

CHAPTER 215

SAVINGS AND LOAN ASSOCIATIONS

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SUBCHAPTER I

GENERAL PROVISIONS ON SAVINGS AND LOAN
ASSOCIATIONS**215.01 Definitions.** In this chapter:

- (1) "Association" means a savings and loan association, a building and loan association or a savings association operating as a mutual or capital stock corporation.
- (2) "Board" means the board of directors of an association.
- (3) "Branch office" means a place of business, other than the home office, where the business of an association is conducted but does not include a limited office or extended office under s. 215.13 (36) or (47).
- (4) "Bylaws" means the bylaws of a given association.
- (5) "Capital stock" means the aggregate of shares of nonwithdrawable stock issued by a stock association.
- (6) "Commissioner" means the commissioner of savings and loan.
- (7) "Earnings" means the return paid on or credited to savings accounts, and may be designated as earnings, dividends or interest.
- (8) "Federal savings and loan association" means a savings and loan association organized pursuant to the Home Owners' Loan Act of 1933, and any acts amendatory thereof and supplementary thereto.
- (9) "Foreign association" means a savings and loan association organized under the laws of any other state or territory, but does not include a federal association.

(10) "Guaranteed mortgage loans" means loans wholly or partially guaranteed by the U.S. department of veterans affairs under the servicemen's readjustment act of 1944, P.L. 78-346, and acts amendatory thereof and supplementary thereto.

(11) "Home office" means the principal place of business of an association.

(13) "Impairment of savings accounts" means that the assets of an association do not have an aggregate appraised value equal to the aggregate savings accounts and other liabilities of the association.

(15) "Insured loans" means loans wholly or partially insured by a state or federal agency.

(17) "Member" means a person owning a savings account in a mutual association or in a stock association if the stock association is a subsidiary of a mutual savings and loan holding company but does not include a person owning a savings account evidenced by a negotiable certificate of deposit which is not in registered form.

(18) "Mutual association" means a mutual savings and loan association.

(18m) "Mutual savings and loan holding company" means a holding company organized under s. 215.59.

(19) "Net income" means the gross income for a period less the aggregate of expenses, determined according to generally accepted accounting principles or an accounting standard or practice approved by the commissioner.

(20) "Net worth" means:

(a) In a stock association, the aggregate of capital stock, additional paid-in capital, retained earnings and other accounts designated as components of net worth by the commissioner, deter-

mined according to generally accepted accounting principles or an accounting standard or practice approved by the commissioner.

(b) In a mutual association, the aggregate of retained earnings and other accounts designated as components of net worth by the commissioner, determined according to generally accepted accounting principles or an accounting standard or practice approved by the commissioner.

(21) "Office" means the office of the commissioner of savings and loan.

(22) "Review board" means the savings and loan review board.

(23) "Saver" means a person who is an owner of a savings account in a given association.

(24) "Savings account" means the monetary interest of the owner thereof in the aggregate of savings accounts in the association and consists of the withdrawal value of such interest.

(24m) "Savings and loan holding company" includes a mutual savings and loan holding company or an equivalent mutual entity organized under the laws of another jurisdiction, a stock savings and loan holding company and includes any person, corporation, partnership, trust, joint stock company, association, state or federal savings and loan association, state or federal savings bank or state or national bank, which owns, holds or in any manner controls, directly or indirectly, 10% of the stock in a savings and loan association.

(25) "State chartered association" means a savings and loan association organized under this chapter.

(26) "Stock association" means a capital stock savings and loan association.

(27) "Stockholder" means a person owning one or more shares of capital stock in a capital stock association.

(27m) "Stock savings and loan holding company" means a savings and loan holding company organized as a capital stock corporation.

(28) "Withdrawal value of a savings account" means the aggregate of deposits in a savings account and the total earnings credited to that account, less withdrawals.

History: 1971 c. 229; 1975 c. 359; 1983 a. 167; 1989 a. 56; 1989 a. 242 ss. 1 to 4; 1991 a. 221.

Chapter 215 is inapplicable to federal savings and loan associations. *Kaski v. First Fed. S. & L. Asso. of Madison*, 72 W (2d) 132, 240 NW (2d) 367.

215.02 Office of the commissioner of savings and loan.

(1) **QUALIFICATIONS, APPOINTMENT AND DUTIES OF DEPUTY COMMISSIONER.** A person is not eligible for appointment as deputy commissioner unless he or she has had at least one year of actual experience in a savings and loan association or savings bank, or serving in a savings and loan association or savings bank supervisory authority, or a combination of such actual experience or supervisory authority. The commissioner shall appoint the deputy commissioner subject to s. 15.04 (2) and (3). The deputy commissioner shall possess all powers and perform the duties of the commissioner during a vacancy in that office and during the absence of or inability of the commissioner to serve.

(2) **FULL-TIME DEVOTION TO DUTIES OF OFFICE.** The deputy commissioner, examiners and clerks shall devote full time to the duties of their respective positions.

(3) **SURETY BONDS.** Bonds shall be executed and filed as follows:

(a) The commissioner shall file an official bond in the sum of \$25,000 approved by the governor.

(b) The deputy commissioner, special deputy commissioners and examiners, each \$10,000.

(c) Special assistants to the commissioner, each \$10,000.

(d) The surety on every bond required under this subsection shall be a surety company licensed by this state.

(4) **IMMUNITY OF COMMISSIONER.** The commissioner shall not be subject to any civil liability or penalty, nor to any criminal prosecution, for any error in judgment or discretion made in good faith

and upon reasonable grounds in any action taken or omitted by the commissioner in the commissioner's official capacity.

(5) **ACTIONS VENUE.** Proceedings by any association to enjoin the commissioner in the discharge of the commissioner's duties shall be had in the county where the savings and loan association is located, or in the state supreme court. All suits and proceedings arising out of this chapter, in which the state, or any of its officers or agents are parties, shall be conducted under the direction and supervision of the department of justice.

(6) **DISCLOSURE OF INFORMATION; PENALTY.** (a) The commissioner and all employees of the office and members of the review board shall keep confidential all the facts and information obtained in the course of examinations by the office and all examination and other confidential information obtained from any state or federal regulatory authority, including an authority of this state or another state, for financial institutions, mortgage bankers, insurance or securities, except:

1. So far as the public duty of such person requires the person to report upon or take special action regarding the affairs of any association.

2. When called as a witness in any criminal proceeding or trial in a court of justice.

3. Under rules prescribed by the commissioner, for the purpose of comparing notes as to matters affecting an association with an examiner of the federal home loan bank board or federal savings and loan insurance corporation as to any association whose savings accounts are insured by the federal savings and loan insurance corporation.

4. The commissioner may:

a. Furnish to the federal home loan bank board or federal savings and loan insurance corporation or to any official or examiner thereof a copy of any examination made by the office of any association or of any report made by such association and filed with the office.

b. Give access to and disclose to the federal home loan bank board, federal savings and loan insurance corporation or to any official or examiner thereof any information possessed by the commissioner about the conditions or affairs of any association whose savings accounts are insured by the federal savings and loan insurance corporation.

5. The commissioner may give access to and disclose to an instrumentality insuring the savings accounts of an association, or to the official examiner of the instrumentality, any information possessed by the commissioner about the conditions or affairs of the association.

6. The commissioner may disclose to any regulatory authority of this state or another state for financial institutions, mortgage bankers, insurance or securities facts and information obtained in the course of examinations by the office, if the regulatory authority agrees to keep the facts and information confidential.

(b) If any person mentioned in par. (a) discloses the name of any debtor of any association or any information about the private account or transactions of such association, discloses any fact obtained in the course of any examination of any association, or discloses examination or other confidential information obtained from any state or federal regulatory authority, including an authority of this state or another state, for financial institutions, mortgage bankers, insurance or securities, except as provided in par. (a), he or she shall forfeit his or her office or position and may be fined not less than \$100 nor more than \$1,000, or imprisoned not less than 6 months nor more than 2 years or both.

(7) **COMMISSIONER TO ISSUE ORDERS; REASONABLE RULES.** (a) In addition to performing the duties prescribed in this chapter, the commissioner shall, with the approval of the review board, issue orders prescribing reasonable rules for conducting the business of associations, subject to the requirements of ch. 227.

(c) If the commissioner, as a result of any examination or report made to the commissioner, finds that any association is violating

the provisions of the articles or bylaws of the association, or the laws of this state, or the laws of the United States, or any lawful rule or order promulgated by the commissioner and review board or any order of the commissioner, the commissioner shall deliver a formal written order to the board of directors of the association in which the facts known to the commissioner are set forth, demanding the discontinuance of the violation and, where applicable, order the association to institute corrective action thereon. The association affected by the order may within 10 days after the order has been delivered to the association request a review of the findings and order before the commissioner, at which time any pertinent evidence may be presented. After review, the commissioner, on the basis of the evidence presented and any matters of record in the office, shall continue, modify or set aside the order. The enforcement of any order issued under this paragraph shall be stayed pending review before the commissioner, and during the period of any subsequent review under s. 215.04 (4).

(d) Any association which willfully violates par. (c) or any order issued thereunder shall, for each violation, forfeit not more than \$250 per day for each day the violation continues. Assessment of any forfeiture shall become effective 20 days from the date of delivery of the order, 20 days from the date of review by the commissioner, if requested, or 20 days from the date of the decision of the review board, if an appeal is taken pursuant to s. 215.04 (4).

(8) REVOCATION OF CERTIFICATE OF INCORPORATION OR LICENSE. Whenever it appears to the commissioner that any association or corporation which has received a certificate of incorporation or a license to do business in this state is conducting its business in violation of this chapter, the commissioner shall report the facts to the department of justice which may bring an action to revoke the certificate of incorporation or license of such association or corporation.

(9) APPROVAL OF ACTS. Whenever any association requests approval of the commissioner for any act, which by statute requires such approval, the commissioner shall have 90 days in which to grant or deny such approval. If the commissioner fails to act, approval shall be deemed to have been granted. In matters which require the holding of public hearings, the 90-day period shall not commence until the conclusion of the hearing and the date set by the commissioner for receipt of briefs.

(10) REMOVAL OF OFFICERS, DIRECTORS OR EMPLOYEES. (a) 1. The commissioner may remove an officer, director or employe of an association if either of the following applies:

a. The policies or practices of the officer, director or employe are prejudicial to the best interest of the association or its savers, endanger or will endanger the safety or solvency of the association, or impair the interests of the savers.

b. The officer, director or employe violates or permits the violation of this chapter, a rule promulgated under this chapter or an order of the commissioner.

2. The commissioner may issue an order removing an officer, director or employe under subd. 1. only after the officer, director or employe is afforded a hearing before the review board and the review board approves the order.

3. An order of removal takes effect on the date issued. A copy of the order shall be served upon the association and upon the officer, director or employe in the manner provided by law for service of a summons in a court of record or by mailing a copy to the association and officer, director or employe at their last-known post-office addresses. Any removal under this subsection has the same effect as if made by the board of directors or the members or stockholders of the association. An officer, director or employe removed from office or employment under this subsection may not be elected as an officer or director of, or be employed by, an association without the approval of the commissioner and the review board. An order of removal under this subsection is a final order or determination of the review board under s. 215.04 (6).

(b) The commissioner may appoint any person to fill the vacancies caused by removal of officers or directors. Any person so appointed shall hold office until the next annual meeting of the members or stockholders.

(11) ANNUAL REPORT. (a) The commissioner shall submit to the governor and the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) an annual report on the general conduct and condition of associations doing business in this state. The report shall be based upon the individual annual reports of associations filed with the commissioner, and shall also include the information required in ss. 215.32 (7) (a), 215.56 (7) (a) and 215.76 (7) (a).

(b) The commissioner shall designate the number of copies of the report to be made available for distribution. Each association is entitled to one copy.

(12) DISPOSITION OF OBSOLETE RECORDS. The commissioner may turn over obsolete departmental records to the secretary of administration, pursuant to s. 16.61.

(14) FEES FOR OFFICE PUBLICATIONS. (a) Whenever extra copies of statutory reprints of this chapter, the annual report of savings and loan associations or any other publication published by the office are requested, such extra copies shall be furnished upon payment of such fee as the commissioner determines. All such fees shall be paid by the commissioner into the general fund to the credit of the office.

(b) Upon request, extra copies may be distributed free to agencies or legislators of this state or any other state, county clerks and to the courts of this state, trade organizations and any other agencies of the United States.

(15) HEARINGS, FINDINGS AND ORDERS ON COMPLAINTS AGAINST ASSOCIATIONS. (a) 1. Within 10 days after any of the following petitions have been filed with the commissioner, the commissioner shall proceed to hear the same:

a. A petition stating that an association fails to pay its debts on demand.

b. A petition signed by not less than 25 savers in an association, stating that: 1) the association or the officers or directors of the association fail to honor requests for the withdrawal of savings accounts under this chapter; 2) the officers or directors are conducting the business of the association in an unsafe or unauthorized manner; 3) by the acts or negligence of officers or directors the funds or assets of the association are or may become impaired.

2. Not less than 3 days before the date of hearing, a copy of the petition and a notice stating the date, time and place for the hearing shall be mailed or delivered to the association and the party petitioning.

(b) At the time and place so fixed, unless by stipulation some other time and place is fixed, the commissioner shall hear all parties interested and shall cause the testimony given to be reduced to writing, or the commissioner may designate some person employed in the commissioner's office to take testimony, hear the petition and file the testimony with the commissioner.

(c) The commissioner shall within a reasonable time make findings as to all matters covered by the petition and make such order as the commissioner deems just and reasonable.

(d) The findings and order of the commissioner shall be final unless modified by the court.

(e) Chapter 776 shall not apply to associations organized under this chapter.

(16) ANNUAL FEES AND EXAMINATION COSTS. (a) *Annual fee.* Associations organized under this chapter shall, on or before July 15, pay an annual fee as determined by the commissioner and the review board, but not exceeding 12 cents per \$1,000 of assets or fraction thereof, as of the close of the preceding calendar year.

(b) *Penalty for failure to pay fee.* An association failing to pay the annual fee to the commissioner by July 15 of each year shall,

if ordered by the commissioner, forfeit \$10 for each day it fails to pay the fee.

(c) *Regular examination costs.* 1. On or before June 30 of each year the commissioner and the review board shall fix a per diem charge for the services of each examiner used in the examination of an association, for the next 12 months. Such per diem charge shall be the same for all associations. The hours constituting a day shall be that which is fixed for state employees by s. 230.35.

2. After the per diem charge for each examiner has been fixed by the commissioner and review board, each association shall be uniformly billed for examinations during the ensuing year on a fixed per diem basis for each examiner engaged in such examination.

3. Every charge so made to an association shall be paid within 30 days from the time the association receives notice of the assessment.

(d) *Special examination costs.* The commissioner shall charge any special costs and expenses incurred because of special work required by the commissioner, caused by an association not having proper or sufficient management or failing to keep its books, records and other matters in a standard and approved manner. An itemized statement of such charges must be submitted to the association.

(e) *Penalty for failure to pay examination costs.* Any association failing to pay the charges and assessments under pars. (c) and (d) shall be subject to the penalty under par. (b) for each day it fails to pay the charge or assessment after it becomes due.

(17) **TESTIMONIAL POWERS.** (a) The office may, in relation to any matter within its powers, issue subpoenas and take testimony.

(b) Witnesses shall be entitled to the same fees as are allowed to witnesses in courts of record. Such fees shall be audited and paid by the state in the same manner as other expenses of the office are audited and paid. No witness subpoenaed at the instance of any party other than the office shall be entitled to payment of fees by the state, unless the office certifies that the testimony of the witness was material to the hearing or proceeding.

