members of stock associations, shares entitled to cast a majority of the votes at the meeting constitute a quorum at the meeting. If the holders of a class of shares of a stock association are entitled to vote separately on an item of business, this section applies in determining the presence of a quorum of holders for each class in connection with the transaction of business. Members present in person or by proxy at the meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum. The meeting may be adjourned by a vote of the shares present whether or not a quorum is present.

(2) In the case of a mutual association, any number of members present in person or by proxy at a meeting constitutes a quorum at the meeting or at an adjournment of the meeting.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.412 Proxy.

Sec. 412. (1) A member entitled to vote at a meeting may authorize other persons to act for the member by written proxy. To be valid, a proxy shall be signed by the member or the member's authorized attorney-in-fact. If filed with an association, a proxy shall remain valid and continue in force from year to year, unless otherwise specified in the proxy, or until revoked.

(2) A proxy is revocable at any time upon delivery of written revocation by the member executing the proxy to the association or by subsequent execution of another proxy. Attendance and voting by a member at a meeting of members shall revoke a proxy, but only for purposes of the meeting or an adjournment of the meeting.

(3) The authority of the holder of a proxy to act is not revoked by the incompetence or death of the member who executed the proxy unless, before the authority is exercised, written notice of an adjudication of the incompetence or death is received by the association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.414 Inspectors; appointment; duties; report.

Sec. 414. The person presiding at a meeting of members shall appoint 1 or more officers or employees of the association as inspectors. The inspectors shall determine the existence of a quorum and the validity and effect of proxies, shall hear and determine challenges and questions arising in connection with the right to vote, shall count and tabulate votes or ballots, shall determine the result of the votes or ballots, and shall do all other acts as are proper to conduct the election or vote with fairness to all members. The inspectors shall make and execute a written report to the person presiding at the meeting of any of the facts found by the inspectors and matters determined by the inspectors, which report shall be entered in the minutes of the meeting and shall be prima facie evidence of the facts stated and of the vote as certified by the inspectors.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.416 Voting by members.

Sec. 416. (1) In determining all questions requiring action by members of a mutual association, each depositor who is a member shall be permitted to cast 1 vote for each \$100.00 or fraction of \$100.00 of the withdrawal value of the member's savings account, to a maximum of 400 votes, or a lesser maximum number of votes as is stated in the bylaws of the mutual association.

(2) In determining all questions requiring action by members of a stock association, each outstanding share is entitled to 1 vote on each matter submitted to a vote, unless otherwise provided in the bylaws of the stock association. A vote may be cast either orally or in writing, unless otherwise provided in the bylaws. If the articles of incorporation of a stock association provide that a class of shares shall vote as a class to authorize any action, including amendment to the articles, the voting as a class shall be in addition to any other vote required by this act. If voting as a class is provided in the articles, it shall be by the proportionate vote provided in the articles or, if a proportionate vote is not provided, then for any action other than the election of directors, by a majority of the votes cast by the holders of shares of each class entitled to vote.

(3) If the election of directors or other action is to be taken by vote of the members, the election or other action shall be authorized by a majority of the votes cast by members present in person or by proxy, unless a greater plurality is required by this act or the bylaws of an association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.418 Members voting as joint tenants, tenants in common, or fiduciaries.

Sec. 418. Shares or savings accounts held by 2 or more persons as joint tenants, tenants in common, or as fiduciaries may be voted at a meeting of members by any of the persons, unless another joint tenant, tenant in common, fiduciary, or beneficial owner seeks to vote in person or by proxy, in which case, a written agreement governing the manner in which the shares or savings accounts shall be voted controls, if presented at the meeting. If an agreement is not presented at the meeting, a majority of the joint tenants or tenants in common, or a majority of the fiduciaries who are record owners, shall control the manner of voting. If there is not a majority, the shares or savings account shall not be voted at the meeting.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.420 Shares of stock association as personal property; transfer.

Sec. 420. The shares of a stock association are personal property and are transferable pursuant to article 8 of the uniform commercial code, 1962 PA 174, MCL 440.8101 to 440.8601, except as otherwise provided in this act.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 2000, Act 360, Eff. Mar. 28, 2001.

