

Article 4.

Supervision and Regulation.

**§ 54B-52. Commissioner of Banks.**

The Commissioner of Banks of the State is hereby empowered and directed to perform all the duties and exercise all the powers as to savings and loan associations organized or operated under this Chapter, unless herein otherwise provided. (1981, c. 282, s. 3; 1989, c. 76, s. 16; 2001-193, s. 16.)

**§ 54B-53: Repealed by Session Laws 2001-193, s. 3.**

**§ 54B-54. Deputy commissioner of Savings Institutions Division.**

There shall be a deputy commissioner of the Savings Institutions Division as appointed by the Commissioner in G.S. 53C-2-2. The deputy commissioner authorized by this section shall perform any duties and exercise any powers directed by the Commissioner. (1981, c. 282, s. 3; 1989, c. 76, s. 18; 2001-193, s. 5; 2012-56, s. 40.)

**§ 54B-55. Power of Commissioner of Banks to promulgate rules and regulations; reproduction of records.**

(a) The Commissioner of Banks shall have the right, and is empowered, to promulgate rules, instructions and regulations as may be necessary to the discharge of his duties and powers as to savings and loan associations for the supervision and regulation of said associations, and for the protection of the public investing in said savings and loan associations.

(b) Without limiting the generality of the foregoing paragraph, rules, instructions, and regulations may be promulgated with respect to:

- (1) Reserve requirements;
- (2) Stock ownership and dividends;
- (3) Stock transfers;
- (4) Incorporators, stockholders, directors, officers and employees of an association;
- (5) Bylaws;
- (6) Repealed by Session Laws 2001-193, s. 3.
- (7) The structure of the office of the Commissioner of Banks;
- (8) The operation of associations;
- (9) Withdrawable accounts, bonus plans, and contracts for savings programs;
- (10) Loans and loan expenses;
- (11) Investments;
- (12) Forms and definitions;
- (13) Types of financial records to be maintained by associations;
- (14) Retention periods of various financial records;
- (15) Internal control procedures of associations;
- (16) Conduct and management of associations;
- (17) Chartering and branching;
- (18) Liquidations;
- (19) Mergers;
- (20) Conversions;
- (21) Reports which may be required by the Commissioner of Banks;
- (22) Conflicts of interest;

- (23) Collection of State savings and loan taxes;
  - (24) Service corporations; and
  - (25) Savings and loan holding companies.
- (c) Repealed by Session Laws 1983, c. 144, s. 14.
- (d) Any association may cause any or all records by it to be recorded, copied or reproduced by any photographic, photostatic or miniature photographic process which correctly, accurately, permanently copies, reproduces or forms a medium for copying or reproducing the original record on a film or other durable material.
- (e) Any such photographic, photostatic or miniature photographic copy or reproduction shall be deemed to be an original record in all courts and administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any such photographic copy or reproduction shall, for all purposes, be deemed a facsimile, exemplification or certified copy of the original record.
- (f) The provisions of this section with reference to the retention and disposition of records shall apply to any federal savings and loan association operating in North Carolina unless in conflict with regulations prescribed by its supervisory authority. (1981, c. 282, s. 3; 1983, c. 144, s. 14; 1989, c. 76, s. 19; 2001-193, ss. 3, 16.)

**§ 54B-56. Examinations by Commissioner of Banks; report.**

- (a) If at any time the Commissioner of Banks deems it prudent, it shall be his duty to examine and investigate everything relating to the business of a State association or a savings and loan holding company, and to appoint a suitable and competent person to make such investigation, who shall file with the Commissioner of Banks a full report of his finding in such case, including in his report any violation of law or any unauthorized or unsafe practices of the association disclosed by his examination.
- (b) The Commissioner of Banks shall furnish a copy of the report to the association examined and may, upon request, furnish a copy of or excerpts from the report to the appropriate federal regulatory authorities.
- (c) No association may willfully delay or willfully obstruct an examination in any fashion. Any person failing to comply with this subsection shall be guilty of a Class 1 misdemeanor.
- (d) No person having in his possession or control any books, accounts or papers of any State association shall refuse to exhibit same to the Commissioner of Banks or his agents on demand, or shall knowingly or willingly make any false statement in regard to the same. Any person failing to comply with this subsection shall be guilty of a Class 1 misdemeanor. (1981, c. 282, s. 3; 1989 (Reg. Sess., 1990), c. 806, s. 5; 1993, c. 539, ss. 431, 432; 1994, Ex. Sess., c. 24, s. 14(c); 2001-193, s. 16.)

**§ 54B-57. Supervision and examination fees.**

- (a) Every State association, including associations in process of voluntary liquidation or savings and loan holding company, shall pay into the office of the Commissioner of Banks each July a supervisory fee. Examination fees shall be paid promptly upon an association's receipt of the examination billing. The Commissioner of Banks, subject to the advice and consent of the Commission, shall, on or before June 1 of each year:
- (1) Determine and fix the scale of supervisory and examination fees to be assessed and collected during the next fiscal year;
  - (2) Determine and fix the amount of the fee and set the fee collection schedule for the fees to be assessed to and collected from applicants to defray the cost of

processing their charter, branch, merger, conversion, location change, savings and loan holding company acquisition, and name change applications.