(c) No person may, without reasonable cause, fail to comply with a subpoena issued under this subsection, nor refuse to be sworn or to be examined, or to answer a proper question or produce a pertinent document, when ordered to do so by the official conducting the investigation or proceeding.

(18) **AUTHORITY TO GRANT CERTAIN POWERS.** Unless the commissioner is expressly restricted by statute from acting under this subsection with respect to a specific power, right or privilege, the commissioner by rule may, with the approval of the review board, authorize associations to exercise any power under the notice, disclosure or procedural requirements governing federally chartered associations or to make any loan or investment or exercise any right, power or privilege of federally chartered associations permitted under a federal law, regulation or interpretation. Notice, disclosure and procedures prescribed by statute which may be modified by a rule adopted under this subsection include, but are not limited to, those provided under s. 138.056. A rule adopted under this subsection may not affect s. 138.041 or chs. 421 to 428 or restrict powers specifically granted associations under this chapter.

History: 1971 c. 101; 1971 c. 270 s. 104; 1973 c. 205; 1975 c. 41 s. 52; 1975 c. 348, 359, 421; 1977 c. 140; 1977 c. 196 s. 131; 1977 c. 418; 1979 c. 32 s. 92(6); 1979 c. 287; 1981 c. 45; 1983 a. 167, 524, 538; 1985 a. 157; 1987 a. 27; 1989 a. 31; 1991 a. 221, 316

Phrase "in the course of examinations" under (6) includes activities before, during and after actual inspection. *National Sav. & Loan v. St. Paul Fire & Marine*, 515 F. Supp. 12 (1981)

215.03 Supervision and control of associations.

(1) **TYPES OF ASSOCIATIONS SUPERVISED AND CONTROLLED BY THE COMMISSIONER.** All associations organized under this chapter or similar laws, or permitted by license to transact, in this state, a business similar to that authorized by this chapter, shall be under the supervision and control of the commissioner.

(2) **ANNUAL SUPERVISORY EXAMINATIONS.** (a) At least once within every 18-month period, the commissioner shall examine the cash, bills, collaterals, securities, assets, books of account, condition and affairs of all such associations and for that purpose the commissioner or the examiners appointed by the commissioner shall have access to, and may compel the production of, all their books, papers, securities and moneys, administer oaths to and examine their officers and agents as to their affairs. Neither the commissioner nor any employe of the office shall examine an association in which the commissioner is interested as an officer or director.

(b) The commissioner may accept an examination-audit made by the federal home loan bank board or any other governmental agency authorized to make examination-audits of savings and loan associations pursuant to their rules and regulations. The examination-audit must comply with the procedure established by the commissioner.

(4) **REFUSAL TO SUBMIT TO AN EXAMINATION.** Any association refusing to submit to an examination so ordered or requested, shall be reported to the attorney general, who shall institute proceedings to revoke its certificate of incorporation for such refusal.

(5) **ACCOUNTING AND BOOKKEEPING PROCEDURE PRESCRIBED BY COMMISSIONER.** (a) Whenever it appears to the commissioner that any association does not keep books and accounts in such manner as to enable the commissioner to readily ascertain its true condition, the commissioner may require the officers of such associations or any of them to open and keep such books or accounts as the commissioner prescribes.

(b) Any association that fails to open books or keep books or accounts as prescribed by the commissioner, shall, at the discretion of the commissioner, forfeit \$10 for each day it so fails. If the association fails to pay the forfeiture, the commissioner may institute proceedings to recover such forfeitures.

(6) **FILE ANNUAL REPORTS.** (a) 1. Not later than February 1 of each year each association subject to the supervision and control of the commissioner shall file with the commissioner a report of its activities of the preceding year, upon forms furnished by the commissioner.

2. The report shall include:

- a. A true and verified copy of a statement of condition as of the close of December 31 of the preceding calendar year;
- b. A statement of its operations during that period; and
- c. Such other information as the commissioner requires.

3. Attached to the annual report shall be a copy of a printed statement of condition and operations as of the end of the association's most recent fiscal year, which shall be available to the public. The reports shall be published as a class 1 notice, under ch. 985, where the association is located, in the condensed form as the commissioner prescribes. Proof of publication shall be furnished to the commissioner within 45 days after the date of the report. The printed statement shall contain such information as the commissioner may by rule prescribe.

(b) If such association fails or refuses to furnish the report herein required, it shall be subject, at the discretion of the commissioner, to a forfeiture of \$10 per day for each day of default, and the commissioner may maintain an action in the name of the state to recover such penalty, and the same shall be paid into the general fund.

(7) **RELOCATION OF ASSOCIATION OFFICE.** (a) Any association which determines to move its home office or branch to some other location not more than one mile from its then location shall make an application to the commissioner. The commissioner may approve or deny such application for relocation.

(b) Any association which determines to move its home office or branch to some other location more than one mile from its then location shall make an application to the commissioner. The commissioner shall give notice and provide an opportunity for hearing as provided in s. 215.40(7). In approving or denying the applica-

tion for relocation, the commissioner shall ascertain the need for relocation and determine whether undue harm or injury would be caused to any properly conducted association or branch now doing business in the area or vicinity of the proposed relocation.

(8) APPLICATION TO ESTABLISH BRANCHES; APPEAL. (a) Any association desiring to establish a branch office, subject to the limitations of s. 215.13 (39), shall apply to the commissioner in such form as the commissioner prescribes, giving such information as the commissioner requires. Each application shall be accompanied by a fee of \$500. The commissioner shall give notice and provide an opportunity for hearing as provided in s. 215.40 (7). The commissioner may grant certificates of authority to maintain and operate branch offices or may refuse to issue certificates when, in the commissioner's opinion, such branch is not in the best interests of the public, or when other good and sufficient reasons exist for refusal.

(b) It is the intent of this section to provide adequate and convenient savings and loan facilities for the public. When 2 or more applications for a branch in the same area are pending, priority of application shall be considered but not be controlling, and the commissioner shall give consideration to the equitable distribution of branches among the associations making application.

(c) Review of the decision of the commissioner in regard to applications for branches shall be governed by s. 215.04 (4).

History: 1975 c. 359 ss. 5, 6, 51; 1977 c. 140; 1983 a. 167; 1985 a. 157, 325; 1991 a. 316.

The legislature established different standards under s. 215.03 (8) (a) and (b), 1973 stats. [now s. 215.03 (7) (a) and (b)] for the relocation of an office and the commissioner need not apply the standards of par. (b) where the move is less than one mile. *Mut. Fed. S. & L. Assn. v. S. & L. Rev. Bd.* 46 W (2d) 110, 174 NW (2d) 554.

215.04 Savings and loan review board. (1) DUTIES. The duties of the review board shall be to:

(a) Advise the commissioner, deputy commissioner and others in respect to improvement in the condition and service of associations;

(b) Review the acts, orders and determinations of the commissioner under sub. (4);

(c) Act promptly on matters and questions, pertaining to associations, that may be submitted to it by the commissioner;

(d) Serve as an appeal board for associations under s. 215.40 (18) and 215.60 (15);

(e) Perform such other review functions in relation to associations as may be provided by law;

(f) Conduct hearings and take testimony, and to subpoena and swear witnesses at such hearings. The review board shall have the same subpoena powers as are possessed by the department of industry, labor and human relations and also the powers granted by s. 885.01 (4);

(2) APPEARANCE OF INTERESTED PERSONS AT BOARD PROCEEDINGS. Any party interested may appear in any proceedings of the review board and may participate in the examination of witnesses and present evidence.

(3) FEES OF SUBPOENAED WITNESSES. (a) Any person causing a witness to be subpoenaed shall advance the fees and mileage of such witness which shall be the same as in circuit court.

(b) The fees of witnesses who are called by the review board in the interests of the state shall be paid by the state in the same manner that other expenses are paid, upon presentation of proper vouchers approved by a member of the review board and charged to the appropriation of the office.

(4) REVIEW OF GRIEVANCES, ORDERS OR DETERMINATIONS. Any interested person or any association aggrieved by any act, order or determination of the commissioner, which relates to savings and loan associations may, within 20 days thereof, apply to the review board to review the action of the commissioner. The sole review of the commissioner's decision shall be to determine whether or not the commissioner has acted within the scope of the commissioner's authority, has not acted in an arbitrary or capricious manner, and that the act, order or determination of the commissioner is supported by substantial evidence in view of the

entire record as submitted. The review of applications for branches, relocation of association offices or new charters shall be based exclusively on the record, and no new evidence shall be taken by the review board. Applications under this subsection shall be considered and disposed of as speedily as possible.

(6) REVIEW OF FINAL ORDERS AND DETERMINATIONS. Any final order or determination of the review board shall be subject to review under ch. 227. If an act, order or determination of the commissioner is reversed or modified by the review board, the commissioner shall be deemed a person aggrieved and directly affected thereby under s. 227.53 (1).

(7) MEMBERS DISQUALIFIED TO ACT. No member of the review board shall be qualified to act in any matter involving the association of which the member is an officer or director.

History: 1971 c. 164, 243; 1975 c. 359; 1983 a. 167; 1985 a. 182 s. 57; 1991 a. 316.

215.11 Surety bond of association's officers, directors and employes. (1) WHO SHALL FURNISH BOND; TYPE AND FORM. Before entry upon the discharge of the person's duties,

every person appointed or elected to any position requiring receipt, payment or custody of money or other personal property of an association or in its custody or control as collateral or otherwise shall give a bond in some surety company, licensed by this state, in such sum as the commissioner prescribes. In lieu of individual bonds, the commissioner may accept a schedule or blanket bond which covers all of the officers, directors and employes of the association, whose duties include the receipt, payment or custody of money or other personal property. Such bonds shall be in the form prescribed by the commissioner.

(2) SURETY BONDS TO BE APPROVED BY THE BOARD AND FILED WITH THE COMMISSIONER. No officer, director or employe who is required to give bond shall enter upon the discharge of the person's duties until the person's bond has been approved by the board. The minute book of the association shall contain a record of each bond executed and approved. Such bonds shall be filed with the commissioner within 10 days after approval by the board.

(3) SURETY BOND COVERAGE. Such bond shall be sufficient to protect the association from loss by reason of acts of fraud or dishonesty, including forgery, theft, embezzlement, wrongful abstraction or misapplication on the part of the person, directly or through connivance with others. At any time the commissioner may require an additional bond.

(4) PROVISIONS OF SURETY BONDS. Every such bond shall also include the following provisions:

(a) No termination of this bond shall be effective unless the surety gives in advance at least 10 days' written notice by registered mail to the commissioner. If this bond is terminated at the request of the insured (employer) this provision shall apply nevertheless, it being the duty of the surety to give the required written notice to the commissioner, such notice to be given promptly and within 10 days after the receipt of such request;

(b) The surety agrees to furnish the commissioner, at Madison, a copy of all riders and indorsements executed subsequently to the effective date of this bond.

(5) COMMISSIONER MAY CONSENT TO TERMINATION AND WAIVE NOTICE THEREOF. The commissioner may waive, as to the termination of any bond, the 10-day written notice in advance and may give written consent to the termination being made effective as of a date agreed upon by the surety and the association.

(6) TERMINATION OF SURETY BOND UPON DISCOVERY OF ANY DISHONEST ACT. Subsection (4) shall not in any way modify or affect or render invalid a provision therein that the bond shall terminate as to any person covered thereby, upon the discovery by the association of any dishonest act on the person's part.

(7) PENALTY FOR FAILURE TO FURNISH SURETY BOND. Any violations of subs. (1) and (2) shall subject the association to a fine of \$10 per day for each consecutive day of such violation and it is the duty of the attorney general to recover any such penalties by action in behalf of the state.

History: 1991 a. 316.

215.12 Penalty for dishonest acts; falsification of records. Every officer, director, employe or agent of any association who steals, abstracts, or wilfully misapplies any property of the association, whether owned by it or held in trust, or who, without authority, issues or puts forth any certificate of savings accounts, assigns any note, bond, mortgage, judgment or decree, or, who makes any false entry in any book, record, report or statement of the association with intent to injure or defraud the association or any person or corporation, or to deceive any officer or director of the association, or any other person, or any agent appointed to examine the affairs of such association, or any person who, with like intent, aids or abets any officer, director, employe or agent in the violation of this section, shall be imprisoned in the Wisconsin state prisons for not to exceed 20 years.

History: 1977 c 418 s 924 (18) (e)

215.13 Powers of savings and loan associations. Savings and loan associations may:

(1) **SAVINGS ACCOUNTS** Accept payments on savings accounts in accordance with s. 215.14.

(2) **EVIDENCE OF SAVINGS ACCOUNT OWNERSHIP** Issue evidence of ownership to savers, in accordance with s. 215.15.

(3) **DECLARATION AND DISTRIBUTION OF EARNINGS ON SAVINGS ACCOUNTS** Declare and distribute earnings to savers, in accordance with s. 215.16.

(4) **WITHDRAWALS OF SAVINGS ACCOUNTS** Pay withdrawal requests of savings accounts, in part or in full, in accordance with s. 215.17.

(5) **CLOSE SAVINGS ACCOUNTS** Close savings accounts, in part or in full, in accordance with s. 215.18.

(6) **LOANS ON SAVINGS ACCOUNTS** Make loans to savers on the security of savings accounts owned by them, in accordance with s. 215.19.

(7) **PROPERTY IMPROVEMENT LOANS** Make property improvement loans in accordance with s. 215.20.

(8) **INSURED OR GUARANTEED LOANS** Make secured or unsecured loans, which are partially insured or guaranteed in any manner by the United States or any instrumentality thereof or for which there is a commitment to so insure or guarantee, pursuant to ch. 219.

(9) **MORTGAGE LOANS** Make mortgage loans in accordance with s. 215.21.

(10) **ADDITIONAL COLLATERAL TO MORTGAGE LOANS** Accept additional collateral to mortgage loans in accordance with s. 215.21 (10).

(11) **PURCHASING MORTGAGE LOANS** Purchase mortgage loans in accordance with s. 215.21 (13).

(12) **SERVICING OF PURCHASED MORTGAGE LOANS** Negotiate servicing agreements to enable vendors of mortgage loans, purchased by the association, to collect payments for transmission to the association, in accordance with s. 215.21 (13).

(13) **SELLING MORTGAGE LOANS** Sell mortgage loans in accordance with s. 215.21 (14).

(14) **SERVICING OF MORTGAGE LOANS SOLD** Negotiate servicing agreements to enable the association to collect payments for transmission to the purchasers of mortgage loans in accordance with s. 215.21 (14).

(15) **PURCHASING PARTICIPATING INTERESTS IN MORTGAGE LOANS** Purchase participating interests in mortgage loans from other lenders and negotiate servicing agreements with said lenders in accordance with s. 215.21 (15).

(16) **SELLING PARTICIPATING INTERESTS IN MORTGAGE LOANS** Sell participating interests in mortgage loans, to other lenders, and negotiate servicing agreements with said lenders in accordance with s. 215.21 (15).

(17) **ACQUIRING REAL ESTATE** Acquire real estate to enforce protection of its securities in accordance with s. 215.22 (1).

(18) **SELLING OF ACQUIRED REAL ESTATE** Sell acquired real estate in accordance with s. 215.22 (2).

(19) **ACQUIRING REAL ESTATE SUBJECT TO SALES CONTRACTS** Acquire real estate, subject to a sales contract, from any instrumentality of the United States.