491.422 Transfer or registration of transfer of share or other security of stock association; restriction; enforcement.

Sec. 422. (1) A restriction on the transfer or registration of transfer of a share or other security of a stock association may be imposed either by its articles of incorporation or its bylaws, or by an agreement among any members or among members and the corporation. A restriction so imposed is not binding with respect to shares or securities issued before adoption of the restriction unless the members are parties to an agreement or voted in favor of the restriction.

(2) A written restriction on the transfer or registration of transfer of a share or other security of a stock association, if noted conspicuously on the instrument, may be enforced against a member or a successor or transferee of the member including an executor, administrator, trustee, guardian, or other fiduciary entrusted with similar responsibility for the person or estate of the member. Unless noted conspicuously on the instrument, a restriction is ineffective except against a person with actual knowledge of the restriction.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.424 Stock association; no preference to existing members in issuance of shares, option rights, or securities having conversion or option rights.

Sec. 424. Except as otherwise provided in the articles of incorporation or by agreement, a stock association may issue shares, option rights, or securities having conversion or option rights, without first offering them to existing members.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.426 Books, records, and minutes at principal office; accounting in accordance with supervisory rules; reproduction and disposal of records.

Sec. 426. Each association shall keep at its principal office books and records of account and minutes of the proceedings of its members, its board, and any committees of the board. Each association shall observe the accounting principles and practices, and the methods of maintaining books and records, as the supervisor may prescribe by rule or otherwise. An association shall keep at the association's principal office, or at the office of the association's transfer agent within or without this state, records containing the names and addresses of all members, and the number of shares or the amount of savings accounts held by each member. An association's books, records, or minutes may be in written form or in any other form capable of being converted into written form within a reasonable time. An association may reproduce any or all of the association's records pursuant to section 2148 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, as amended, being section 600.2148 of the Michigan Compiled Laws, and may subsequently dispose of the original records.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1992, Act 202, Imd. Eff. Oct. 5, 1992.

491.428 Examination of members' minutes or records by member of record of stock

association; extracts; inspection of account records by depositor; limitation; furnishing list of members to supervisor; confidentiality.

Sec. 428. (1) A member of record of a stock association, upon not less than 10 days' written demand, may examine during usual business hours, and for any proper purpose, in person or by agent or attorney, the association's minutes of members' meetings and records of members, and may make extracts from the minutes or records, at the places where the minutes or records are kept.

(2) Each depositor may inspect the books and records of an association that pertain to the depositor's savings account. Otherwise, the right of inspection and examination of the books and records is limited to the supervisor or the supervisor's authorized representative; to persons authorized to act for the association; to any governmental agency authorized to inspect or examine the books and records of an association; and to persons authorized to enter, inspect, and examine specified books and records by express action of the association's board or by a valid order of a court of competent jurisdiction. Within 2 calendar weeks after any demand made by the supervisor, a stock association shall furnish the supervisor with a list containing the name and address of each member together with the number of shares held by each member at the close of business on the date of the demand. The accounts of depositors and borrowers shall be kept confidential by the association, its directors, officers, and employees; by the supervisor, the supervisor's examiners and representatives; and by the employees of any governmental agency, except that an association may furnish information concerning the accounts of depositors and borrowers to persons subject to the fair credit reporting act, 15 U.S.C. 1681 to 1681t, and to authorized governmental agencies.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.430 Communication by member with other members of association; request for statement as to number of members and for estimate of cost; certificate of supervisor; expenses of preparation and mailing; disposition of inappropriate or untruthful communications; provisions applicable to federal associations and members thereof.

Sec. 430. If a member desires to communicate with the other members of an association with reference to a question pending or to be presented for consideration at a meeting of members, the association shall furnish upon request a statement of the approximate number of members of the association at the time of the request, and an estimate of the cost of forwarding the communication. The requesting member shall then submit the communication to the supervisor who, if the supervisor finds the request to be appropriate, truthful, and in the best interests of the association and all its members, shall execute a certificate setting out the supervisor's findings, forward the certificate together with the communication to the association, and direct that the communication be prepared and mailed by the association to the members upon the requesting member's payment to the association of the expenses of the preparation and mailing. If the supervisor finds the proposed communication to be inappropriate, untruthful, or contrary to the best interests of the association and its members, the supervisor may make any disposition of the request to communicate which the supervisor considers proper and shall execute a certificate setting out the findings and deliver the certificate to the requesting member together with the supervisor's order making disposition of the request. Insofar as section 428 and this section are not inconsistent with federal law or regulations, section 428 and this section shall apply to federal associations and to members of federal associations, except that the communication provided for in this section shall be submitted to the federal home loan bank board, and forwarded only upon the board's certificate and direction.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.432 Closing of books; annual publication of statement of condition; affidavit; public inspection of annual statements; certain associations not required to issue additional statement.