(b) All funds and revenue collected by the Division under the provisions of this section and the provisions of all other sections of this Chapter which authorize the collection of fees and other funds shall be deposited with the State Treasurer of North Carolina and expended under the terms of the Executive Budget Act, solely to defray expenses incurred by the office of the Commissioner of Banks in carrying out its supervisory and auditing functions.

(c) Notwithstanding any of the provisions of subsections (a) and (b) of this section, whenever the Commissioner of Banks under the provisions of G.S. 54B-56 appoints a suitable and competent person, other than a person employed by the Commissioner of Banks' office, to make an examination and investigation of the business of a State association, all costs and expenses relative to such examination and investigation shall be paid by such association. (1981, c. 282, s. 3; 1983, c. 144, s. 15; 1985, c. 659, s. 10; 2001-193, s. 16.)

**§ 54B-58. Prolonged audit, examination or revaluation; payment of costs.**

(a) If, in the opinion of the Commissioner of Banks, an examination conducted under the provisions of G.S. 54B-57 fails to disclose the complete financial condition of an association, he may in order to ascertain its complete financial condition:

- (1) Make an extended audit or examination of the association or cause such an audit or examination to be made by an independent auditor;
- (2) Make an extended revaluation of any of the assets or liabilities of the association or cause an independent appraiser to make such revaluation.

(b) The Commissioner of Banks shall collect from the association a reasonable sum for actual or necessary expenses of such an audit, examination or revaluation. (1981, c. 282, s. 3; 2001-193, s. 16.)

**§ 54B-59. Cease and desist orders.**

(a) If any person or association is engaging in, or has engaged in, any unsafe or unsound practice or unfair and discriminatory practice in conducting the association's business, or of any other law, rule, regulation, order or condition imposed in writing by the Commissioner of Banks, the Commissioner of Banks may issue a notice of charges to such person or association. A notice of charges shall specify the acts alleged to sustain a cease and desist order, and state the time and place at which a hearing shall be held. A hearing before the Commission on the charges shall be held no earlier than seven days, and no later than 14 days after issuance of the notice. The charged institution is entitled to a further extension of seven days upon filing a request with the Commissioner of Banks. The Commissioner of Banks may also issue a notice of charges if he has reasonable grounds to believe that any person or association is about to engage in any unsafe or unsound business practice, or any violation of this Chapter, or any other law, rule, regulation or order. If, by a preponderance of the evidence, it is shown that any person or association is engaged in, or has been engaged in, or is about to engage in, any unsafe or unsound business practice, or unfair and discriminatory practice or any violation of this Chapter, or any other law, rule, regulation, or order, a cease and desist order shall be issued. The Commission may issue a temporary cease and desist order to be effective for 14 days and may be extended once for a period of 14 days.

(b) If any person or State association is engaging in, has engaged in, or is about to engage in any unsafe or unsound practice in conducting the association's business, or any violation of this

Chapter or of any other law, rules, regulation, order, or condition imposed in writing by the Commissioner of Banks, and the Commissioner of Banks has determined that immediate corrective action is required, the Commissioner of Banks may issue a temporary cease and desist order. A temporary cease and desist order shall be effective immediately upon issuance for a period of 14 days, and may be extended once for a period of 14 days. Such an order shall state its duration on its face and the words, "Temporary Cease and Desist Order." A hearing before the Commission shall be held within such time as such an order remains effective, at which time a temporary order may be dissolved or made permanent. (1981, c. 282, s. 3; 2001-193, s. 16.)

**§ 54B-60. Commissioner of Banks to have right of access to books and records of association; right to issue subpoenas, administer oaths, examine witnesses.**

(a) The Commissioner of Banks and his agents:

- (1) Shall have free access to all books and records of an association, or a service corporation thereof, that relate to its business, and the books and records kept by an officer, agent or employee relating to or upon which any record is kept;
- (2) May subpoena witnesses and administer oaths or affirmations in the examination of any director, officer, agent, or employee of an association, or a service corporation thereof or of any other person in relation to its affairs, transactions and conditions;
- (3) May require the production of records, books, papers, contracts and other documents; and
- (4) May order that improper entries be corrected on the books and records of an association.

(b) The Commissioner of Banks may issue subpoenas duces tecum.

(c) If a person fails to comply with a subpoena so issued or a party or witness refuses to testify on any matters, a court of competent jurisdiction, on the application of the Commissioner of Banks, shall compel compliance by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify in such court. (1981, c. 282, s. 3; 2001-193, s. 16.)

**§ 54B-61. Test appraisals of collateral for loans; expense paid.**

(a) The Commissioner of Banks may direct the making of test appraisals of real estate and other collateral securing loans made by associations doing business in this State, employ competent appraisers, or prescribe a list from which competent appraisers may be selected, for the making of such appraisals by the Commissioner of Banks, and do any and all other acts incident to the making of such test appraisals.