(20) **PURCHASING PROPERTY IMPROVEMENT LOANS** Purchase secured or unsecured property improvement loans from any person, whether or not such loans are partially insured or guaranteed in any manner by the United States or any instrumentality thereof, provided such loans could have been made by the association in the first instance.

(21) **ACQUIRING ASSETS OF OTHER ASSOCIATIONS** Acquire all or any part of the assets of any other association with prior approval of the commissioner.

(22) **SELLING OF ASSETS TO OTHER ASSOCIATIONS** Sell all or any part of its assets to any other association with prior approval of the commissioner.

(23) **ASSOCIATION OFFICE BUILDING** Acquire real estate for use as the association's office building in accordance with s. 215.23.

(24) **MEMBERSHIP IN ANY FEDERAL FINANCE OR CREDIT CORPORATION** Become a member in any federal finance or credit corporation organized by an act of congress for aiding associations to utilize their resources and credit. Membership in such federal finance or credit corporation to include:

(a) Purchasing stock therein;

(b) Purchasing notes and debentures thereof;

(c) Borrowing money therefrom, not exceeding that allowed under sub. (28).

(25) **MEMBERSHIP IN A NATIONAL MORTGAGE COMPANY** Become a member in, and purchase stock or securities of a national mortgage company, under the national housing act approved June 27, 1934, and acts amendatory thereof and supplemental thereto.

(26) **INVESTMENT SECURITIES** Invest in the following types of securities, subject to such limitations as may be fixed by the commissioner:

(a) United States government securities;

(b) Savings accounts of savings and loan associations doing business in the state;

(c) Savings accounts of savings and loan associations, located outside the state, providing such savings accounts are insured by an instrumentality of the United States;

(d) Bonds, notes or other evidences of indebtedness which are general obligations supported by the full faith and credit of any state in the United States or any city, town, village, county, technical college district or school district in any state in the United States if the obligations have been assigned one of the 4 highest grades by a nationally recognized investment rating service. Before purchasing any obligation under this paragraph other than an obligation issued in this state, the association shall ascertain whether suitable obligations issued in this state are available in the quantity sought by the association at a competitive rate of return at the time the investment is intended to be made. If such obligations are available, the association shall give preference to obligations issued in this state. Notwithstanding any other requirement of this paragraph, an association may invest not more than one percent of its assets in the obligations of any city, town, village, county, technical college district or school district in this state which are not assigned one of the 4 highest grades by a nationally recognized investment rating service, if the obligations are issued by a city, town, village, county, technical college district or school district in which the association maintains one or more offices.

(e) Certificates of deposit of a state or national bank.

(f) Such other types of securities which may be approved and authorized by the commissioner.

(27) **LEND MONEY TO OTHER ASSOCIATIONS** Lend money to other savings and loan associations incorporated and operating under this chapter, subject to approval of the commissioner.

(28) **BORROWING MONEY** Borrow money and issue its obligations for the borrowed money, including but not limited to obliga-

tions, bonds, notes or other debt securities. The aggregate amount borrowed under this subsection may not exceed 50% of the association's total assets, except with the prior written approval of the commissioner. An obligation, bond, note or other debt security may include a written provision subordinating the debt to claims of other creditors or of savers.

(29) ASSIGN COLLATERAL FOR BORROWED MONEY Assign as collateral for borrowed money its mortgages and mortgage notes or any of the securities enumerated in sub. (26).

(30) INTEREST AND OTHER CHARGES Assess and collect interest, premiums, fines, fees and other charges. No savings and loan association may demand or receive for loans or discounts a rate of interest exceeding that allowed by law.

(31) INSURANCE OF SAVINGS ACCOUNTS Insure the savings accounts of savers with the federal savings and loan insurance corporation or with another instrumentality approved by the commissioner.

(32) ACT AS AGENT FOR THE UNITED STATES Whenever designated by the secretary of the treasury of the U.S. or any other instrumentality of the U.S., and authorized by a resolution of the board of directors, act as agent for them, and perform all duties as agent that may be required.

(33) STORE MICROFILM RECORDS OF OTHER ASSOCIATIONS Act as custodian or keeper of microfilm records of other savings and loan associations for a fee.

(34) PLACE MICROFILM RECORDS FOR STORAGE AT OTHER ASSOCIATIONS Place microfilm records of the association for storage and safekeeping with another association for a fee.

(36) LIMITED OFFICE With the prior written approval of the commissioner, establish a limited office providing lending or other services. Deposits to savings accounts may not be accepted at a limited office except as permitted under sub. (46).

(37) OMNIBUS POWERS Exercise any powers reasonably related or incident to the purposes of the association.

(38) EDUCATIONAL LOANS Make loans to defray the expense of attending any college or university.

(39) BRANCHES Subject to the approval of the commissioner, any savings and loan association may establish and maintain one or more branch offices within the normal lending area of the home office, as defined in s. 215.21 (2), in this state or in any one of the regional states, as defined in s. 215.36 (1) (f). In the commissioner's approval, the commissioner may limit the powers of the branch. Savings and loan associations may promote thrift in their local schools by accepting payments in the school upon savings accounts of the teachers and pupils.

(40) LOCATION OF BRANCHES Whenever an association is absorbed or a branch office is acquired under s. 215.36, 215.53 or 215.73, maintain and operate a branch office at the location of the absorbed association or of the acquired branch office, if the commissioner finds that the continued operation of a branch office at the location of the absorbed association or of the acquired branch office would be in the public interest. This subsection does not permit continued operation of an office of an absorbed association which received its certificate of incorporation less than 5 years prior to its absorption.

(41) SELLER OF CHECKS To engage as an authorized agent in the business and functions provided for in ch. 217 for their members upon receiving a certificate of authority from the commissioner. Such applicants shall be under the jurisdiction and supervision of the commissioner and meet the same requirements as other applicants under ch. 217, but no license or investigation fee shall be charged savings and loan association applicants. The commissioner has the authority to enforce ch. 217 as it applies to savings and loan associations, the same as that granted the commissioner of banking in enforcing ch. 217. The commissioner shall determine the records that shall be maintained and shall require the segregation of such funds as is necessary for operations permitted savings and loan associations under this subsection and ch. 217.

(42) INVEST IN REAL PROPERTY Invest in, or in interests in, real property, subject to such rules as the commissioner shall issue.

(43) SECURITIES GUARANTEED UNDER NATIONAL HOUSING ACT Issue and sell securities which are guaranteed under the national housing act.

(44) ACT AS TRUSTEE Act as trustee of trusts created or organized in the United States under the self-employed individuals tax retirement act of 1962, and amendments thereto, and which qualify for specific tax treatment under section 401 (d) or 408 (a) of the internal revenue code, if the funds of such trust are invested in savings accounts or deposits in such association or in obligations or securities issued by such association. Individual accounts and records shall be kept by the association for each participant and shall show in proper detail all transactions therein.

(45) OTHER LOANS AND INVESTMENTS Make loans and investments in accordance with s. 215.205.

(46) REMOTE SERVICE UNITS (a) 1. Directly or indirectly, acquire, place and operate, or participate in the acquisition, placement and operation of, at locations other than its home or branch offices, remote service units, in accordance with rules established by the commissioner. Remote service units established in accordance with such rules are not subject to sub. (36), (39), (40) or (47) or s. 215.03 (8). The rules of the commissioner shall provide that any such remote service unit shall be available for use, on a non-discriminatory basis, by any state or federal savings and loan association which has its principal place of business in this state, by any other savings and loan association obtaining the consent of a state or federal savings and loan association which has its principal place of business in this state and is using the terminal and by all customers designated by a savings and loan association using the unit. This paragraph does not authorize a savings and loan association which has its principal place of business outside this state to conduct business as a savings and loan association in this state. The remote service units also shall be available for use, on a nondiscriminatory basis, by any credit union, state or national bank or state or federal savings bank, whose home office is located in this state, if the credit union, bank or savings bank requests to share its use, subject to the joint rules established under s. 221.04 (1) (k). The rules of the commissioner shall prohibit any advertising with regard to a shared remote service unit which suggests or implies exclusive ownership or control of the shared unit by any savings and loan association or group of savings and loan associations operating or participating in the operation of the unit. The commissioner by order may authorize the installation and operation of a remote service unit in a mobile facility, after notice and hearing upon the proposed service stops of the mobile facility.

2. In this paragraph "remote service unit" means a terminal or other facility or installation, attended or unattended, which is not located at the principal place of business or at a branch or extended facility of a savings and loan association and through which customers and savings and loan associations may engage, by means of either the direct transmission of electronic impulses to and from a savings and loan association or the recording of electronic impulses or other indicia of a transaction for delayed transmission to a savings and loan association, in transactions which are incidental to the conduct of the business of a savings and loan association and which are otherwise permitted by law. "Remote service unit" also includes all equipment, regardless of location, which is interconnected with a remote service unit and which is necessary to transmit, route and process electronic impulses in order to enable the remote service unit to perform any function for which it is designed.

3. If any person primarily engaged in the retail sale of goods or services owns or operates a remote service unit on such person's premises and allows access to the unit by any financial institution, group of financial institutions or their customers, nothing in this paragraph or in rules established by the commissioner shall, or shall be construed or interpreted to, require such person to accept any connection to or use of the unit on its premises for any other

purpose or function or to accept any connection to the unit on its premises by any other financial institution.

4. If a person primarily engaged in the retail sale of goods or services owns or operates a remote service unit on such person's premises and allows access to the unit by any financial institution, group of financial institutions or their customers for any purpose or function, no laws governing such institutions or rules established by the commissioner shall apply to such person other than those laws or rules directly related to the particular function performed by the unit on such person's premises for a financial institution.

5. Information transmitted from a remote service unit, either identified as to particular transactions or aggregate information, shall only be used for purposes of effecting the financial transactions for which such information was received, for any other purpose lawfully authorized by contract, or for any other purpose permitted by statute and rules pertaining to the dissemination and disclosure of such information.

(47) **EXTENDED OFFICE** With the approval of the commissioner, extend its home office or branch by purchasing or leasing real estate for the purpose of establishing, identifying and maintaining an extended office, but only if the extended office is located within 1,000 feet of the home office or branch. All measurements under this subsection shall be made in a straight line from the nearest adjacent points in the respective property lines. The authority under this subsection is in addition to the authority to establish branch offices under s. 215.03 (8).

(48) **TRUST ACCOUNTS** Maintain real estate broker trust accounts under s. 452.13, attorney trust accounts under s. 757.293 and collection agency trust accounts under s. 218.04 (9g).

(49) **CONTRACT FOR TRUST SERVICES** Contract for the provision of trust services to its members with a trust company or other organization with trust powers authorized to do business in this state. For this purpose, the trust company or other organization with trust powers may serve association members at association facilities on a full-time or part-time basis.

(50) **DEMAND DEPOSIT ACCOUNTS** Accept and maintain demand deposit accounts.

(51) **CONTRACT FOR FINANCIAL SERVICES** Contract with a bank that is owned by a bank holding company which also owns the contracting association, to provide products or services under s. 221.04 (1) (pm). The bank shall be subject to regulation and examination by the commissioner with regard to services performed under the contract to the same extent as if the services were being performed by the association itself on its own premises.

History: 1971 c. 154, 164, 173, 229; 1973 c. 205; 1975 c. 3, 11, 359, 389, 391; 1977 c. 26 s. 75; 1977 c. 136, 272, 387; 1979 c. 78, 280; 1979 c. 287 ss. 8, 14; 1981 c. 319, 391; 1983 a. 167 ss. 14 to 19, 112; 1985 a. 157, 325; 1987 a. 403 s. 256; 1989 a. 313; 1991 a. 39, 221, 234, 269, 316; 1993 a. 399

Commissioner may issue, pursuant to (41), a certificate of authority to a state-chartered savings and loan association to engage as an authorized agent for the Federal Home Loan Bank of Chicago, which is lawfully engaged in the business of a seller of checks. 61 Atty. Gen. 186

215.135 Additional authority. (1) Subject to any regulatory approval required by law and subject to sub. (2), a savings and loan association, directly or through a subsidiary, may undertake any activity, exercise any power or offer any financially related product or service in this state that any other provider of financial products or services may undertake, exercise or provide or that the commissioner finds to be financially related.

(2) The activities, powers, products and services that may be undertaken, exercised or offered by savings and loan associations under sub. (1) are limited to those specified by rule of the commissioner. The commissioner may direct any savings and loan association to cease any activity, the exercise of any power or the offering of any product or service authorized by rule under this subsection. Among the factors that the commissioner may consider in so directing a savings and loan association are the savings and loan association's net worth, assets, management rating and liquidity ratio and its ratio of net worth to assets.

(3) This section does not authorize a savings and loan association, directly or through a subsidiary, to engage in the business of underwriting insurance.

History: 1985 a. 325

215.136 Availability of funds. (1) As used in this section, "business day" means a business day as defined in s. 421.301 (6) that is not a federal legal holiday.

(2) Subject to any right of an association to apply the credit to an obligation of a member or to withhold the credit for a reasonable period of time after that otherwise permitted by this section if the association, in good faith, believes that the item may be dishonored upon presentment and gives notice to the member of the withholding stating the facts on which the belief is founded, credit given by an association for an item in an account with its member that has been in existence for at least 90 days becomes available for withdrawal as of right as follows:

(a) If the item is a check or draft endorsed only by the person to whom it was issued and is drawn on the treasury of the United States, the state of Wisconsin or any unit of local government located in this state, after not more than one business day has intervened between the business day on which the check or draft is received at the proof and transit facility of the depository and the business day on which the funds are available for withdrawal.

(b) If the payor bank or other financial institution is located in this state, after not more than 4 business days have intervened between the business day on which the item is received at the proof and transit facility of the depository and the business day on which the funds are available for withdrawal.

(c) If the payor bank or other financial institution is located in any other state, after not more than 7 business days have intervened between the business day on which the item is received at the proof and transit facility of the depository and the business day on which the funds are available for withdrawal.

History: 1985 a. 325

215.14 Savings accounts. (1) **AGGREGATE OF SAVINGS ACCOUNTS** The aggregate of savings accounts of an association is unlimited, and consists of the total deposits in savings accounts and the total earnings credited to the accounts, less withdrawals.

(2) **OWNERSHIP OF ACCOUNTS** Any person may become the owner of a savings account in an association if the person is accepted by the association or if the person acquires ownership by a transfer authorized under s. 215.15 (3).

(3) **DEPOSITS IN SAVINGS ACCOUNTS** Deposits may be made in savings accounts in any amount at any time, unless otherwise determined by the board.

(4) **MAXIMUM OWNERSHIP OF SAVINGS ACCOUNTS BY ONE PERSON** The aggregate amount of the withdrawal value of savings accounts owned by one person in any association is unlimited, unless the board determines otherwise.

(5) **NONASSESSABILITY OF SAVINGS ACCOUNTS** All savings accounts shall be nonassessable. No person may, in the person's capacity as a saver, be responsible for any losses incurred by the association beyond the loss of the withdrawal value of the person's savings accounts.

(6) **SAVINGS ACCOUNTS ELIGIBLE INVESTMENT FOR TRUST FUNDS** An administrator, executor, personal representative, guardian, trustee or other fiduciary authorized to invest trust funds, may acquire, own or hold savings accounts in an association, within the limits of standards contained in s. 881.01, and shall have the same rights and be subject to the same obligations and limitations as other savings account owners, except the right to be an officer or director. Savings accounts owned or held by an administrator, executor, personal representative, guardian, trustee or other fiduciary shall specifically name the trust represented.