Sec. 432. Each association shall close its books at least once each year, and may do so more often if its board so elects. In addition to the annual report provided for in this act, each association not less than once during each year, shall issue a statement listing its assets and liabilities in full and showing its true financial condition as of and for the period ending at the annual closing of its books specified in this section. The statement shall be signed and sworn to by the chief executive officer of the association and a copy shall be mailed to the supervisor within 30 days after the date of the report, together with an affidavit that the statement has been published in a newspaper within the county of the principal office of the association, or instead, has been mailed to each member. The supervisor shall make all annual statements available for public inspection. An association which merges, is acquired, dissolves, liquidates, or converts to a federal savings and loan association or federal savings bank within the first 31 days immediately following the closing of the books of the association shall not be required to issue the additional statement required by this section.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

491.434 Board of directors; designation by organizers; qualifications; election; number; term; resignation; meetings; minutes; calling of meeting by supervisor.

Sec. 434. (1) The affairs of an association shall be managed by a board of not less than 7 directors who shall be designated by the organizers of an association before the association is authorized to commence business. Not less than 4/5 of the directors of an association shall be residents of this state, except that the supervisor may allow a waiver of this requirement if there is a merger of 2 or more associations which results from an agreement to merge to assure the financial stability of 1 or more of the merged associations. Directors shall thereafter be elected pursuant to this act at the annual meeting of members, or, if for any reason an election is not held at that meeting or at an adjournment of that meeting, then at a subsequent meeting called for that purpose of which notice is given as provided in the bylaws. Directors of a mutual association shall be members of that mutual association during their tenure of office. The number of directors shall be fixed by or in the manner provided in the bylaws of an association. If the board membership falls below the minimum number prescribed by law or otherwise, the association shall restore the board to its minimum size within 60 days. A director shall hold office until a successor is elected and qualifies, or until the director's resignation or removal. A director may resign by written notice to the association. A resignation is effective upon receipt by the association or at a subsequent time as set forth in the notice of resignation.

(2) The board shall meet not less than once each month for the purpose of carrying out the board's duties. The board shall cause to be spread upon the records of the association, in the record book which shall be kept for that purpose, the minutes of each meeting and all of the board's actions at the meeting. The minutes shall be signed by the presiding officer and the secretary of the meeting.

(3) If the supervisor considers it expedient, the supervisor may call a meeting of the board of an association for any purpose by giving notice of the time, place, and purpose of the meeting not less than 3 days before the meeting to the directors either by personal service or by registered or certified mail sent to the directors' last known addresses as shown by the records of the supervisor.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.436 Regular or special meetings of board; waiver of notice; participation by conference telephone or similar equipment.

Sec. 436. (1) Regular or special meetings of the board may be held at a place and time and with the notice as is prescribed in the bylaws. Attendance of a director at a meeting constitutes a waiver of notice of the meeting, except if a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted at, or the purpose of, a regular or special meeting does not need to be specified in the notice or waiver of notice of the meeting unless required by the bylaws.

(2) Unless otherwise restricted by the bylaws, a member of the board or of a committee designated by the board may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting under this subsection constitutes presence in person at the meeting.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.438 Official communication by supervisor.

Sec. 438. Each official communication directed by the supervisor to an association or to an officer of an association that relates to an investigation or examination conducted by the supervisor or which contains suggestions or recommendations as to the conduct of the business of the association, shall be submitted by the chief executive officer to the board at the board's next meeting and the submission shall be recorded in the minutes of the board.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.440 Classification of directors as to term expiration.

Sec. 440. The bylaws of an association shall provide that the board shall be divided into 3 classes of directors, each class to be as nearly equal in number as possible. The term of office of directors in the first class shall expire at the first annual meeting of members after their election, that of the second class shall expire at the second annual meeting after their election, and that of the third class shall expire at the third annual meeting after their election. At each annual meeting after classification of the board, a number of directors equal to the number of the class whose term expires at the time of the meeting shall be elected to hold office until the third succeeding annual meeting. If the number of directors is changed, the directors

thereafter elected shall be classified under this section so that each of the 3 classes shall be as equal in number as possible.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.442 Vacancy among directors.