(b) In lieu of causing such appraisals to be made, the Commissioner of Banks may accept an appraisal caused to be made by the appropriate federal regulatory authority.

(c) The expense and cost of test appraisals made pursuant to this section shall be defrayed by the association subjected to such test appraisals, and each association doing business in this State shall pay all reasonable costs and expenses of such test appraisals when it shall be directed. (1981, c. 282, s. 3; 1989 (Reg. Sess., 1990), c. 806, s. 6; 2001-193, s. 16.)

**§ 54B-62. Relationship of savings and loan associations with the Savings Institutions Division.**

(a) Except as provided by subsection (b) of this section, a savings and loan association or any director, officer, employee, or representative thereof shall not grant or give to any employee of the Savings Institutions Division, or to their spouses, any loan or gratuity, directly or indirectly.

(b) No person on the staff of the Savings Institutions Division shall:

- (1) Hold an office or position in any State association or exercise any right to vote on any State association matter by reason of being a member of the association;
- (2) Be interested, directly or indirectly in any savings and loan association organized under the laws of this State; or
- (3) Undertake any indebtedness, as a borrower directly or indirectly or endorser, surety or guarantor, or sell or otherwise dispose of any loan or investment to any savings and loan association organized under the laws of this State.

(c) Notwithstanding subsection (b) of this section, any person employed in or by the Savings Institutions Division may be a withdrawable account holder and receive earnings on such account.

(d) Any employee of the Savings Institutions Division shall dispose of any right or interest in a savings and loan association, held either directly or indirectly, that is prohibited under subsection (b) of this section, within 60 days after the date of the employee's appointment or employment. If that person is indebted as borrower directly or indirectly, or is an endorser, surety or guarantor on a note, at the time of his appointment or employment, he may continue in such capacity until such loan is paid off.

(e) If any employee of the Division has a loan or other note acquired by a State savings and loan association through the secondary market, he may continue with the debt until such loan or note is paid off. (1981, c. 282, s. 3; 1989, c. 76, s. 20; 1991, c. 707, s. 3; 2001-193, s. 6.)

#### **§ 54B-63. Confidential information.**

(a) The following records or information of the Commission, the Commissioner of Banks or the agent(s) of either shall be confidential and shall not be disclosed:

- (1) Information obtained or compiled in preparation of or anticipation of, or during an examination, audit or investigation of any association;
- (2) Information reflecting the specific collateral given by a named borrower, the specific amount of stock owned by a named stockholder, or specific withdrawable accounts held by a named member or customer;
- (3) Information obtained, prepared or compiled during or as a result of an examination, audit or investigation of any association by an agency of the United States, if the records would be confidential under federal law or regulation;
- (4) Information and reports submitted by associations to federal regulatory agencies, if the records or information would be confidential under federal law or regulation;
- (5) Information and records regarding complaints from the public received by the Division which concern associations when the complaint would or could result in an investigation, except to the management of those associations;
- (6) Any other letters, reports, memoranda, recordings, charts or other documents or records which would disclose any information of which disclosure is prohibited in this subsection.

(b) A court of competent jurisdiction may order the disclosure of specific information.

(c) The information contained in an application shall be deemed to be public information. Disclosure shall not extend to the financial statement of the incorporators nor to any further information deemed by the Commissioner of Banks to be confidential.

(d) Nothing in this section shall prevent the exchange of information relating to associations and the business thereof with the representatives of the agencies of this State, other states, or of the United States, or with reserve or insuring agencies for associations. The private business and affairs of an individual or company shall not be disclosed by any person employed by the Savings Institutions Division, any member of the Commission, or by any person with whom information is exchanged under the authority of this subsection.

(e) Any official or employee violating this section shall be liable to any person injured by disclosure of such confidential information for all damages sustained thereby. Penalties provided shall not be exclusive of other penalties. (1981, c. 282, s. 3; 1989, c. 76, s. 21; 2001-193, s. 16.)

#### **§ 54B-63.1. Confidential records.**

(a) As used in this section:

(1) "Compliance review committee" means:

- a. An audit, loan review, or compliance committee appointed by the board of directors of an association or any other person to the extent the person acts at the direction of or reports to a compliance review committee; and
- b. Whose functions are to audit, evaluate, report, or determine compliance with any of the following:
  1. Loan underwriting standards;
  2. Asset quality;
  3. Financial reporting to federal or State regulatory agencies;
  4. Adherence to the association's investment, lending, accounting, ethical, and financial standards; or
  5. Compliance with federal or State statutory requirements.

(2) "Compliance review documents" means documents prepared for or created by a compliance review committee.

(3) "Loan review committee" means a person or group of persons who, on behalf of an association, reviews assets, including loans held by the association, for the purpose of assessing the credit quality of the loans or the loan application process, compliance with the association's investment and loan policies, and compliance with applicable laws and regulations.