(7) **VOTING RIGHTS OF JOINT SAVINGS ACCOUNTS** When a savings account in a mutual association is a multiple-party account

under subch. I of ch. 705, the right to vote such account shall be no greater than if the account were held by an individual.

(8) RIGHTS OF FIDUCIARIES. (a) In a mutual association a fiduciary shall have all rights and privileges of a saver except the right to hold office.

(b) In a capital stock association a fiduciary shall have all rights and privileges as other savers in the association.

(9) SAVINGS ACCOUNTS OF DECEASED OR INCOMPETENT PERSONS. The savings account of a deceased individual may be held and controlled by the administrator, executor, personal representative or trustee of the estate, or after 60 days after death, the legal representative may be paid the withdrawal value of such savings accounts. If the savings account is pledged to the association for a loan, such loan shall first be fully repaid.

History: 1971 c. 41 s. 12; 1971 c. 229; 1971 c. 307 s. 118; 1973 c. 291; 1975 c. 359, 421; 1983 a. 167; 1989 a. 331.

215.141 Financially related services tie-ins. In any transaction conducted by an association, a savings and loan holding company or a subsidiary of either with a customer who is also a customer of any other subsidiary of any of them, the customer shall be given a notice in 12-point boldface type in substantially the following form:

NOTICE OF RELATIONSHIP

This company, ... (insert name and address of association, savings and loan holding company or subsidiary), is related to (insert name and address of association, savings and loan holding company or subsidiary) of which you are also a customer. You may not be compelled to buy any product or service from either of the above companies or any other related company in order to participate in this transaction.

If you feel that you have been compelled to buy any product or service from either of the above companies or any other related company in order to participate in this transaction, you should contact the management of either of the above companies at either of the above addresses or the office of the commissioner at (insert address).

History: 1985 a. 325

215.145 Account disclosures. (1) Every association shall provide a disclosure statement, which may include a separate interest rate table or fee schedule or both, for each savings account offered by the association, setting forth all of the following information:

- (a) A description of the savings account.
- (b) The conditions, if any, on which the savings account is offered.
- (c) The terms of interest offered for the savings account.
- (d) All fees charged for the savings account.

(2) Every association shall provide the appropriate disclosure statement under sub. (1) to each member upon all of the following occasions:

(a) At the time of the member's initial deposit into the savings account.

(b) Upon any change in any of the information under sub. (1) (a) to (d) applicable to a member's savings account, other than a change in the interest rate of a variable interest rate savings account if the variability of the interest rate was disclosed at the time of initial deposit.

(3) Every association shall provide the appropriate disclosure statement under sub. (1) to any person requesting the disclosure statement for a savings account.

(4) Disclosure statements provided under subs. (2) and (3) shall be accompanied by a brief description of all other savings accounts offered by the association and a statement that more detailed information is available on request.

History: 1985 a. 325

215.15 Evidence of ownership of savings accounts.

(1) SAVINGS ACCOUNT FORMS. The association shall issue to each

saver a written summary of the terms of the saver's account or, if permitted by the commissioner, a receipt. The commissioner may promulgate rules prescribing the form of or otherwise regulating issuance and use of evidences of savings accounts, summaries of savings accounts and receipts.

(2) VALIDATION OF PASSBOOKS AND CERTIFICATES. The board of directors may designate one or more persons to sign passbooks, certificates or other evidence of savings accounts. Facsimile signatures of designated signatures may be used when authorized by the board of directors.

(3) GENERAL. (a) The board of directors may, subject to the rules of the commissioner and par. (b), provide for the following:

1. The transfer of savings accounts by any procedure permitted by law or limit or prohibit transfer of savings accounts.

2. The replacement of lost or destroyed evidences of savings accounts

(b) Unless the commissioner approves, a mutual association may not issue negotiable certificates of deposit which are not in registered form in an aggregate amount exceeding 20% of the total amount in savings accounts.

(c) The commissioner may promulgate rules governing the transfer of savings accounts or the replacement of lost or destroyed evidences of savings accounts.

History: 1975 c. 359; 1983 a. 167

215.16 Savings account earnings. Subject to the rules of the commissioner, the board of directors of an association may:

(1) Declare or contractually fix one or more rates of earnings on savings accounts.

(2) Prescribe the methods for computing, and the time and manner of crediting or paying, earnings on savings accounts.

History: 1971 c. 229; 1973 c. 205; 1975 c. 359; 1983 a. 167.

215.17 Withdrawal of savings accounts. **(1) WHEN PERMITTED.** The association may pay, on request, withdrawals on its savings accounts to the owners of such savings accounts. The association may require advance notice of withdrawal.

(2) WITHDRAWAL REQUESTS OF SAVERS. In a mutual association a saver who has made a withdrawal request does not become a creditor of the association by reason of the withdrawal request.

History: 1975 c. 359 ss. 25 to 27, 51; 1975 c. 421; 1979 c. 175 s. 53; 1983 a. 167

215.18 Closing of savings accounts. **(1)** Except as provided in sub. (3), an association may close a savings account by delivering notice of the closing to the saver or mailing notice to the last-known address of the saver.

(2) On the date the notice required under sub. (1) is delivered or mailed, all rights of the saver in the savings account terminate except the right to receive the withdrawal value of the account calculated as of the date of delivery or mailing of the notice. A saver remains a member until the withdrawal value of the savings account is paid.

(3) An association may agree in writing not to close a savings account. The commissioner may promulgate rules restricting the authority of an association to close savings accounts.

History: 1975 c. 359; 1983 a. 167

215.19 Loans on savings accounts. **(1)** An association may make loans on the security of its savings accounts.

(2) In no event shall a savings account loan exceed the withdrawal value of the savings account pledged as security therefor.

(3) Each savings account loan shall be evidenced by a savings account loan note and a pledge of the savings account books or savings account certificates securing said loan.

(5) Any corporation, owning savings accounts in an association, and whose officers, directors or employees are officers, directors or employees of said association, may obtain a savings account loan on the security of said saving accounts.

History: 1975 c. 359; 1983 a. 167

215.20 Property improvement loans. **(1)** For the purpose of this section, a property improvement loan means a loan,

the proceeds of which are used to repair, modernize, alter, furnish, equip or improve the real estate or the structure upon it, or both. As used in this section, loans made for the purpose of furnishing or equipping a structure shall be made to the owners thereof only.

(2) An association may make, buy, sell and hold property improvement loans to such persons, for such purposes, in such individual and aggregate amounts, and upon such terms as the commissioner by rule prescribes.

History: 1975 c. 359; 1977 c. 140.

Second mortgage constitutes equivalent security interest when held by savings and loan association which holds first mortgage, and there are no intervening liens. Sections 428.101, 428.106 (5), 227.014 (2) (a), 1983 stats [now s. 227.11 (2) (a)] discussed. 63 Atty. Gen. 557

215.205 Other loans and investments. Subject to such rules as the commissioner prescribes, an association may make, buy, sell and hold the following loans and investments:

(1) Loans or obligations, or interests therein, for the purpose of mobile home financing.

(2) Housing project loans or interests therein, having the benefit of any guaranty under sec. 221 of the foreign assistance act of 1961, as now or hereafter in effect, or loans or interests therein, having the benefit of any guaranty under sec. 224 of such act, or any commitment or agreement with respect to such loans or interests therein, made pursuant to either of such sections.

(3) Loans or obligations or interests therein, which the association has the benefit of any guaranty under Title IV of the housing and urban development act of 1968, as now or hereafter in effect, or of a commitment or agreement therefor.

(4) Loans or interests in loans to financial institutions with respect to which the United States, or any agency or instrumentality thereof, has any function of examination or supervision, or to any broker or dealer registered with the securities and exchange commission, secured by loans, obligations or investments in which it has any statutory authority to invest directly, subject to such rules as the commissioner may issue.

(5) Notwithstanding any other statutory provision relating to investments in or ownership of real property, an association may invest in, or in interests in, real property located within urban renewal areas as defined in the national housing act of 1949 as now or hereafter in effect, and in obligations secured by first liens on real property so located.

(6) Loans to building contractors for the purpose of the development and construction of residential property.

History: 1975 c. 11.

215.21 Mortgage loans. (1) **BASIC SECURITY REQUIRED.** Subject to such additional limitations as the commissioner may prescribe, associations may make loans on the security of any of the following:

(a) A mortgage on real estate owned by the borrower in fee simple if the aggregate value of the mortgage and any current balance of any mortgage, lien and encumbrances does not exceed the appraised value of the real estate.

(b) Leasehold interests extending or renewable automatically for a period of at least 15 years beyond the maturity of the debt.

(c) An assignment or transfer of stock certificates or other evidence of the borrower's ownership interest in a corporation formed for the cooperative ownership of real estate. Sections 846.10 and 846.101, as they apply to a foreclosure of a mortgage involving a one-family residence, apply to a proceeding to enforce the lender's rights in security given for a loan under this paragraph. The commissioner shall promulgate joint rules with the commissioners of credit unions and banking that establish procedures for enforcing a lender's rights in security given for a loan under this paragraph.

(2) **LENDING AREA.** Except for loans made under s. 45.79, the lending area of an association is limited to that area within a radius of 100 miles of the association's office.

(3) **MORTGAGE AND MORTGAGE NOTE.** Every mortgage loan shall be secured by a mortgage upon the real estate security and evidenced by a mortgage note.

(4) **PRIORITY OF ASSOCIATION'S MORTGAGES.** (a) All mortgages described in this section shall have priority over all liens, except tax and special assessment liens and liens under ss. 144.442 (9) (i), 144.76 (13) and 144.77 (6) (d), upon the mortgaged premises and the buildings and improvements thereon, which shall be filed subsequent to the recording of such mortgage.

(b) Any additional advance made to a borrower, where the mortgage and mortgage note provides for such additional advances, shall not exceed an amount specified in said mortgage.

(5) **MAXIMUM AMOUNT OF LOANS TO ONE BORROWER.** (a) The aggregate of loans that an association may make to any one borrower is subject to such limits as determined and prescribed by the commissioner and review board, but not exceeding 10% of the aggregate savings accounts or the net worth of the association, whichever is less.

(b) The aggregate of loans to any one borrower shall consist of any loans made directly to the borrower and to any corporation of which the borrower is an officer, director or shareholder.

(6) **MAXIMUM PERIODS OF LOAN AMORTIZATION.** (a) *Direct reduction mortgage loans.* The total monthly contractual payment on a direct reduction mortgage shall appear in the mortgage note. The commissioner shall by regulation establish the maximum terms for the various types of direct reduction mortgages. The interest charges on loans of this type may be adjusted monthly or semiannually in accordance with the terms of the mortgage note.

(b) *Straight mortgage loans.* An association may make mortgage loans without the amortization of principal.

(7) **TYPES OF REAL ESTATE SECURITY.** An association may make loans on the following types of real estate security as defined by the commissioner:

(a) Home type properties;

(b) Combination home-and-business type properties;

(c) Commercial type properties, the aggregate of which shall be fixed by the commissioner;

(d) Vacant lands, subject to the limitations under sub. (16) (a).

(8) **INSURANCE COVERAGE OF MORTGAGED PREMISES.** (a) The borrower shall cause the buildings and improvements on any property on which the association has a mortgage to be insured and kept insured, unless the association maintains insurance under par. (b), up to the full insurable value during the life of the loan, for the benefit of the association, against loss by fire, windstorm and such other hazards as the association requires. The selection of the insurance agent or insurer through which the insurance covering such property is to be negotiated shall be made in accordance with ss. 134.10 and 628.34 (5).

(b) The insurance policies or evidence or certificate of the existence of such insurance policies shall remain on deposit with the association until the loan is paid. An association which carries adequate insurance, issued by a company licensed to write insurance protecting the association from losses under par. (a) at no cost to the borrower if the borrower fails to maintain insurance, shall not be required to request or record future insurance policies of the borrower if at the time of closing the mortgage transaction the borrower deposited with the association an acceptable policy or evidence or certificate of the existence of such an insurance policy, with a mortgage clause protecting the interest of the association.

(c) War damage insurance shall not be required unless the directors of the association, by resolution, demand that same be provided by the borrower.

(10) **ADDITIONAL COLLATERAL.** (a) Any association may accept, as additional collateral to its mortgage note, any other real estate, personal property or a policy of insurance on the life of any person who is a party to or responsible for the payment of the mort-

gage note. The association may be named beneficiary as well as absolute assignee of such life insurance and, to protect its interests therein, advance premiums thereon.

(b) Upon written request of any borrower, any association may accept as additional collateral a policy of health and accident insurance on the life of any person responsible for the repayment of the mortgage loan, and may, in the event of the borrower's inability to pay premiums thereon, advance said premiums. Any premiums so advanced shall be added to the unpaid balance of the mortgage loan and become a part of the mortgage indebtedness.

(12) **INSURED OR GUARANTEED LOANS** An association may make mortgage loans insured or guaranteed wholly or in part under the national housing act approved June 27, 1934, or the servicemen's readjustment act of 1944, (P.L. 78-346). All mortgage loans made under this section shall be in accordance with federal law and regulations and ch. 219.

(13) **PURCHASING OF LOANS** Except as otherwise prescribed in s. 215.13 (21), an association may purchase mortgage loans from any person, provided that the association could have made such loans in the first instance. The association may enter into an agreement with the seller of such mortgages to service the loans.

(14) **SELLING LOANS** Except as otherwise prescribed in s. 215.13 (22) an association may sell mortgage loans, without recourse, to any person, and service such loans for the purchaser in accordance with a duly executed servicing agreement. The aggregate of loans sold in any calendar year shall not exceed such limits as may be set by the commissioner and review board.

(15) **PARTICIPATION LOANS** Any association may participate with other lenders in mortgage loans of any type that such association may otherwise make, subject to such rules as the commissioner issues, including the interest in participation loans to be retained by the originator. The normal lending area, prescribed in sub. (2), shall not apply to any association purchasing a participating interest in such loan, provided the real estate securing such loan is located within the United States.

(16) **UNACCEPTABLE TYPES OF SECURITY** (a) An association may not make a mortgage loan on the security of vacant land, except:

1. A loan made to develop or to acquire and develop land for primarily residential purposes may be secured by the land to be developed.

2. A loan made to a builder to construct residential property may be secured by a lot suitable for the construction of a home.

3. A loan made to acquire a building site for future construction of a personal residence may be secured by the building site.

4. A loan made to acquire land for use in connection with a farm operated for profit may be secured by that land.

(b) An association may not make a mortgage loan on the security of real estate in which an officer, director or employe of the association or his or her spouse has an interest. This paragraph does not apply to home-type property containing 4 dwelling units or less personally used by the borrower as a place of residence.

(c) Nothing in this section shall prevent any property from being pledged as additional collateral for a loan as long as the value of the unacceptable security is not used to determine the appraised value of the real estate security upon which the loan is based.

(17) **PROHIBITED LOANS** (a) No association may directly or indirectly make a mortgage loan to an officer, director or employe of the association.

(b) Without the prior written approval of the commissioner, no association may directly or indirectly make a mortgage loan to:

1. A business venture employing an officer, director or employe of the association.

2. Such other persons as the commissioner may by rule designate to avoid conflicts between the best interests of the association and the interests of its officers, directors or employes.

(c) In this subsection "business venture" means any partnership, joint venture, corporation or similar entity.

(d) This subsection does not apply to loans made:

1. On the security of home-type property containing 4 dwelling units or less and used by the borrower as his or her residence; or

2. To a nonprofit, religious, charitable or fraternal organization or a corporation in which the association has been authorized to invest by the commissioner.

(18) **BASIS OF APPRAISALS** All appraisals of real estate securing mortgage loans shall be based on the reasonable market value of the real estate.