Sec. 442. A vacancy among directors may be filled by a majority vote of the remaining directors, though less than a quorum, by electing a director to serve until the next annual meeting of the members, at which time a director shall be elected to fill the vacancy for the unexpired term of the vacancy which was filled. In the event of a vacancy on the board for any cause, the remaining directors shall continue direction of the association until the vacancy is filled under section 434.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.444 Quorum for directors' meeting; vote constituting action of board or committee; proposed amendments to bylaws.

Sec. 444. One half or more of the members of the board then in office, or of the members of a committee of the board, constitutes a quorum for transaction of business unless the bylaws provide for a larger number. The vote of the majority of members present at a meeting at which a quorum is present constitutes the action of the board or of the committee unless the vote of a larger number is required by this act or the bylaws. Proposed amendments to the bylaws of an association by the board require the vote of not less than a majority of the members of the board then in office.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.446 Written consent to action without board or committee meeting; filing; effect.

Sec. 446. Unless otherwise provided by the bylaws, action required or permitted to be taken pursuant to authorization voted at a meeting of the board or a committee of the board may be taken without a meeting if all members of the board or of the committee consent to the action in writing. The written consent shall be filed with the minutes of the proceedings of the board or committee. The consent has the same effect as a vote of the board or committee for all purposes.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.448 Board committees; appointment of members.

Sec. 448. Unless otherwise provided in the bylaws, the board may designate 1 or more committees consisting of 3 or more persons, 1 of whom shall be a director of the association. The board may designate 1 or more directors as alternate members of a committee, who may replace an absent or disqualified member at a meeting of the committee. The bylaws may provide that in the absence or disqualification of a committee member the members of the committee present at a meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another member of the board to act in place of an absent or disqualified member. A committee and each member of a committee shall serve at the pleasure of the board.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.450 Committee; powers; prohibited authority.

Sec. 450. To the extent provided in the resolution of the board or in the bylaws, a committee of the board may exercise all powers and authority of the board in management of the business and affairs of the association. However, a committee of the board shall not:

- (a) Authorize an amendment to the articles of incorporation or bylaws.
- (b) Authorize an agreement or plan of merger, consolidation, conversion, or similar corporate change.
- (c) Authorize the sale, lease, or exchange of all or substantially all of the association's property and assets.
- (d) Authorize a dissolution of the association or the revocation of a dissolution.
- (e) Fill vacancies in the board.
- (f) Fix compensation of the directors for serving on the board or on a committee.

History: 1980, Act 307, Eff. Jan. 1, 1981.

Compiler's note: In subdivision (e), "in" evidently should read "on".

491.452 Officers of association; election or appointment; term; powers and duties.

Sec. 452. (1) The officers of an association shall consist of a president, 1 or more vice-presidents, secretary, treasurer, and, if desired, a chairperson of the board, and other officers as may be prescribed by the bylaws or determined by the board. Unless otherwise provided in the bylaws, the officers shall be elected or appointed by the board.

(2) Any 2 offices may be held by the same person except the offices of president and vice-president, but an officer shall not execute, acknowledge, or verify an instrument in more than 1 capacity if the instrument is required by law or the bylaws to be executed, acknowledged, or verified by 2 or more officers.

(3) An officer elected or appointed under this section shall hold office for the term for which the officer is elected or appointed and until a successor is elected or appointed and qualified, or until the officer's resignation or removal.

(4) An officer, as between himself or herself and other officers and the association, has the authority and shall perform the duties in the management of the association as may be provided in the bylaws or as may be determined by resolution of the board not inconsistent with the bylaws.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.454 Removal or resignation of officer; contract rights.

Sec. 454. An officer of an association may be removed by the board, or by the chief executive officer of the association if authorized by the board or the bylaws of an association, with or without cause. The removal of an officer shall be without prejudice to the officer's contract rights, if any. The election or appointment of an officer does not of itself create contract rights. An officer may resign by written notice to the association. The resignation is effective upon its receipt by the association or at a subsequent time specified in the notice of resignation.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.456 Bonding of officers, directors, and employees.