(4) "Person" means an individual, group of individuals, board, committee, partnership, firm, association, corporation, or other entity.

(b) Associations chartered under the laws of North Carolina or of the United States shall maintain complete records of compliance review documents, and the documents shall be available for examination by any federal or State association regulatory agency having supervisory jurisdiction. Notwithstanding Chapter 132 of the General Statutes, compliance review documents in the custody of an association or regulatory agency are confidential, are not open for public inspection, and are not discoverable or admissible in evidence in a civil action against an association, its directors, officers, or employees, unless the court finds that the interests of justice require that the documents be discoverable or admissible in evidence. (1995, c. 408, s. 2.)

**§ 54B-64. Civil penalties; State associations.**

(a) Except as otherwise provided in this Article, any association which is found to have violated any provision of this Article may be ordered to forfeit and pay a civil penalty of up to twenty thousand dollars (\$20,000). Any association which is found to have violated or failed to comply with any cease and desist order issued under the authority of this Article may be ordered to forfeit or pay a civil penalty of up to twenty thousand dollars (\$20,000) for each day that the violation or failure to comply continues.

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) To enforce the provisions of this section, the Commissioner of Banks is authorized to assess such a penalty and to appear in a court of competent jurisdiction and to move the court to order payment of the penalty. Prior to the assessment of the penalty, a hearing shall be held by the Commissioner of Banks which shall comply with the provisions of Article 3 of Chapter 150B of the General Statutes.

(c) If the Commissioner of Banks determines that, as a result of a violation of any provision of this Article, or of a failure to comply with any cease and desist order issued under the authority of this Article, a situation exists requiring immediate corrective action, the Commissioner of Banks may impose the civil penalty in this section on the association without a prior hearing, and said penalty shall be effective as of the date of notice to the association. Imposition of such penalty may be directly appealed to the Wake County Superior Court.

(d) Nothing in this section shall prevent anyone damaged by a State association from bringing a separate cause of action in a court of competent jurisdiction. (1981, c. 282, s. 3; 1987, c. 827, s. 1; 1998-215, s. 36; 2001-193, s. 16.)

**§ 54B-65. Civil penalties; directors, officers and employees.**

(a) Any person, whether a director, officer or employee, who is found to have violated any provision of this Article, whether willfully or as a result of gross negligence, gross incompetency, or recklessness, may be ordered to forfeit and pay a civil penalty of up to five thousand dollars (\$5,000) per violation. Any person who is found to have violated or failed to comply with any cease and desist order issued under the authority of this Article, may be ordered to forfeit and pay a civil penalty of up to five thousand dollars (\$5,000) per violation for each day that the violation or failure to comply continues.

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) To enforce the provisions of this section, the Commissioner of Banks is authorized to assess such a penalty and to appear in a court of competent jurisdiction and to move the court to order payment of the penalty. Prior to the assessment of the penalty, a hearing shall be held by the Commissioner of Banks which shall comply with the provisions of Article 3 of Chapter 150B of the General Statutes.

(c) Whenever the Commissioner of Banks shall determine that an emergency exists which requires immediate corrective action, the Commissioner of Banks, either before or after instituting any other action or proceeding authorized by this Article, may request the Attorney General to institute a civil action in a court of competent jurisdiction, in the name of the State upon the relation of the Commissioner of Banks seeking injunctive relief to restrain or enjoin the violation or threatened violation of this Article and for such other and further relief as the court may deem

proper. Instituting an action for injunctive relief shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violation of this Article.

(d) Nothing in this section shall prevent anyone damaged by a director, officer or employee of a State association from bringing a separate cause of action in a court of competent jurisdiction. (1981, c. 282, s. 3; 1987, c. 827, s. 1; 1998-215, s. 37; 2001-193, s. 16.)

**§ 54B-66. Criminal penalties.**

(a) The provisions of this section shall in no event extend to persons who are found to have acted only with gross negligence, simple negligence, recklessness or incompetence.

(b) In addition to any of the other penalties or remedies provided by this Article, the following shall be deemed to be Class 1 misdemeanors:

(1) The willful or knowing violation of the provisions of this Article by any employee of the Savings Institutions Division.

(2) The willful or knowing violation of a cease and desist order which has become final in that no further administrative or judicial appeal is available.

(c) In addition to any of the other penalties or remedies provided by this Article, the willful omission, making, or concurrence in making or publishing a written report, exhibit, or entry in a financial statement on the books of the association, which contains a material statement known to be false shall be deemed to be a Class 1 misdemeanor. For purposes of this section, "material" shall mean "so substantial and important as to influence a reasonable and prudent businessman or investor."

(d) The Commissioner of Banks is authorized to enforce this section in a court of competent jurisdiction. (1981, c. 282, s. 3; 1989, c. 76, s. 22; 1993, c. 539, s. 433; 1994, Ex. Sess., c. 24, s. 14(c); 2001-193, s. 16.)