(21) **PENALTY FOR GIVING OR ACCEPTING MONEY FOR LOANS** Every officer, director, employe or agent of any association, or any appraiser making appraisals for any association, who accepts or receives, or offers or agrees to accept or receive anything of value in consideration of its loaning any money to any person; or any person who offers, gives, presents or agrees to give or present anything of value to any officer, director, employe or agent of any association or to any appraiser making appraisals for any association in consideration of its loaning money to the person, shall be fined not to exceed \$10,000 or imprisoned in the Wisconsin state prisons not to exceed 2 years or both. Nothing in this subsection prohibits an association from employing an officer, employe or agent to solicit mortgage loans and to pay the officer, employe or agent on a fee basis.

(23) **FALSE STATEMENT IN LOAN APPLICATIONS; PENALTY** Any person who makes or causes to be made any false written statement to any state or federal savings and loan association for the purpose of obtaining a loan for himself or herself for another, with intent to mislead, or which may mislead the association, may be imprisoned for not more than 6 months or fined not to exceed \$1,000.

(24) **BOARD MAY WAIVE PRINCIPAL PAYMENT ON LOANS** Any association, in the discretion of its board, may accept only payments of interest on the loan and taxes on the mortgaged premises, and may waive the principal payments for periods not exceeding one year at a time.

(25) **LOANS DUE, WHEN** Whenever a borrower is in arrears in any contractual payments, whether principal, interest, taxes or insurance, the board of directors may call the borrower's whole loan due and payable as provided in the mortgage note.

(28) **LOANS OUTSIDE THE LENDING AREA** Subject to the rules issued by the commissioner and without regard to the limitation set forth in sub. (2), an association may make or invest its funds in loans, originated and serviced by or through an institution, the accounts or deposits of which are insured by the federal savings and loan insurance corporation or the federal deposit insurance corporation or by or through an approved federal housing administration mortgagee, in an aggregate amount not exceeding 10% of such association's assets on the security of real estate or leasehold interests.

History: 1971 c. 222; 1973 c. 205, 208; 1975 c. 11, 359; 1975 c. 371 s. 50; 1975 c. 387; 1977 c. 58, 140; 1979 c. 250, 287; 1981 c. 45; 1983 a. 36, 167; 1989 a. 103; 1991 a. 316; 1993 a. 213, 453, 482.

Cross-references: See ss. 138.051 and 138.052 for residential mortgage loans, s. 138.053 for interest adjustment clauses, and ss. 138.055 and 138.056 for variable interest rate clauses.

See s. 706.11 (1) for provision as to priority of mortgages to federal savings and loan associations and the department of veterans affairs.

The limitation on loans to one borrower is intended to protect the assets of the lender; a violation does not create a cause of action in favor of anyone else who claims that the excess loan damaged him. *McNeill v. Jacobson*, 55 W (2d) 254, 198 NW (2d) 611.

Where money is advanced in reliance upon justifiable expectation that lender will have security equivalent to that which its advances have discharged, equity will treat the transaction as tantamount to an assignment of the original security provided no innocent 3rd party will suffer. *Rock River Lumber v. Universal Mortg. Corp.* 82 W (2d) 235, 262 NW (2d) 114.

Adjustable interest rates in home mortgages: a reconsideration 1975 WLR 742.

215.22 Real estate owned by association. (1) A savings and loan association may acquire such real estate, by pur-

chase, exchange or otherwise, as may be necessary to protect or enforce its securities and to collect claims or debts due the association.

(2) All real estate acquired pursuant to this section shall be sold within 10 years from acquiring title thereto, unless the commissioner grants extensions of time within which such real estate shall be sold.

(3) All real estate owned by the association shall be assessed for taxation.

History: 1975 c. 359.

215.23 Limitations on investments in office buildings and related facilities. An association's aggregate investment in the following may not exceed the association's net worth without the prior written approval of the commissioner:

(1) Land used or intended to be used as the site of an office of the association.

(2) Buildings used in whole or in part as an office of the association.

(3) Leasehold improvements to properties rented or leased by the association for use as an office of the association.

(4) Parking facilities used by the association in connection with an office of the association.

History: 1973 c. 205; 1975 c. 59; 1975 c. 359 ss. 36, 51; 1979 c. 287.

215.24 Minimum net worth. An association shall maintain net worth at an amount not less than the minimum amount established by the commissioner. If an association fails to maintain the minimum net worth required under this section, the commissioner may take appropriate action, including but not limited to ordering the association to take corrective action or to restrict payment of dividends.

History: 1973 c. 205; 1975 c. 359; 1983 a. 167.

215.25 Audit requirements. Each association shall be audited at least once in each fiscal year by auditors and in a manner satisfactory to the commissioner in accordance with the policies established by the commissioner. The auditors are to be designated by the board of directors and must be independent, certified public accountants certified in this state. In lieu of audits by independent, certified public accountants, the board of directors may request an audit of the books and accounts to be made by the commissioner to check the assets of the association and to determine losses, which request the commissioner may refuse. The commissioner may at any time make or cause to be made an audit of any association, with appraisals, when deemed advisable. Associations shall promptly file with the commissioner a copy of the report of each audit, other than audits made by the commissioner. The cost of any audit made pursuant to this section shall be paid by the association audited.

History: 1973 c. 205; 1983 a. 167.

215.26 Miscellaneous provisions. (1) **ACTION AGAINST AN ASSOCIATION.** No action may be brought under ch. 776 against any association organized under this chapter.

(2) **RELIATORY TAXES AND RESTRICTIONS.** When the laws of any other state or territory impose any taxes, fines, penalties, licenses, fees, deposits, money, securities or other obligations or prohibitions on associations of this state doing business in such other state or territory or upon their agents therein, so long as such laws continue in force, the same obligations and prohibitions shall be imposed upon all associations of such other state or territory and their agents in this state.

(3) **OBSELETE RECORDS.** Any association may destroy or dispose of such of its records as may become obsolete after first obtaining the written consent of the commissioner.

(4) **REPRODUCTION AND DESTRUCTION OF RECORDS.** (a) Any association may cause any or all records kept by such association to be recorded, copied or reproduced by any photostatic, photographic or miniature photographic process or by optical imaging if the process employed correctly, accurately and permanently

copies, reproduces or forms a medium for copying, reproducing or recording the original record on a film or other durable material. An association may thereafter dispose of the original record after first obtaining the written consent of the commissioner. This section, excepting the part of it which requires written consent of the commissioner, is applicable to federal associations insofar as it does not contravene federal law.

(b) Any photographic, photostatic or miniature photographic copy or reproduction or copy reproduced from a film record or any copy of a record generated by optical disk storage of an association record shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any such photographic copy or reproduction, copy reproduced from a film record or copy generated from optical disk storage of a record shall, for all purposes, be deemed a facsimile, exemplification or certified copy of the original record.

(5) **LEGAL HOLIDAYS.** The commissioner shall designate such of the legal holidays listed in s. 895.20 as days on which no association may transact business or be open for the purpose of transacting business. For purposes of this subsection, operation of a remote service unit as defined in s. 215.13 (46) (a) 1. or an unstaffed facility does not constitute the transaction of business.

(6) **AGENT OF SAVINGS AND LOAN ASSOCIATION.** Any person who acts as the agent for any unauthorized savings and loan association in this state, or sells or disposes of any savings accounts, certificates, bonds or other evidences of indebtedness of or for any such unauthorized association, not licensed to transact business in this state, and any person who acts for any such unauthorized association or in any manner aids in the transaction of the business of such association in this state shall be guilty of a misdemeanor and be fined not less than \$100 nor more than \$500 for each offense, and shall be personally liable for any sums received by the person for or on behalf of such unauthorized association.

(7) **FEDERAL ASSOCIATIONS LOCATED IN WISCONSIN.** Federal savings and loan associations which have their home offices located in Wisconsin, and are incorporated pursuant to the home owners' loan act of 1933, as now or hereafter amended, are not foreign corporations or associations. Unless federal law or regulations provide otherwise, such federal savings and loan associations and members thereof shall possess all of the rights, powers, privileges, benefits, immunities and exemptions that are now provided or that may be hereafter provided by the laws of this state for associations organized under the laws of this state and for the members thereof. This provision is additional and supplemental to any provision which, by specific reference, is applicable to such federal savings and loan associations and the members thereof.

(8) **ACCESS TO BOOKS AND RECORDS.** (a) 1. Every person may inspect those books and records of an association which pertain to the person's loan or savings account. An association and officers and employes of an association may provide books, records or other information as required by court order or by a subpoena in a court or administrative proceeding.

2. If requested by an individual who is a customer, loan applicant or credit applicant, a financial institution, as defined in s. 705.01 (3), shall provide that individual with a copy of any written appraisal report which is held by the financial institution, which relates to residential real estate that the individual owns or has agreed to purchase and for which a fee is imposed.

3. If requested by an individual who is a customer, loan applicant or credit applicant, a financial institution, as defined in s. 705.01 (3), shall provide that individual, at no additional charge, with a copy of any written credit report which is held by the financial institution, which relates to that individual and for which a fee is imposed.

(b) Except as provided under par. (a), the right of inspection and examination of the books and records of an association is limited to:

1. The commissioner or duly authorized representatives.
2. Persons duly authorized to act for the association.
3. Any federal agency or other instrumentality approved by the commissioner which is authorized to inspect and examine books and records of an insured association.

(c) The books and records of an association pertaining to savings accounts and loans shall be kept confidential by the association, its directors, officers and employees. Except as authorized under pars. (a) and (d) to (f), no other person may have access to the books and records or may be furnished or may possess a partial or complete list of borrowers or savings account owners.

(d) An association may disclose information from its books and records to a consumer reporting agency as defined in 15 USC 1681a (f) for purposes of a consumer report as defined in 15 USC 1681a (d).

(dm) An association may disclose information from its books and records as provided in s. 767.267 (5).

(e) An association shall disclose the current balances of a saver's accounts and identify the accounts to any person who:

1. Submits an affidavit stating that the person has standing under s. 867.01 (3) or 867.02 (2) to petition for summary settlement or assignment of a decedent's estate or that the person is an heir who may obtain transfer of property of a decedent under s. 867.03; and

2. Submits a certified copy of the saver's death certificate. If the association already possesses a certified copy of the saver's death certificate, this subdivision does not apply.

(f) An association may furnish a partial or complete list of its customers to any person if all of the following apply:

1. The list does not classify customers by individual financial criteria and contains only the names and addresses of customers.
2. The association gives each customer prior written notice of the association's intent to furnish information about the customer and informs the customer that the customer has the right to prohibit the release by notifying the association in writing on a form provided by the association.
3. The person who is furnished a list agrees in writing not to furnish the list to another person.

(9) **CLOSING BOOKS** Each association shall close its books at least once annually and at such other times as the commissioner requires. The date of the annual fiscal closing may be March 31, June 30, September 30 or December 31, unless rules of the commissioner otherwise direct.

History: 1971 c. 229; 1973 c. 291; 1975 c. 359 s. 16; 1975 c. 421; 1977 c. 140; 1977 c. 187 s. 135; 1979 c. 32 s. 92 (6); 1981 c. 192; 1983 a. 167 ss. 43, 44, 112; 1983 a. 192 s. 304; 1983 a. 268; 1989 a. 313; 1991 a. 78, 280, 316; 1993 a. 425, 481

215.32 Possession by commissioner; involuntary liquidation. (1) **DEFINITION.** In this section, "circuit court" means the circuit court of Dane county, notwithstanding s. 801.50.

(1m) **CONDITIONS FOR TAKING POSSESSION** The commissioner may take possession of the business and property of any association to which this chapter applies if the commissioner finds that the association:

- (a) Is conducting its business contrary to law; or
- (b) Has violated its charter or any law; or
- (c) Is conducting its business in an unauthorized or unsafe manner; or
- (d) Is in an unsound or unsafe condition to transact its business; or
- (e) Has an impairment of its savings accounts; or
- (f) Cannot with safety and expediency continue business; or
- (g) Has suspended payment of its obligations; or
- (h) Has failed to comply with an order of the commissioner; or
- (i) Has refused to submit its books, papers, records or affairs for inspection; or
- (j) Has refused to be examined upon oath regarding its affairs.

(2) **PROCEDURE AFTER TAKING POSSESSION** After taking possession of the business and property of an association, the commissioner shall immediately:

(a) Serve written notice on an officer of the association stating that the commissioner has taken possession and control of the business and property of the association. A copy of the notice and proof of service thereof shall be filed with the clerk of circuit court.

(b) Mail notice to the last-known address of any person known to the commissioner to be in possession of assets of the association.

(3) **EMPLOYMENT OF COUNSEL; RETENTION OF OFFICERS AND EMPLOYEES OF ASSOCIATION.** The commissioner may employ necessary counsel and experts in a liquidation under this section and may retain any officer or employee of the association.

(4) **APPOINTMENT OF SPECIAL DEPUTY COMMISSIONERS** The commissioner may appoint special deputy commissioners as agents to assist in the liquidation and distribution of the assets of associations whose business and property the commissioner has taken possession of. A certificate of the appointment shall be filed in the office of the commissioner and a certified copy in the office of the clerk of circuit court.

(5) **SURETY BONDS OF SPECIAL DEPUTY COMMISSIONERS AND ASSISTANTS.** Special deputy commissioners and assistants shall furnish surety bonds in accordance with s. 215.11.

(6) **DUTIES OF SPECIAL DEPUTY COMMISSIONERS** (a) *Notice, allowance and payment of claims.* The special deputy commissioner shall publish a class 3 notice, under ch. 985, requiring all persons who have claims against the association, other than savers whose claims are shown in the records of the association, to file proof of their claims at a place and by a date not earlier than 30 days after the last insertion of the notice. The special deputy commissioner shall mail a copy of the notice to all persons, at their last-known addresses, who appear as creditors upon the books of the association. Proof of publication and service of the notice shall be filed with the clerk of circuit court. A claim, other than that of a saver whose claim is shown on the records of the association, for which no proof of claim is filed by the date fixed in the notice is barred. Savers whose claims are shown in the records of the association need not file proof of their claims. Any interested party may file written objections to any claim with the special deputy commissioner. The special deputy commissioner may reject any claim, including a claim of a saver. After notice by registered mail of rejection, the claim is barred unless the claimant commences an action within 90 days after the date of mailing of the notice of rejection.

(b) *Inventory of assets and statement of liabilities.* The special deputy commissioner appointed under this section shall make an inventory of the assets of the association. One copy of the inventory shall be filed in the office of the commissioner and one in the office of the clerk of circuit court. After the time for filing proof of claims has expired, the special deputy commissioner shall make a complete list of the claims for which proof of claims were filed and specify the claims he or she has rejected. One copy shall be filed in the office of the commissioner and one in the office of the clerk of circuit court. The inventory of assets and list of claims shall be open to inspection.

(c) *Execution of legal documents; borrowing of money.* A special deputy commissioner appointed under this section may, with the prior approval of the commissioner and the circuit court, execute, acknowledge and deliver all deeds, assignments, releases or other instruments necessary and proper to effect any sale or transfer or incumbrance of the property of an association subject to this section and may borrow money for use in the liquidation.

(d) *Conservation of assets; collection of claims; sale of assets and performance of any other acts upon order of the court.* A special deputy commissioner appointed under this section may take any action necessary to conserve the assets and business of an association subject to this section and shall proceed to liquidate its

affairs. The special deputy commissioner shall collect all claims belonging to the association, and, with the prior approval of the commissioner and the circuit court, may sell or compound all bad or doubtful claims, do any act or execute any necessary instruments, or sell the property of the association.