Sec. 456. Before entering upon the performance of any of their duties, each director, employee, and officer of an association shall be individually bonded with adequate corporate surety payable to the association as an indemnity for any loss the association may sustain of money or other property by or through any dishonest, fraudulent, or criminal act by the director, officer, or employee. Associations which employ collection agents who for any reason are not covered by a bond, shall provide for the bonding of agents in an amount equal to not less than twice the average monthly collection of the agent. The agents shall make settlement with the association not less than monthly. Bond coverage shall not be required of an agent which is a bank insured by the federal deposit insurance corporation or an institution insured by the federal savings and loan insurance corporation. The amount and form of the bonds and sufficiency of the surety shall be prescribed by the supervisor. Instead of individual bonds, a blanket bond, protecting the association from loss through an act on the part of the director, officer, or employee may be obtained. A true copy of every current indemnity bond shall be on file at all times with the supervisor. The bonds shall provide that a cancellation of the bonds either by the surety or by the insured shall not become effective until after 10 days' notice in writing is given to the supervisor, unless the supervisor has approved the cancellation earlier.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.458 Fiduciary relationship of directors and officers to association; conflict of interests; profits inuring to officer or director; disclosures; violation as misdemeanor; penalty; restrictions governing conduct of directors and officers.

Sec. 458. (1) Directors and officers occupy a fiduciary relationship to the association of which they are directors or officers, and a director or officer shall not engage or participate, directly or indirectly, in any business or transaction conducted on behalf of or involving the association which would result in a conflict of the director's or officer's own personal interests with those of the association which the director or officer serves unless all of the following occur:

(a) The business or transactions are conducted in good faith and are honest, fair, and reasonable to the association.

(b) A full disclosure of the business or transaction and the nature of the director's or officer's interest is made to the board of directors.

(c) The business or transaction is approved in good faith by the board of directors with an interested director abstaining, which approval shall be recorded in the minutes.

(2) Any profits inuring to the officer or director shall not be at the expense of the association and shall not prejudice the best interests of the association in any way. The business or transaction shall not represent a breach of the officer's or director's fiduciary duty and shall not be fraudulent, illegal, or ultra vires. Notwithstanding any other provisions of this section, the supervisor may require the disclosure by directors, officers, and employees of their personal interest, directly or indirectly, in any business or transaction on behalf of or involving the association and of their control of or active participation in enterprises having activities related to the business of the association. An officer, director, or employee who violates this section

is guilty of a misdemeanor, punishable by a fine of not less than \$100.00 nor more than \$500.00, or imprisonment for not less than 1 month nor more than 6 months, or both.

(3) The following restrictions governing the conduct of directors and officers expressly are specified, but this specification shall not be construed to excuse the directors or officers from the observance of any other aspect of the general fiduciary duty owed by them to the association which they serve:

(a) A director or officer shall not have an interest, directly or indirectly, in the proceeds of a loan or in a purchase, sale, or other investment made by the association, unless the loan, purchase, sale, or investment is authorized expressly by resolution approved by a vote of not less than 2/3 of the total number of directors of the association with the interested director not taking part in the vote.

(b) A director, officer, or employee of an association shall not be granted, or become the obligor on, a real estate loan from the association except for a real estate loan secured solely by an interest in the principal residence of the director, officer, or employee.

(c) A director or officer shall not have an interest, direct or indirect, in the purchase at less than its face value of any evidence of a savings account, deposit, or other indebtedness issued by the association.

(d) A director, association, or officer of an association shall not require, as a condition to the granting of a loan or the extension of any other service by the association, that the borrower or any other person enter into a contract of insurance or any other agreement or understanding with respect to the furnishing of any other goods or services, with a specific company, agency, or individual.

(e) An officer or director acting as proxy for a member of an association shall not exercise, transfer, or delegate the right in any consideration of a private benefit or advantage, direct or indirect, accruing to himself or herself nor surrender control or pass his or her office to any other person in consideration of a private benefit or advantage, direct or indirect. The voting rights of members and directors shall not be the subject of sale, barter, exchange, or similar transaction, either directly or indirectly. An officer or director who violates this subdivision shall be held accountable to the association for any benefit, advantage, or profit.

(f) A director or officer shall not solicit, accept, or agree to accept, directly or indirectly, from a person other than the association a gratuity, compensation, or other personal benefit for an action taken by the association or for endeavoring to procure the action.

(g) A director shall not receive remuneration as a director except reasonable fees for service as a director or as a member of a committee of directors. A director who is an officer or employee of or an attorney for the association may also receive compensation for services as an officer, employee, or attorney.