**§ 54B-67. Primary jurisdiction.**

Whenever an agency of the United States government shall defer to the Commissioner of Banks, or notify the Commissioner of Banks of pending action against an association chartered by this State or fail to exercise its authority over any State-or federally-chartered association doing business in this State, the Commissioner of Banks shall have the authority to exercise jurisdiction over such association. (1981, c. 282, s. 3; 2001-193, s. 16.)

**§ 54B-68. Supervisory control.**

(a) Whenever the Commissioner of Banks determines that an association is conducting its business in an unsafe or unsound manner or in any fashion which threatens the financial integrity or sound operation of the association, the Commissioner of Banks may serve a notice of charges on the association, requiring it to show cause why it should not be placed under supervisory control. Such notice of charges shall specify the grounds for supervisory control, and set the time and place for a hearing. A hearing before the Commission pursuant to such notice shall be held within 15 days after issuance of the notice of charges, and shall comply with the provisions of Article 3 of Chapter 150B of the General Statutes.

(b) If, after the hearing provided above, Commission determines that supervisory control of the association is necessary to protect the association's members, customers, stockholders or creditors, or the general public, the Commissioner of Banks shall issue an order taking supervisory control of the association. An appeal may be filed in the Wake County Superior Court.

(c) If the order taking supervisory control becomes final, the Commissioner of Banks may appoint an agent to supervise and monitor the operations of the association during the period of supervisory control. During the period of supervisory control, the association shall act in accordance with such instructions and directions as may be given by the Commissioner of Banks directly or through his supervisory agent and shall not act or fail to act except when to do so would violate an outstanding cease and desist order.

(d) Within 180 days of the date the order taking supervisory control becomes final, the Commissioner of Banks shall issue an order approving a plan for the termination of supervisory control. The plan may provide for:

- (1) The issuance by the association of capital stock;
- (2) The appointment of one or more officers and/or directors;
- (3) The reorganization, merger, or consolidation of the association;
- (4) The dissolution and liquidation of the association.

The order approving the plan shall not take effect for 30 days during which time period an appeal may be filed in the Wake County Superior Court.

(e) The costs incident to this proceeding shall be paid by the association, provided such costs are found to be reasonable.

(f) For the purposes of this section, an order shall be deemed final if:

- (1) No appeal is filed within the specific time allowed for the appeal, or
- (2) After all judicial appeals are exhausted. (1981, c. 282, s. 3; 1987, c. 827, s. 1; 2001-193, s. 16.)

#### **§ 54B-69. Removal of directors, officers and employees.**

(a) If, in the Commissioner of Banks' opinion, one or more directors, officers or employees of any association has participated in or consented to any violation of this Chapter, or any other law, rule, regulation or order, or any unsafe or unsound business practice in the operation of any association; or any insider loan not specifically authorized by or pursuant to this Chapter; or any repeated violation of or failure to comply with any association's bylaws, the Commissioner of Banks may serve a written notice of charges upon the director, officer or employee in question, and the association, stating his intent to remove said director, officer or employee. Such notice shall specify the conduct and place for the hearing before the Commission to be held. A hearing shall be held no earlier than 15 days and no later than 30 days after the notice of charges is served, and it shall comply with the provisions of Article 3 of Chapter 150B of the General Statutes. If, after the hearing, the Commission determines that the charges asserted have been proven by a preponderance of the evidence, the Commissioner of Banks may issue an order removing the director, officer or employee in question. Such an order shall be effective upon issuance and may include the entire board of directors or all of the officers of the association.

(b) If it is determined that any director, officer or employee of any association has knowingly participated in or consented to any violation of this Chapter, or any other law, rule, regulation or order, or engaged in any unsafe or unsound business practice in the operation of any association, or any repeated violation of or failure to comply with any association's bylaws, and that as a result, a situation exists requiring immediate corrective action, the Commissioner of Banks may issue an order temporarily removing such person or persons pending a hearing. Such an order shall state its duration on its face and the words, "Temporary Order of Removal," and shall be effective upon issuance, for a period of 15 days, and may be extended once for a period of 15 days.

A hearing must be held within 10 days of the expiration of a temporary order, or any extension thereof, at which time a temporary order may be dissolved or converted to a permanent order.

(c) Any removal pursuant to subsections (a) or (b) of this section shall be effective in all respects as if such removal had been made by the board of directors, the members or the stockholders of the association in question.

(d) Without the prior written approval of the Commissioner of Banks, no director, officer or employee permanently removed pursuant to this section shall be eligible to be elected, reelected or appointed to any position as a director, officer or employee of that association, nor shall such a director, officer or employee be eligible to be elected to or retain a position as a director, officer or employee of any other State association. (1981, c. 282, s. 3; 1987, c. 827, s. 1; 2001-193, s. 16.)