(e) *Depositing of moneys in one or more financial institutions.* The moneys collected by the special deputy commissioner under this section shall be deposited in financial institutions, and in case of the suspension or insolvency of the depository the deposits shall be preferred before all other deposits.

(em) *Claims against association.* Claims against an association subject to this section shall be satisfied according to the following priority:

1. All costs, expenses and debts of the association incurred on or after the date on which the commissioner takes possession of the association.

2. All claims which are secured by, or which are liens on, assets of the association, to the extent of the value of the assets.

3. All portions of secured claims which remain unsatisfied and unsecured claims on equal priority and proportionate basis, except subordinated debt shall be paid according to the terms of the contract evidencing it.

(f) *Liquidating dividends.* After the date fixed for filing proof of claims under s. 215.32 (6) (a), the special deputy commissioner may, with the prior approval of the commissioner and the circuit court, out of the funds remaining after the payment of costs, expenses, debts and claims under par. (em), declare liquidating dividends, and may declare a final liquidating dividend. The liquidating dividends shall be paid to those persons, in those amounts directed by the circuit court.

(g) *Notice prior to order for final distribution.* Prior to the order for final distribution under par. (f), the special deputy commissioner shall publish a class 3 notice, under ch. 985, and give such further notice as the circuit court directs, requiring all persons who have claims against the association arising during the liquidation proceedings to file proof of their claims at a place and by a date not earlier than 30 days after the last insertion of the notice. Proof of publication of the notice shall be filed with the clerk of circuit court. A claim for which no proof of claim is filed by the date fixed in the notice is barred. Any interested party may file written objection to any claim with the special deputy commissioner. The special deputy commissioner may reject any claim. After notice by registered mail of rejection, the claim is barred unless the claimant commences an action within 90 days after the date of mailing of the rejection.

(h) *Transfer of residual assets to commissioner.* After the order for final distribution has been made under par. (f), the special deputy commissioner shall, with the approval of the commissioner and the circuit court, assign all assets, claims and demands that have been written off and considered worthless, and all unknown assets, to the commissioner. The commissioner may accept and hold the assets, claims and demands, with the power to compound, compromise, settle and assign them and execute and deliver any legal instrument incidental thereto without court approval. Any moneys received shall be paid into the general fund of the state after the commissioner has deducted the cost of his or her services, attorney fees and other incidental expenses.

(7) UNCLAIMED LIQUIDATING DIVIDENDS AND UNCLAIMED FUNDS (a) 1. The special deputy commissioner shall deliver to the commissioner:

a. Any unclaimed liquidating dividends and all funds remaining in the hands of the special deputy commissioner at the date of the order for final distribution

b. All final liquidating costs.

2. The commissioner shall deposit moneys delivered under subd. 1. in a financial institution, to the credit of the commissioner in trust for the persons entitled to the moneys.

3. The commissioner shall include in the annual report under s. 215.02 (11):

a. The names of associations liquidated.

b. The sums of unclaimed and unpaid liquidating dividends and unclaimed funds with respect to each liquidated association.

c. A statement of interest earned upon such funds.

(c) The commissioner may:

1. Pay the moneys so held to the persons entitled thereto, upon being furnished satisfactory evidence of their right to the same.

2. In case of doubt or conflicting claims, require an order of the circuit court directing the payment.

3. Apply the interest earned by the moneys so held towards defraying the expenses in the payment and distribution of unclaimed liquidating dividends and funds to the persons entitled to the same.

(d) The commissioner may make application to the circuit court for an order determining what books or records of an association subject to this section are to be kept or destroyed. All books or records ordered kept shall be kept in a manner and place ordered, subject to the further order of the circuit court. The expense of keeping books or records shall be paid before final distribution. All books or records ordered destroyed shall be delivered to the commissioner to be destroyed.

(8) *TITLE PASSES TO COMMISSIONER.* The possession of and title to all property of the association is transferred from the association to the commissioner on the date the notice required by sub. (2) is filed. The filing of the notice bars any attachment, garnishment, execution or other legal proceedings against the association or its property.

(9) *EFFECT OF POSSESSION.* No association shall have a lien or charge for any payment, advance or clearance made or liability incurred, against any of the assets of the association after the commissioner has possession.

(10) *ACTION TO ENJOIN PROCEEDINGS.* An association subject to this section may, within 10 days after the notice required under sub. (2) is filed, apply to the circuit court to enjoin further proceedings. The circuit court, after citing the commissioner to show cause why further proceedings should not be enjoined and hearing the matter, may enjoin the commissioner from further proceedings, and direct the commissioner to surrender the association's business and property to the association.

(11) *COMPENSATION AND EXPENSES IN CONNECTION WITH LIQUIDATION.* The compensation of the special deputy commissioners, counsel and other employes and assistants and all expenses of supervision and liquidation shall be fixed by the commissioner, subject to the approval of the circuit court, and shall upon the certificate of the commissioner be paid out of the funds of the association. Such expenses include the cost of the service rendered by the commissioner to the association and shall be determined from time to time by the commissioner and shall be paid to the commissioner from the assets of the association.

(13) *REINSTATEMENT.* Whenever the commissioner has taken possession of the business and property of any association, the association may resume business when:

(a) In the case of a mutual association, the owners of at least two-thirds of such association's dollar value aggregate of outstanding savings accounts or, in the case of a capital stock association, the owners of at least two-thirds of the association's outstanding shares, execute a petition to such effect, in the form prescribed by the commissioner;

(b) Such members, savers or stockholders, or a committee selected by them, submit to the commissioner a plan for the reorganization and reinstatement of the association;

(c) The commissioner recommends that control of the business and property of the association be returned to the directors; and

(d) The court in which such liquidation is pending, upon application of the commissioner, finds that the association will be in a safe and sound condition when control is resumed by the directors.

(14) *REINSTATEMENT UPON A RESTRICTED BASIS.* Such association may resume business upon a restricted basis, and upon limita-

tions and conditions prescribed by the commissioner when approved by the circuit court, upon application of the commissioner. Such restrictions and conditions may include a prohibition against the acceptance of payments on new savings accounts, reasonable restrictions upon withdrawals of savings accounts and the payment of other liabilities. Such associations shall thereupon be relieved from the control of the commissioner.

(15) PROCEDURE UPON TAKING POSSESSION OF ASSOCIATION WHOSE SAVINGS ACCOUNTS ARE INSURED BY FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION. (a) The commissioner may, if the commissioner takes possession of any association, the savings accounts of which are to any extent insured by the federal savings and loan insurance corporation, tender to said corporation the appointment as statutory liquidator of such association. If the commissioner does not make such tender, the commissioner shall tender to said corporation the appointment as statutory co-liquidator to act jointly with the commissioner, but such co-liquidatorship shall not be for more than one year from the date of such tender, at the expiration of which time the commissioner shall become the sole liquidator except as herein otherwise provided. The commissioner shall tender to said corporation the appointment as sole statutory liquidator of such association whenever said corporation has become subrogated to the rights of 90 per cent of the liability of such association on savings accounts. If the corporation becomes subrogated as to all the savings accounts in such association, it may then exercise all the powers and privileges herein conferred upon it without court approval.

(b) If the corporation accepts the appointment as sole liquidator it shall possess all the powers and privileges of the commissioner as statutory liquidator of a possessed savings and loan association, and be subject to all the duties of the commissioner as sole liquidator, except insofar as such powers and privileges or duties are in conflict with federal laws, and except as herein otherwise provided, unless such association resumes business, pursuant to subs. (13) and (14). If the corporation accepts the appointment as co-liquidator, it shall possess such powers and privileges jointly with the commissioner and shall be subject to such duties jointly with said commissioner.

(c) In the event the corporation accepts the appointment as co-liquidator or liquidator, it shall file such acceptance with the commissioner and the clerk of the circuit court and it may act without bond. Upon the filing by the corporation of its acceptance of the appointment as sole liquidator, the possession of and title to all the assets, business and property of the association shall vest in the corporation without the execution of any conveyance, assignments, transfer or indorsement. Upon the filing by the corporation of its acceptance of the appointment as co-liquidator, such possession and title shall be vested in the commissioner and the corporation jointly. If the corporation does not qualify as sole liquidator at or before the time herein provided for the expiration of the co-liquidatorship, the corporation shall be wholly divested of and from such joint title and possession and the sole title and possession shall thereupon vest in the commissioner. The vesting of title and possession of the property of the association, under sub. (8), shall not render such property subject to any claims or demands against the federal corporation, except such as may be incurred by it with respect to such association and its property. Whether or not it serves as aforesaid, the corporation may make loans on the security of or may purchase with the approval of the court, except as herein otherwise provided, all or any part of the assets of any association, the savings accounts of which are to any extent insured by it, but in the event of such purchase, the corporation shall pay a reasonable price.

(d) Whether or not the corporation serves as liquidator, when-ever it pays or makes available for payment the savings accounts of any such association in liquidation which are insured by it, it shall be subrogated upon the surrender and transfer to it of such savings accounts, with respect thereto, but such surrender and transfer shall not affect any right which the transferor has in such savings accounts which are not paid or made available for pay-

ment or any right to participate in the distribution of the net proceeds remaining from the disposition of the assets of such association; provided, that the rights of the investors and creditors of such association shall be determined in accordance with the applicable laws of the state.

History: 1975 c. 359, 421; 1977 c. 187 s. 134; 1983 a. 167, 219, 524; 1991 a. 316
Cross-reference: See Chap. 177 for disposition of unclaimed funds.

215.33 Foreign associations. (1) DOING BUSINESS IN THIS STATE A foreign association is "doing business" in this state if it accepts funds for deposit in this state, takes loan applications in this state in the regular course of business, or otherwise engages in any activity which would, if engaged in by a domestic association or corporation, require it to be chartered under the laws of this state as a savings and loan association. However, a foreign association is not considered to be doing business in this state solely because it does one or more of the following:

(a) Makes a mortgage loan in this state, purchases a loan secured by real property located in this state, or otherwise acquires an interest in real property located in this state.

(b) Holds or disposes of any interest in real property located in this state.

(c) Pursues its rights or remedies in this state as the owner of real estate or under the terms of a real estate mortgage or similar security interest.

(d) Advertises in this state.

(2) LIMITATIONS ON THE ACTIVITIES OF FOREIGN ASSOCIATION. The activities in which a foreign association may engage in this state are limited to those in which an association chartered by this state may engage, and are subject to the laws of this state to the same extent as those activities of an association chartered by this state. No foreign association may do business in this state without a certificate of authority issued under this section.

(3) CERTIFICATE OF AUTHORITY TO DO BUSINESS (a) *Application fee and contents.* Each application by a foreign association for a certificate of authority to do business in this state shall be accompanied by a \$500 application fee payable to the office and shall contain:

1. A certified copy of the association's current articles of incorporation and bylaws, or other similar governing documents.

2. The name and address of an individual in this state who will serve as the association's agent under sub. (5).

3. Satisfactory evidence that the association is in good standing with the authorities responsible for its supervision in the jurisdiction in which it is organized.

4. If the accounts of the association are insured, satisfactory evidence that the insurance is in force.

5. Such other information as the commissioner may require.

(b) *Approval of applications.* Upon receipt of a completed application and the required fee, the commissioner may issue a certificate of authority. The certificate of authority may be subject to specific conditions that the commissioner believes necessary to adequately safeguard the interests of the residents of this state. A certificate of authority to do business in this state shall not be issued unless:

1. The association is in sound financial condition and entitled to public confidence, and the commissioner is satisfied that the association will conduct its business in this state in accordance with the laws of this state.

2. The accounts of the association are insured by the federal savings and loan insurance corporation or any other insurer acceptable to the commissioner, or that adequate and sufficient securities have been deposited with the state treasurer to assure that the association will meet its obligations to the residents of this state.

(c) *Revocation.* The commissioner may revoke a certificate of authority issued under this section if:

1. The association fails to conduct its business in this state in accordance with the laws of this state.

2. The association refuses to permit the commissioner to conduct a complete examination of the association, or fails to pay applicable costs or fees.

3. The commissioner determines that the association is in an unsafe condition or that its continued operation in this state is otherwise inconsistent with the best interests of the residents of this state.

(4) **EXAMINATION AND AUDIT OF FOREIGN ASSOCIATIONS.** Each foreign association doing business in this state shall be examined by the commissioner as provided under s. 215.03, audited under s. 215.25 and assessed fees and costs as provided under s. 215.02 (16), together with any out-of-state travel expenses incurred in the course of the examination and audit. However, the commissioner may accept as all or part of the examination or audit, all or any part of an examination or audit made on behalf of the agency responsible for the supervision of the foreign association in the jurisdiction in which the association is organized.

(5) **DESIGNATION OF REGISTERED AGENT.** Each foreign association doing business in this state shall maintain on file with the commissioner the name and address of an individual in this state who is authorized to receive legal process on behalf of the association. The commissioner shall maintain a current record of each individual so designated. The record of the commissioner shall be conclusive evidence of the authority of the person whose name appears therein to receive process on behalf of the association.

(6) **RECIPROCITY.** If the laws of another jurisdiction prohibit an association chartered by this state and insured by the federal savings and loan insurance corporation from doing business in that jurisdiction, no association organized under the laws of that jurisdiction may be authorized to do business in this state. If the laws of another jurisdiction require the posting of securities or impose other additional requirements as a condition of permitting an association chartered by this state to do business in that jurisdiction, the commissioner may impose similar requirements on an association organized under the laws of that jurisdiction before issuing the association a certificate of authority to do business in this state.

History: 1975 c. 56; 1979 c. 287; 1983 a. 167; 1985 a. 135, 157.

215.35 Conversion; or absorption; waiver. (1) The commissioner may waive any portion of s. 215.53, 215.57, 215.58, 215.73 or 215.77 if the commissioner makes written findings of both of the following:

(a) The net worth of an association is equal to less than one percent of the assets of the association or is reasonably expected to be less than one percent within one year.

(b) The waiver is in the best interest of savers of the association and the public.

(2) (a) An acquisition under this section is not subject to s. 215.36.

(b) Section 215.36 does not limit any authority of the federal home loan bank board or federal savings and loan insurance corporation in connection with an acquisition under this section.

History: 1983 a. 167, 538; 1985 a. 325.

215.36 Interstate acquisition and merger of associations. (1) **DEFINITIONS.** In this section:

(a) "In-state savings and loan" means an association or federal savings and loan association, both having their home offices in this state.

(b) "In-state savings and loan holding company" means a savings and loan holding company that has its principal place of business in this state and is not owned or controlled by a company having its principal place of business outside of this state.

(c) "Merger" includes absorptions under ss. 215.53 and 215.73.

(d) "Regional savings and loan" means a foreign association, if its accounts are insured by the federal savings and loan insurance corporation, or a federal savings and loan association, both having their home offices located in one of the regional states and that, if owned or controlled by a company, is owned or controlled

by a regional state savings and loan holding company or by an in-state savings and loan holding company.

(e) "Regional savings and loan holding company" means a savings and loan holding company that has its principal place of business in a regional state and is not owned or controlled by a company having its principal place of business outside of the regional states.

(f) "Regional states" means the states of Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri and Ohio.

(2) **IN-STATE SAVINGS AND LOANS.** (a) An in-state savings and loan may do any of the following:

1. Acquire direct or indirect ownership or control of voting shares of one or more regional savings and loans or acquire an interest in, or some or all of the assets and liabilities of, one or more regional savings and loans.