(4) An officer or director of an association shall not hold office or status as a director or officer of another association, the principal office of which is located in the association's lending area.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.460 Indemnification of party to action or proceeding; presumptions.

Sec. 460. An association may indemnify a person who was or is a party or is threatened to be made a party to a threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative, other than an action by or in the right of the association, by reason of the fact that the person is or was a director, officer, employee, or agent of the association, or is or was serving at the request of the association as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with the action or proceeding, if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the association or its members, and with respect to any criminal action or proceeding, did not have reasonable cause to believe his or her conduct was unlawful. The termination of an action or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the association or the association's members, and, with respect to a criminal action or proceeding, shall not, of itself, create a presumption that the person had reasonable cause to believe that his or her conduct was unlawful.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.462 Indemnification of party to action by or in right of association; effect of negligence or misconduct.

Sec. 462. An association may indemnify a person who was or is a party to or is threatened to be made a party to a threatened, pending, or completed action by or in the right of the association to procure a judgment in the association's favor by reason of the fact that the person is or was a director, officer, employee, or agent of the association, or is or was serving at the request of the association as a director, officer, employee, or

agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses, including attorneys' fees, actually and reasonably incurred by the person in connection with the defense or settlement of the action if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the association or its members. Indemnification shall not be made in respect of a claim, issue, or matter as to which the person has been adjudged to be liable for negligence or misconduct in the performance of his or her duty to the association unless and only to the extent that the court in which the action was brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnity for the expenses which the court considers proper.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.464 Indemnification against expenses actually and reasonably incurred; determination.

Sec. 464. (1) To the extent that a director, officer, employee, or agent of an association has been successful on the merits or otherwise in defense of an action or proceeding as provided in section 460 or 462, or in defense of a claim, issue, or matter in an action or proceeding, the person shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred in connection with the action or proceeding.

(2) An indemnification under section 460 or 462, unless ordered by a court, shall be made by the association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because the person has met the applicable standard of conduct set forth in sections 460 and 462. The determination shall be made by any of the following:

(a) By the board, by a majority vote of the directors who were not a party to the action or proceeding.

(b) By independent legal counsel in a written opinion, if a majority vote by directors who were not a party to the action or proceeding is not obtainable, or if the directors who were not a party to the action or proceeding so decide.

(c) By the members of the association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.466 Civil or criminal action or proceeding; payment of expenses in advance; undertaking.

Sec. 466. Expenses incurred in defending a civil or criminal action or proceeding as provided in section 460 or 462 may be paid by the association in advance of the final disposition of the action or proceeding as authorized in the manner provided in section 464(2) upon receipt of an undertaking by or on behalf of the director, officer, employee, or agent to repay the amount unless it is ultimately determined that the person is entitled to be indemnified by the association.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.468 Validity of provision to indemnify director or officer in action or proceeding; right of indemnification by contract or otherwise by law; continuation of indemnification.

Sec. 468. A provision made to indemnify a director or an officer in an action or proceeding as provided in section 460 or 462, whether contained in the articles of incorporation, the bylaws, a resolution of members or directors, an agreement, or otherwise, shall be invalid only insofar as it is in conflict with section 460 or 462. Sections 460 to 466 and this section shall not affect a right to indemnification to which persons other than directors and officers may be entitled by contract or otherwise by law. The indemnification provided in sections 460 to 466 and this section continues as to a person who has ceased to be a director, officer, employee, or agent, and shall inure to the benefit of the heirs, executors, and administrators of that person.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.470 Insurance against liability.

Sec. 470. An association may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee, or agent of the association, or is or was serving at the request of the association as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against the person and incurred by the person in the capacity or arising out of his or her status as such, whether or not the association would have power to indemnify the person against liability under sections 460 to 468.

History: 1980, Act 307, Eff. Jan. 1, 1981.

491.472 Meaning of "association" in MCL 491.460 to 491.470.

Sec. 472. As used in sections 460 to 470, “association” means, in addition to an association, all constituent associations absorbed in a merger as well as the resulting association, so that a person who is or was a director, officer, employee, or agent of the constituent association or is or was serving at the request of the constituent association as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise shall stand in the same position under this section with respect to the resulting association, as the person would if the person had served the resulting association in the same capacity.

History: 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.