### **§ 54B-70. Involuntary liquidation.**

(a) The Commissioner of Banks with prior approval of the Commission may take custody of the books, records and assets of every kind and character of any association organized and operated under the provisions of this Chapter for any of the purposes hereinafter enumerated, if it reasonably appears from examinations or from reports made to the Commissioner of Banks that:

- (1) The directors, officers, or liquidators have neglected, failed or refused to take such action which the Commissioner of Banks may deem necessary for the protection of the association, or have impeded or obstructed an examination; or
- (2) The withdrawable capital of the association is impaired to the extent that the realizable value of its assets is insufficient to pay in full its creditors and holders of withdrawable accounts; or its liquidity fund or general reserve account is impaired; or
- (3) The business of the association is being conducted in a fraudulent, illegal or unsafe manner, or that the association is in an unsafe or unsound condition to transact business; (any association which, except as authorized in writing by the Commissioner of Banks, fails to make full payment of any withdrawal when due is in an unsafe or unsound condition to transact business, notwithstanding such provisions of the certificate of incorporation or such statutes or regulations with respect to payment of withdrawals in event an association does not pay all withdrawals in full); or
- (4) The officers, directors, or employees have assumed duties or performed acts in excess of those authorized by statute or regulation or charter, or without supplying the required bond; or,
- (5) The association has experienced a substantial dissipation of assets or earnings due to any violation or violations of statute or regulation, or due to any unsafe or unsound practice or practices; or
- (6) The association is insolvent, or is in imminent danger of insolvency or has suspended its ordinary business transactions due to insufficient funds; or
- (7) The association is unable to continue operations.

(b) Unless the Commissioner of Banks finds that such an emergency exists which may result in loss to members, withdrawable account holders, stockholders, or creditors, and which requires that he take custody immediately, he shall first give written notice to the directors and officers specifying the conditions criticized and allowing a reasonable time in which corrections may be made before a receiver shall be appointed as outlined in subsection (d) below.

(c) The purposes for which the Commissioner of Banks may take custody of an association include examination or further examination; conservation of its assets; restoration of impaired capital; the making of any reasonable or equitable adjustment deemed necessary by the Commissioner of Banks under any plan of reorganization.

(d) If the Commissioner of Banks after taking custody of an association, finds that one or more of the reasons for having taken custody continue to exist through the period of his custody, with little or no likelihood of amelioration of the situation, then he shall appoint as receiver or co-receiver any qualified person, firm or corporation for the purpose of liquidation of the association, which receiver shall furnish bond in form, amount and with surety as the Commissioner of Banks may require. The Commissioner of Banks may appoint the association's withdrawable account insurance corporation or its nominee as the receiver, and such insuring corporation shall be permitted to serve without posting bond.

(e) In the event the Commissioner of Banks appoints a receiver for an association, he shall mail a certified copy of the appointment order by certified mail to the address of the association as it shall appear on the records of the Division, and to any previous receiver or other legal custodian of the association, and to any court or other authority to which such previous receiver or other legal custodian is subject. Notice of such appointment shall be published in a newspaper of general circulation in the county where such association has its principal office.

(f) Whenever a receiver for an association is appointed pursuant to subsection (d) above the association may within 30 days thereafter bring an action in the Superior Court of Wake County, for an order requiring the Commissioner of Banks to remove such receiver.

(g) The duly appointed and qualified receiver shall take possession promptly of the association for which he or it has been so appointed, in accordance with the terms of such appointment, by service of a certified copy of the Commissioner of Banks' appointment order upon the association at its principal office through the officer or employee who is present and appears to be in charge. Immediately upon taking possession of the association, the receiver shall take possession and title to books, records and assets of every description of such association. The receiver, by operation of law and without any conveyance or other instrument, act or deed, shall succeed to all the rights, titles, powers and privileges of the association, its members or stockholders, holders of withdrawable accounts, its officers and directors or any of them; and to the titles to the books, records and assets of every description of any previous receiver or other legal custodian of such association. Such members, stockholders, holders of withdrawable accounts, officers or directors, or any of them, shall not thereafter, except as hereinafter expressly provided, have or exercise any such rights, powers or privileges or act in connection with any assets or property of any nature of the association in receivership: Provided however, that any officer, director, member, stockholder, withdrawable account holder, or borrower of such association shall have the right to communicate with the Commissioner of Banks with respect to such receivership. The Commissioner of Banks, with the approval of the Commission, may at any time, direct the receiver to return the association to its previous or a newly constituted management. The Commissioner of Banks may provide for a meeting or meetings of the members or stockholders for any purpose, including, without any limitation on the generality of the foregoing, the election of directors or an increase in the number of directors, or both, or the election of an entire new board of directors; and may provide for a meeting or meetings of the directors for any purpose including, without any limitation on the generality of the foregoing, the filling of vacancies on the board, the removal of officers and the election of new officers, or for any of such purposes. Any such meeting

of members or stockholders, or of directors, shall be supervised or conducted by a representative of the Commissioner of Banks.