2. Merge with one or more regional savings and loans.

(b) An in-state savings and loan proposing any action under par. (a) shall provide the commissioner a copy of any original application seeking approval by a federal agency or by an agency of the regional state and of any supplemental material or amendments filed in connection with any application.

(3) **IN-STATE SAVINGS AND LOAN HOLDING COMPANIES.** (a) An in-state savings and loan holding company may do any of the following:

1. Acquire direct or indirect ownership or control of voting shares of one or more regional savings and loans or regional savings and loan holding companies or acquire an interest in, or some or all of the assets of, one or more regional savings and loans or regional savings and loan holding companies.

2. Merge with one or more regional savings and loan holding companies.

(b) An in-state savings and loan holding company proposing any action under par. (a) shall provide the commissioner a copy of any original application seeking approval by a federal agency or by an agency of the regional state and of any supplemental material or amendments filed in connection with any application.

(4) **REGIONAL SAVINGS AND LOANS AND REGIONAL SAVINGS AND LOAN HOLDING COMPANIES.** Except as provided in sub. (5), a regional savings and loan or regional savings and loan holding company may do any of the following:

(a) Acquire direct or indirect ownership or control of voting shares of one or more in-state savings and loans or in-state savings and loan holding companies or acquire an interest in, or some or all of the assets and liabilities of, one or more in-state savings and loans or in-state savings and loan holding companies.

(b) Merge with one or more in-state savings and loan holding companies.

(5) **LIMITATIONS.** A regional savings and loan or regional savings and loan holding company may not take any action under sub. (4) until all of the following conditions have been met:

(a) The commissioner finds that the statutes of the regional state in which the regional savings and loan or regional savings and loan holding company has its principal place of business permit all of the following:

1. In-state savings and loans to acquire one or more regional savings and loans in the regional state.

2. In-state savings and loan holding companies both to acquire one or more regional savings and loans and to acquire and merge with one or more regional savings and loan holding companies in the regional state.

(b) The commissioner has not disapproved the acquisition of the in-state savings and loan or the acquisition or merger with the in-state savings and loan holding company under sub. (7).

(c) The commissioner gives a class 3 notice, under ch. 985, in the official state newspaper, of the application to take an action under sub. (4) and of the opportunity for a hearing and, if at least 25 residents of this state petition for a hearing within 30 days of the final notice or if the commissioner on his or her motion calls

for a hearing within 30 days of the final notice, the commissioner holds a public hearing on the application, except that a hearing is not required if the commissioner finds that an emergency exists and that the proposed action under sub. (4) is necessary and appropriate to prevent the probable failure of an in-state savings and loan that is closed or in danger of closing.

(d) The commissioner is provided a copy of any original application seeking approval by a federal agency of the acquisition of an in-state savings and loan or acquisition of or merger with an in-state savings and loan holding company and of any supplemental material or amendments filed with the application.

(e) The applicant has paid the commissioner a fee of \$1,000 together with the actual costs incurred by the commissioner in holding any hearing on the application.

(f) With regard to an acquisition of an in-state savings and loan that is chartered on or after May 9, 1986, the in-state savings and loan has been in existence for at least 5 years before the date of its acquisition.

(6) CONDITION ON ACQUISITION. If a regional state savings and loan holding company acquires an in-state savings and loan holding company that owns one or more in-state savings and loans that have been chartered on or after May 9, 1986, and that have been in existence for less than 5 years, the regional state savings and loan holding company shall divest itself of those in-state savings and loans within 2 years after the date of acquisition of the in-state savings and loan holding company by the regional state savings and loan holding company.

(7) STANDARDS FOR DISAPPROVAL. The commissioner may disapprove of any action under sub. (4) if the commissioner finds any of the following:

(a) Considering the financial and managerial resources and future prospects of the applicant and of the in-state savings and loan or in-state savings and loan holding company concerned, the action would be contrary to the best interests of the shareholders or customers of the in-state savings and loan or in-state savings and loan holding company.

(b) The action would be detrimental to the safety and soundness of the applicant or of the in-state savings and loan or in-state savings and loan holding company concerned, or to a subsidiary or affiliate of the applicant or of the in-state savings and loan or in-state savings and loan holding company.

(c) Because the applicant, its executive officers, directors or principal shareholders have not established a record of sound performance, efficient management, financial responsibility and integrity, the action would be contrary to the best interests of the depositors, other customers, creditors or shareholders of the applicant or of the in-state savings and loan or in-state savings and loan holding company or contrary to the best interests of the public.

(cg) The applicant has failed to provide adequate and appropriate services required by the community reinvestment act of 1977 to the communities in which the applicant is located.

(cr) The applicant has failed to propose to provide adequate and appropriate services required by the community reinvestment act of 1977 in the community in which the in-state savings and loans which the applicant proposes to acquire or in-state savings and loan holding company which the applicant proposes to acquire or merge with is located.

(ct) The applicant has failed to enter into an agreement prepared by the commissioner to comply with laws and rules of this state regulating consumer credit finance charges and other charges and related disclosure requirements, except to the extent preempted by federal law or regulation.

(d) Any of the conditions under sub. (5) (a), (c), (d), (e) or (f) has not been met.

(e) The applicant fails to meet any other standards established by rule of the commissioner.

(8) EXCEPTION. This section does not prevent a regional savings and loan or regional savings and loan holding company from acquiring voting shares of one or more in-state savings and loans

or savings and loan holding companies, subject to the limitations of 12 USC 1730a except that the standard for control in 12 USC 1730a (a) (2) shall be 10% rather than 25%.

(8m) BRANCHING NOT LIMITED. This section does not limit branching authority under s. 215.13 (39).

(9) APPLICABILITY. (a) Subsections (1) to (7) do not apply prior to January 1, 1987, except that the commissioner may promulgate rules under sub. (7) (e) to be applicable no earlier than the date that subs. (1) to (7) apply.

(b) Subsections (1) to (7) apply as of the date, not earlier than January 1, 1987, that 3 regional states, at least 2 of which shall be from among the states of Illinois, Indiana, Iowa, Michigan and Minnesota, permit in-state savings and loan holding companies both to acquire one or more regional savings and loans and to acquire and merge with one or more regional savings and loan holding companies in those regional states.

(10) WHEN INVALIDATED. (a) Except as provided in par. (b), if any part of subs. (1) to (7) is held to be unconstitutional, then all of subs. (1) to (7) shall be invalid.

(b) If any part of subs. (1) to (7) is held to be unconstitutional with respect to a savings and loan holding company, as defined under 12 USC 1730 (a), subs. (1) to (7) shall remain in effect with respect to in-state savings and loans and regional savings and loans.

(11) DIVESTITURE. Any savings and loan holding company that ceases to be an in-state savings and loan holding company or regional savings and loan holding company shall immediately notify the commissioner of the change in its status and shall, as soon as practical and, in any case, within 2 years after the event causing it to no longer be one of these entities, divest itself of control of all in-state savings and loans and in-state savings and loan holding companies. A savings and loan holding company that fails to immediately notify the commissioner is liable for a forfeiture of \$500 for each day beginning with the day its status changes and ending with the day notification is received by the commissioner.

History: 1985 a. 325, 332; 1989 a. 242

SUBCHAPTER II

MUTUAL SAVINGS AND LOAN ASSOCIATIONS; ORGANIZATION AND MANAGEMENT

215.40 Incorporation of a mutual savings and loan association. **(1) USE OF NAME.** (a) A corporation organized under this subchapter shall be known as a mutual savings and loan association. The words "savings and loan association" or "savings association" shall form part of the name of every mutual association so organized.

(b) No corporation other than a corporation organized under this subchapter or subch. III may use a name embodying those words. No association may adopt a name identical to that of any other association or so similar to an existing association name as to be misleading.

(c) An association shall include the word "savings" in its name if its name includes the word "bank". This paragraph does not apply to an association name if the association obtained approval for use of the name from the commissioner before February 12, 1992.

(2) MINIMUM MEMBERSHIP AND SAVINGS ACCOUNTS. The commissioner shall determine:

(a) The minimum number of persons required to organize a mutual savings and loan association in any locality.

(b) The aggregate minimum amount of savings accounts to be paid into the association by persons subscribing for savings accounts.

(c) The length of time for which the incorporators shall guarantee or pay the association's operating expenses.

(d) Such other requirements as the commissioner deems necessary or desirable.

(3) **WHO MAY ORGANIZE** Adult citizens of this state, herein-after referred to as incorporators, desiring to organize a mutual association under this section shall make application to the commissioner as prescribed on forms furnished by the commissioner.

(4) **APPLICATION TO ORGANIZE A MUTUAL ASSOCIATION** The application to organize a mutual association shall be in duplicate and shall set forth:

- (a) The name of the proposed association.
- (b) The location of the proposed association.
- (c) The full name, residence and occupation of each incorporator.
- (d) The need of an association in the locality in which the proposed association intends to locate.
- (e) Such other information as the commissioner requires.

(5) **APPLICATION FEE** The applicants shall pay to the commissioner \$200 to defray the cost of investigation, which sum shall be paid by the commissioner into the general fund to the credit of the office.

(6) **EXPENSE FUND.** (a) Along with the application, the incorporators shall file an agreement with the commissioner that, in addition to their initial savings account subscriptions, they will create an expense fund in an amount not less than one-half of the total minimum required amount of savings accounts. The expense fund is for organization expenses, operating deficits, earnings distributions on savings accounts and losses.

(b) This expense fund shall become a part of the assets of the proposed association if the commissioner approves the application and will be reflected on the books as a liability under the caption "Subsidy by incorporators."

(c) If the income of a period is insufficient to pay expenses or pay a competitive rate of earnings, appropriate charges shall be made to the expense fund account.

(d) At the end of 3 years of corporate existence, the board of directors may petition the commissioner for authority to repay the incorporators on a proportional basis, any unused portion remaining in the subsidy by directors. If the commissioner determines that the operations of the association at that point are of such degree as to enable the association to operate as an independent institution, requiring no further subsidy, the commissioner may authorize such repayment.

(e) At the end of the 4th year, and each subsequent year, the board of directors of the association may petition the commissioner for authority to pay out of current income of any period to the incorporators on a proportional basis the amount remaining after payment of expenses, provision for taxes, and the provision for distribution of earnings as a recovery of previous charges made to the expense fund account by incorporators. The commissioner may approve or deny the petition for recovery payments. In no event shall refunds of this type exceed the total of the charges made to the expense fund account by incorporators.

(f) The contributions made to the expense fund shall be non-interest bearing.

(7) **NOTICE OF APPLICATIONS; HEARINGS** (a) Within 30 days after receiving a completed application the commissioner shall furnish a notice of application to the applicant and to each association authorized to operate an office within 4 miles of the proposed office if the office is to be located in Milwaukee county, or 20 miles of the proposed office if located elsewhere. The notice shall describe the location and nature of the proposed office and shall solicit written comments on the application. If a hearing on the application has been scheduled the notice shall also indicate the time and place of the hearing. If not, the notice shall notify interested persons of their right to request a hearing under par. (b) 2. The applicant shall publish the notice of application as a class 3 notice under ch. 985 in the city, town or village where the office is to be located and shall provide the commissioner with proof of its publication.

(b) The commissioner shall conduct a public hearing on the application if any of the following occur:

1. The applicant requests a hearing at the time of filing;
2. Within 3 days after publication of the notice of application any person planning to participate in a hearing on the application files with the commissioner a request for hearing; or
3. The commissioner determines that a hearing will be necessary or useful.

(c) If a hearing date was not indicated in the notice of application and a hearing is subsequently required, the commissioner shall give written notice of the time and place of the hearing to the applicant and to anyone who has requested a hearing, not later than 10 days in advance of the scheduled hearing.

(8) **CERTIFICATION OF AUTHORITY, WHEN ISSUED.** If the application is approved, the commissioner shall issue to the incorporators a certificate of authority to effect a temporary organization, consisting of a chairperson, a secretary and a treasurer; to execute and file articles of incorporation; to adopt and file bylaws; to adopt rules for the procedure of the incorporators; to conduct the first meeting of members; and to open subscription books for savings accounts.

(9) **POWERS OF INCORPORATORS** The incorporators shall, until the completion of the organization, exercise such other powers as are conferred upon the incorporators of other corporations so far as such powers are not in conflict with this chapter.

(10) **SURETY BOND OF OFFICERS** The incorporators shall require a surety bond in a suitable amount from the treasurer and other officers who may handle funds of the temporary organization.

(11) **CERTIFICATE OF AUTHORITY, WHEN VOIDED** The certificate of authority shall be void after 90 days from its date, but the commissioner may for cause, after a hearing, extend the life of such certificate for such time as the commissioner deems advisable.

(12) **COMPENSATION FOR ORGANIZING PROHIBITED** (a) No person may directly or indirectly receive or contract to receive any commission, salary, compensation, bonus, rights or privileges for organizing the association, or for securing a subscription for the original savings accounts of the association.

(b) This subsection does not prohibit an attorney from receiving reasonable compensation for legal services in connection therewith, after the association has been granted a certificate of incorporation.

(c) Whoever violates this subsection shall forfeit to the state \$1,000 for each violation, and in addition double the amount of the violator's commission, salary, compensation or bonus.

(13) **CERTIFICATE OF COMPLIANCE** (a) Within the time prescribed in sub. (11), the incorporators shall file with the commissioner a certificate stating:

1. That articles of incorporation have been executed, filed with and approved by the commissioner, and recorded; and
2. That the first meeting of members was held and that directors and officers were elected at such meeting; and
3. That bylaws were adopted at the first meeting of members and filed with and approved by the commissioner; and
4. That the minimum number of required savers was obtained, and that said savers, in the aggregate, paid to the association the required initial amount of savings accounts; and
5. That funds, representing the initial amount of savings accounts, have been deposited in the association's designated depository bank; and
6. That the incorporators, in accordance with the requirement of sub. (6), paid to the association the moneys for an expense fund; and
7. That the moneys, representing the expense fund, have been deposited in the association's designated depository bank; and
8. That ground floor, independent office quarters have been obtained for the proposed association; and

9. That necessary action has been taken to obtain membership in the federal home loan bank, and insurance of savings accounts from the federal savings and loan insurance corporation or other instrumentality approved by the commissioner.

(b) No business, other than that of completing the organization of the proposed association, may be transacted until such time as the commissioner issues a certificate of incorporation to the association to commence business.

(14) CERTIFICATE OF INCORPORATION, WHEN ISSUED. Upon receipt of the certificate of compliance from the incorporators, the commissioner may within 30 days issue a certificate of incorporation to the association under the commissioner's hand and seal authorizing said association to commence business. The date appearing on the certificate of incorporation shall be the date of the corporate existence of the association.

(15) FEE FOR CERTIFICATE OF INCORPORATION. The incorporators shall pay to the commissioner a fee of \$50 for the certificate of incorporation, which sum shall be paid by the commissioner into the general fund to the credit of the office.

(16) CERTIFICATE OF INCORPORATION, WHEN VOIDED. Any association failing to commence business within one year from the date of the certificate of incorporation shall have its corporate existence terminated, and its articles of incorporation and certificate of incorporation shall be void.

(17) DISCRETIONARY AUTHORITY. The commissioner shall have discretionary power in the granting of certificates of authority to incorporators desiring to organize such associations. The commissioner may also refuse to issue certificates of incorporation to the incorporators to commence business when, in the commissioner's opinion, the incorporators or any of them are not of such character and general fitness as to warrant belief that the association will be conducted for the best interest of its members; the location of the association is so close to an existing association that its business might be interfered with and the support of the new association would not be such as to assure its success; or when other good and sufficient reasons exist for such refusal.