- (h) A duly appointed and qualified receiver shall have power and authority to:
  - (1) Demand, sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes, and property of every description of the association;
  - (2) Foreclose mortgages, deeds of trust, and other liens executed to the association to the extent the association would have had such right;
  - (3) Institute suits for the recovery of any estate, property, damages, or demands existing in favor of the association, and he shall, upon his own application, be substituted as party plaintiff in the place of the association in any suit or proceeding pending at the time of his appointment;
  - (4) Sell, convey, and assign all the property rights and interest owned by the association;
  - (5) Appoint agents to serve at his pleasure;
  - (6) Examine and investigate papers and persons, and pass on claims as provided in the regulations as prescribed by the Commissioner of Banks;
  - (7) Make and carry out agreements with the insuring corporation or with any other financial institution for the payment or assumption of the association liabilities, in whole or in part, and to sell, convey, transfer, pledge, or assign assets as security or otherwise and to make guarantees in connection therewith; and
  - (8) Perform all other acts which might be done by the employees, officers and directors.

Such powers shall be continued in effect until liquidation and dissolution or until return of the association to its prior or newly constituted management.

(i) A receiver may at any time during the receivership and prior to final liquidation be removed and a replacement appointed by the Commissioner of Banks.

(j) The Commissioner of Banks may determine that such liquidation proceedings should be discontinued. He shall then remove the receiver and restore all the rights, powers, and privileges of its members and stockholders, customers, employees, officers and directors, or restore such rights, powers, and privileges to its members, stockholders and customers, and grant such rights, powers and privileges to a newly constituted management, all as of the time of such restoration of the association to its management unless another time for such restoration shall be specified by the Commissioner of Banks. The return of an association to its management or to a newly constituted management from the possession of a receiver shall, by operation of law and without any conveyance or other instrument, act or deed, vest in such association the title to all property held by the receiver in his capacity as receiver for such association.

(k) A receiver may also be appointed under the authority of G.S. 1-502. No judge or court, however, shall appoint a receiver for any State association unless five days' advance notice of the motion, petition or application for appointment of a receiver shall have been given to such association and to the Commissioner of Banks.

(l) Following the appointment of a receiver, the Commissioner of Banks shall request the Attorney General to institute an action in the name of the Commissioner of Banks in the superior court against the association for the orderly liquidation and dissolution of the association, and for

an injunction to restrain the officers, directors and employees from continuing the operation of the association.

(m) Claims against a State association in receivership shall have the following order of priority for payment:

- (1) Costs, expenses and debts of the association incurred on or after the date of the appointment of the receiver, including compensation for the receiver;
- (2) Claims of holders of special purpose or thrift accounts;
- (3) Claims of holders of withdrawable accounts;
- (4) Claims of general creditors;
- (5) Claims of stockholders of a stock association;
- (6) All remaining assets to members and stockholders in an amount proportionate to their holdings as of the date of the appointment of the receiver.

(n) All claims of each class described within subsection (m) above shall be paid in full so long as sufficient assets remain. Members of the class for which the receiver cannot make payment in full because assets will be depleted during payment to such class shall be paid an amount proportionate to their total claims.

(o) The Commissioner of Banks shall have the authority to direct the payment of claims for which no provision is herein made, and may direct the payment of claims within a class. The Commissioner of Banks shall have the authority to promulgate rules and regulations governing the payment of claims by an association in receivership.

(p) When all assets of the association have been fully liquidated, and all claims and expenses have been paid or settled, and the receiver shall recommend a final distribution, the dissolution of the association in receivership shall be accomplished in the following manner:

- (1) The receiver shall file with the Commissioner of Banks a detailed report, in a form to be prescribed by the Commissioner of Banks, of his acts and proposed final distribution, and dissolution.
- (2) Upon the Commissioner of Banks' approval of the final report of the receiver, the receiver shall provide such notice and thereafter shall make such final distribution, in such manner as the Commissioner of Banks may direct.
- (3) When a final distribution has been made except as to any unclaimed funds, the receiver shall deposit such unclaimed funds with the Commissioner of Banks and shall deliver to the Commissioner of Banks all books and records of the dissolved association.
- (4) Upon completion of the foregoing procedure, and upon the joint petition of the Commissioner of Banks and receiver to the superior court, the court may find that the association should be dissolved, and following such publication of notice of dissolution as the court may direct, the court may enter a decree of final resolution and the association shall thereby be dissolved.
- (5) Upon final dissolution of the association in receivership or at such time as the receiver shall be otherwise relieved of his duties, the Commissioner of Banks shall cause an audit to be conducted, during which the receiver shall be available to assist in such. The accounts of the receiver shall then be ruled upon by the Commissioner of Banks and Commission and if approved, the receiver shall thereupon be given a final and complete discharge and release. (1981, c. 282, s. 3; 1987, c. 237, s. 4; 2001-193, s. 16.)

**§ 54B-71. Judicial review.**

Any person or State association against whom a cease and desist order is issued or a fine is imposed may have such order or fine reviewed by a court of competent jurisdiction. Except as otherwise provided, an appeal may be made only within 30 days of the issuance of the order or the imposition of the fine, whichever is later. (1981, c. 282, s. 3.)

**§ 54B-72. Indemnity.**

No person who is fined or penalized for a violation of any criminal provision of this Article shall be reimbursed or indemnified in any fashion by the association for such fine or penalty. (1981, c. 282, s. 3.)

**§ 54B-73. Cumulative penalties.**

All penalties, fines, and remedies provided by this Article shall be cumulative. (1981, c. 282, s. 3.)

**§ 54B-74. Annual license fees.**

All State associations shall pay an annual license fee set by the Commissioner of Banks, subject to the advice and consent of the Commission. Such license fee shall be used to defray the expenses incurred by the Division in supervising State associations. The Commissioner of Banks may license each State association upon receipt of the license fee and filing of an application in such form as the Commissioner of Banks may prescribe. (1981, c. 282, s. 3; 1985, c. 659, s. 11; 2001-193, s. 16.)

**§ 54B-75. Statement filed by savings and loan association; fees and examination.**

Every State association shall file in the Office of the Commissioner of Banks, on or before the first day of February in each year, in the form prescribed by the Commissioner of Banks, a statement of the business standing and financial condition of the association on the preceding 31st day of December. This statement shall be signed and sworn to by the secretary or other officer duly authorized by the board of directors of the association before a notary public. The statement shall be accompanied by a filing fee set by the Commissioner of Banks, subject to the advice and consent of the Commission. The filing fees shall be used to defray the expenses incurred by the Division in supervising State associations. The Commissioner of Banks shall receive and thoroughly examine each annual statement. (1981, c. 282, s. 3; 1985, c. 659, s. 12; 1993, c. 163, s. 1; 2001-193, s. 16; 2019-173, s. 1(c).)

**§ 54B-76.** Repealed by Session Laws 2019-173, s. 1(d), effective July 26, 2019.

**§ 54B-77. Certain powers granted to State associations.**

(a) In addition to the powers granted under this Chapter, any savings and loan association incorporated or operated under the provisions of this Chapter is herein authorized to:

- (1) Establish off the premises of any principal office or branch a customer communications terminal, point-of-sale terminal, automated teller machine, automated or other direct or remote information-processing device or machine, whether manned or unmanned, through or by means of which funds or information relating to any financial service or transaction rendered to the public is stored and transmitted, instantaneously or otherwise to or from an association terminal or terminals controlled or used by or with other parties; and

the establishment and use of such a device or machine shall not be deemed to constitute a branch office and the capital requirements and standards for approval of a branch office as set forth in the statutes and regulations, shall not be applicable to the establishment of any such off-premises terminal, device or machine; and associations may through mutual consent share on-premises unmanned automated teller machines and cash dispensers. The Commissioner of Banks may prescribe rules and regulations with regard to the application for permission for use, maintenance and supervision of said terminals, devices and machines;

- (2) Subject to such regulations as the Commissioner of Banks may prescribe, a state-chartered association is authorized to issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations;
- (3) Subject to such regulations as the Commissioner of Banks may prescribe, a state-chartered association may act as a trustee, executor, administrator, guardian or in any other fiduciary capacity permitted for federal savings and loan associations;
- (4) a. In accordance with rules and regulations issued by the Commissioner of Banks, mutual capital certificates may be issued by state-chartered associations and sold directly to subscribers or through underwriters, and such certificates shall constitute part of the general reserve and net worth of the issuing association. The Commissioner of Banks, in the rules and regulations relating to the issuance and sale of mutual capital certificates, shall provide that such certificates:
  1. Shall be subordinate to all savings accounts, savings certificates, and debt obligations;
  2. Shall constitute a claim in liquidation on the general reserves, surplus and undivided profits of the association remaining after the payment of all savings accounts, savings certificates, and debt obligations;
  3. Shall be entitled to the payment of dividends; and
  4. May have a fixed or variable dividend rate.
- b. The Commissioner of Banks shall provide in the rules and regulations for charging losses to the mutual capital certificate, reserves, and other net worth accounts.

(b) To such extent as the Commissioner of Banks may authorize by regulation or advice in writing, a State association may issue notes, bonds, debentures, or other obligations or securities. (1981, c. 282, s. 3; 1983, c. 144, s. 16; 1989 (Reg. Sess., 1990), c. 806, s. 7; 2001-193, s. 16.)

#### **§ 54B-78. Prohibited practices.**

Any person or association who shall engage in any of the following acts or practices shall be guilty of a Class 1 misdemeanor:

- (1) Defamation: Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing,

disseminating, or circulating of any oral, written, or printed statement which is false regarding the financial condition of any association.

- (2) False information and advertising: Making, publishing, disseminating, or circulating or causing, directly or indirectly, to be made published, disseminated, circulated, or otherwise placed before the public in any publication, media, notice, pamphlet, letter, poster, or any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the savings and loan business or with respect to any person in the conduct of the savings and loan business which is untrue, deceptive, or misleading. (1985, c. 659, s. 13; 1993, c. 539, s. 434; 1994, Ex. Sess., c. 24, s. 14(c).)

**§§ 54B-79 through 54B-99. Reserved for future codification purposes.**