(18) APPEAL BY APPLICANTS AFTER BEING DENIED CERTIFICATE OF AUTHORITY. If the commissioner refuses to grant a certificate of authority to organize an association, and the applicants feel aggrieved thereby, they may appeal to the review board to review the commissioner's determination under s. 215.04 (1) (d) and (4).

History: 1971 c. 229; 1975 c. 359 s. 10; 1975 c. 421; Stats. 1975 s. 215.40; 1977 c. 140; 1979 c. 110 ss. 35, 60 (11); 1983 a. 167; 1991 a. 221, 316; 1993 a. 184.

215.41 Articles of incorporation for mutual associations. (1) FORM. The articles of incorporation of a mutual association shall be approved by the commissioner. The commissioner shall, with the approval of the review board, promulgate rules governing articles of incorporation.

(2) FILING AND APPROVAL. Duplicate originals of the articles of incorporation executed by the incorporators, and any subsequent amendments thereto adopted by the members of the association, shall be filed with and approved by the commissioner.

(3) RECORDING. Upon their approval by the commissioner, articles of incorporation and amendments thereto shall be recorded in the office of the register of deeds of the county in which the home office of the association is located.

(4) AMENDMENT PROCEDURE. Amendments to the articles of incorporation may be made at any annual or special meeting of the members duly called for that purpose, provided that a statement of the nature of the proposed amendment is included in the notice of meeting. The proposed amendment shall be adopted upon receiving the affirmative vote of a majority of the total eligible votes thereon, pursuant to s. 215.43 (4).

(5) EFFECTIVE DATE. The effective date of articles of incorporation and amendments thereto shall be the date when left for record in the office of the register of deeds. The register of deeds shall forward a certificate of recording to the commissioner.

History: 1975 c. 359 s. 8; Stats. 1975 s. 215.41; 1979 c. 287; 1983 a. 167 ss. 54, 112; 1991 a. 316.

215.42 Bylaws of mutual associations. (1) FORM. The bylaws of a mutual association shall be approved by the commissioner. The commissioner shall, with the approval of the review board, promulgate rules governing bylaws.

(2) FILINGS AND APPROVAL. Duplicate originals of the bylaws and any subsequent amendments thereto shall be filed with and approved by the commissioner.

(3) EFFECTIVE DATE. The effective date of bylaws and amendments thereto shall be the date when approved by the commissioner.

(4) BYLAWS AVAILABLE TO MEMBERS. Each association shall have its bylaws prepared in convenient form and upon request shall furnish a copy to any member.

(5) AMENDMENTS TO BYLAWS. The bylaws of the association may be amended as prescribed therein.

History: 1975 c. 359 s. 9; Stats. 1975 s. 215.42; 1983 a. 167; 1991 a. 316.

215.43 Members and voting rights in a mutual association. (1) WHO MAY BECOME A MEMBER. Any person, including but not limited to a partnership, corporation, fiduciary, association or federal agency, may become a member of any mutual association by owning a savings account in the association unless the savings account is evidenced by a negotiable certificate of deposit which is not in registered form. As of March 29, 1984, no person is a member of a state chartered mutual savings and loan association solely because the person has borrowed money from the association regardless of when the borrowing occurred.

(2) OWNERSHIP OF SAVINGS ACCOUNTS BY MINORS. With respect to any account created before July 1, 1975:

(a) Minors under 14 years of age may own savings accounts held by a trustee or guardian.

(b) Minors above the age of 14 years may own savings accounts, and shall then be subject to the same duties and liabilities as adult members. Payment for the withdrawal of savings accounts may, in the discretion of the board, be made to such minor, the parents or guardian, and the payments made on such withdrawals shall be valid, as well as payments on forfeited savings accounts or redeemed savings accounts.

(3) MEETINGS OF MEMBERS. Annual and special meetings of members shall be held in accordance with the method prescribed in the bylaws.

(4) VOTING RIGHTS. (a) Each saver in a mutual association shall have one vote for each \$100 or additional fraction of \$100 of the withdrawal value of each of the saver's savings accounts as they appear on the books of the association at the end of a day determined by the board which shall be not more than 60 days preceding the first day of a meeting at which a vote is taken.

(b) At any meeting of members, voting may be in person or by proxy. Every proxy shall be in writing and signed by the member or the member's duly authorized attorney in fact.

(c) If a member appears at a meeting, the member's proxy shall be void for that meeting.

(d) Any proxy, when filed with the secretary, shall, unless otherwise specified in the proxy, continue in force from year to year until revoked by a written notice delivered to the secretary or until superseded by subsequent proxies.

(5) TERMINATION OF MEMBERSHIP. Any member who has made a request for the withdrawal of the member's savings account remains a member and has all rights, privileges and duties of a member, until the withdrawal value of the savings account is paid.

History: 1971 c. 229; 1973 c. 291; 1975 c. 359 ss. 13, 47; 1975 c. 421; 1977 c. 140; 1983 a. 167; 1991 a. 316.

215.50 Directors of a mutual association. (1) MANAGEMENT RESPONSIBILITY. The government and management of a mutual association shall be vested in a board of directors, who are charged with the responsibility of compliance with this chapter, orders of the commissioner, rules of the commissioner promulgated under ch. 227, the articles of incorporation and bylaws of the

association, and other laws applicable to savings and loan operations.

(2) **QUALIFICATIONS OF DIRECTORS AND COMPOSITION OF THE BOARD.** (a) To qualify as a director of a mutual association, a member must have a savings account in the association, the withdrawal value of which is at least \$500. A director automatically ceases to be a director when the withdrawal value of his or her savings account is less than \$500.

(b) At least two-thirds of the directors shall reside in this state.

(3) **NUMBER OF DIRECTORS.** The board of directors shall consist of such number as designated in the bylaws.

(4) **ELECTION OF DIRECTORS.** The directors shall be elected by the members in accordance with the bylaws.

(5) **VACANCY ON BOARD OF DIRECTORS.** Any vacancy on the board of directors may be filled by the majority vote of the remaining directors in accordance with the bylaws.

(6) **OATH OF DIRECTORS.** Upon election, every director shall take and subscribe an oath that the director will diligently and honestly perform the duties of such office and will not knowingly violate or willingly permit to be violated this chapter, any rule of the commissioner, the articles of incorporation or bylaws under which the association operates, or any other law applicable to savings and loan operations.

(7) **DIRECTORS TO FIX COMPENSATION.** The compensation of officers, directors, employes and committee members shall be fixed by a majority vote of the board of directors in accordance with the bylaws. In addition, the board of directors may, by resolution, create a fund or join a pension system or enter into deferred compensation agreements for the retirement of its officers and employes, subject to specific, prior approval of the commissioner and the review board.

(8) **MAY ESTABLISH EXECUTIVE COMMITTEE.** The board of directors may appoint and remove, by resolution, an executive committee, the members of which shall be directors, and which committee shall have the power of the board when not in session.

(9) **MEETINGS OF DIRECTORS.** (a) The board of directors shall hold regular or special meetings in accordance with the bylaws.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board may permit any or all directors to participate in a regular or special meeting or in a committee meeting, including an executive committee meeting, of the board by, or to conduct the meeting through the use of, any means of communication by which any of the following occurs:

1. All participating directors may simultaneously hear each other during the meeting.

2. All communication during the meeting is immediately transmitted to each participating director, and each participating director is able to immediately send messages to all other participating directors.

(c) If a meeting will be conducted through the use of any means described in par. (b), all participating directors shall be informed that a meeting is taking place at which official business may be transacted. A director participating in a meeting by any means described in par. (b) is deemed to be present in person at the meeting. If requested by a director, minutes of the meeting shall be prepared and distributed to each director.

(10) **PROMULGATION OF RULES.** The board of directors, may by resolution, adopt rules and regulations for the conduct of business, provided that they are consistent with this chapter, the rules of the commissioner, and the association's articles of incorporation and bylaws.

(11) **REMOVAL OF OFFICERS OR DIRECTORS.** (a) The board may remove a director who violates this chapter, the rules of the commissioner, the articles of incorporation, the bylaws, orders of the commissioner or any other law applicable to savings and loan operations. The board may remove a director only after affording the director a hearing.

(b) The board may remove any officer of the association who is elected or appointed by the board whenever in its judgment removal is in the best interest of the association.

History: 1971 c. 229, 239; 1975 c. 11, 199; 1975 c. 359 ss. 17, 19; 1975 c. 421, 422; Stats 1975 s. 215.50; 1983 a. 167; 1989 a. 308; 1991 a. 16

215.51 Officers of a mutual association. (1) **GENERAL OFFICERS.** (a) The general officers of a mutual association shall be:

1. A president;
2. One or more vice presidents;
3. A secretary;
4. A treasurer; and
5. Such other officers as the directors by resolution designate.

(b) The president shall also be a director.

(2) **WHEN ELECTED.** Immediately following each annual meeting of members, the directors shall convene and elect general officers for the ensuing year, in accordance with the bylaws.

(3) **DUTIES OF OFFICERS.** The officers shall, in addition to the duties and functions prescribed in the articles of incorporation and the bylaws, perform such other duties as are delegated by the directors.

(4) **FILLING VACANCIES.** Whenever any vacancy occurs in any general office, the directors shall, as soon as practicable, fill such vacancy by an election for the then unexpired term.

History: 1975 c. 359 ss. 20, 51; Stats 1975 s. 215.51; 1983 a. 167.

215.512 Definitions applicable to indemnification and insurance provisions. In ss. 215.512 to 215.521:

(1) "Director or officer" means any of the following:

(a) A natural person who is or was a director or officer of a mutual association.

(b) A natural person who, while a director or officer of a mutual association, is or was serving at the mutual association's request as a director, officer, partner, trustee, member of any governing or decision-making committee, manager, employe or agent of another mutual association or foreign association, corporation, limited liability company, partnership, joint venture, trust or other enterprise.

(c) A natural person who, while a director or officer of a mutual association, is or was serving an employe benefit plan because his or her duties to the mutual association also imposed duties on, or otherwise involved services by, the person to the plan or to participants in or beneficiaries of the plan.

(d) Unless the context requires otherwise, the estate or personal representative of a director or officer.

(2) "Expenses" include fees, costs, charges, disbursements, attorney fees and any other expenses incurred in connection with a proceeding.

(3) "Liability" includes the obligation to pay a judgment, settlement, penalty, assessment, forfeiture or fine, including any excise tax assessed with respect to an employe benefit plan, and reasonable expenses.

(4) "Mutual association" means a mutual savings and loan association organized under this subchapter and any domestic or foreign predecessor of the mutual association where the predecessor mutual association's existence ceased upon the consummation of a merger or other transaction.

(5) "Party" means a natural person who was or is, or who is threatened to be made, a named defendant or respondent in a proceeding.

(6) "Proceeding" means any threatened, pending or completed civil, criminal, administrative or investigative action, suit, arbitration or other proceeding, whether formal or informal, which involves foreign, federal, state or local law and which is

brought by or in the right of the mutual association or by any other person.

History: 1987 a 13; 1993 a 112, 491.

215.513 Mandatory indemnification. (1) A mutual association shall indemnify a director or officer, to the extent he or she has been successful on the merits or otherwise in the defense of a proceeding, for all reasonable expenses incurred in the proceeding if the director or officer was a party because he or she is a director or officer of the mutual association.

(2) (a) In cases not included under sub. (1), a mutual association shall indemnify a director or officer against liability incurred by the director or officer in a proceeding to which the director or officer was a party because he or she is a director or officer of the mutual association, unless liability was incurred because the director or officer breached or failed to perform a duty he or she owes to the mutual association and the breach or failure to perform constitutes any of the following:

1. A wilful failure to deal fairly with the mutual association or its members in connection with a matter in which the director or officer has a material conflict of interest.

2. A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

3. A transaction from which the director or officer derived an improper personal profit.

4. Wilful misconduct.

(b) Determination of whether indemnification is required under this subsection shall be made under s. 215.514.

(c) The termination of a proceeding by judgment, order, settlement or conviction, or upon a plea of no contest or an equivalent plea, does not, by itself, create a presumption that indemnification of the director or officer is not required under this subsection.

(3) A director or officer who seeks indemnification under this section shall make a written request to the mutual association.

(4) (a) Indemnification under this section is not required to the extent limited by the articles of incorporation under s. 215.516.

(b) Indemnification under this section is not required if the director or officer has previously received indemnification or allowance of expenses from any person, including the mutual association, in connection with the same proceeding.

History: 1987 a 13

Cooperative indemnification. La Rowe and Weine. WBB Sept. 1988.

215.514 Determination of right to indemnification.

Unless otherwise provided by the articles of incorporation or bylaws or by written agreement between the director or officer and the mutual association, the director or officer seeking indemnification under s. 215.513 (2) shall select one of the following means for determining his or her right to indemnification:

(1) By majority vote of a quorum of the board consisting of directors not at the time parties to the same or related proceedings. If a quorum of disinterested directors cannot be obtained, by majority vote of a committee duly appointed by the board and consisting solely of 2 or more directors not at the time parties to the same or related proceedings. Directors who are parties to the same or related proceedings may participate in the designation of members of the committee.

(2) By independent legal counsel selected by a quorum of the board or its committee in the manner prescribed in sub. (1) or, if unable to obtain such a quorum or committee, by a majority vote of the full board, including directors who are parties to the same or related proceedings.

(3) By a panel of 3 arbitrators consisting of one arbitrator selected by those directors entitled under sub. (2) to select independent legal counsel, one arbitrator selected by the director or officer seeking indemnification and one arbitrator selected by the 2 arbitrators previously selected.

(4) By members by an affirmative vote of a majority of votes cast in person or by proxy as provided in s. 215.43 (4). Voting rights owned by, or voted under the control of, persons who are at the time parties to the same or related proceedings, whether as plaintiffs or defendants or in any other capacity, may not be voted in making the determination.

(5) By a court under s. 215.518.

(6) By any other method provided for in any additional right to indemnification permitted under s. 215.517.

History: 1987 a 13.

215.515 Allowance of expenses as incurred. Upon written request by a director or officer who is a party to a proceeding, a mutual association may pay or reimburse his or her reasonable expenses as incurred if the director or officer provides the mutual association with all of the following:

(1) A written affirmation of his or her good faith belief that he or she has not breached or failed to perform his or her duties to the mutual association.

(2) A written undertaking, executed personally or on his or her behalf, to repay the allowance and, if required by the mutual association, to pay reasonable interest on the allowance to the extent that it is ultimately determined under s. 215.514 that indemnification under s. 215.513 (2) is not required and that indemnification is not ordered by a court under s. 215.518 (2) (b). The undertaking under this subsection shall be an unlimited general obligation of the director or officer and may be accepted without reference to his or her ability to repay the allowance. The undertaking may be secured or unsecured.

History: 1987 a 13.

215.516 Mutual association may limit indemnification. (1) A mutual association's obligations to indemnify under s. 215.513 may be limited as follows:

(a) If the mutual association obtains a certificate of incorporation on or after June 13, 1987, by the articles of incorporation, including any amendments to the articles of incorporation.

(b) If the mutual association has obtained a certificate of incorporation before June 13, 1987, by an amendment to the articles of incorporation with an effective date, as provided in s. 215.41 (5), on or after June 13, 1987.

(2) A limitation under sub. (1) applies if the first alleged act of a director or officer for which indemnification is sought occurred while the limitation was in effect.

History: 1987 a 13.

215.517 Additional rights to indemnification and allowance of expenses. (1) Except as provided in sub. (2), ss. 215.513 and 215.515 do not preclude any additional right to indemnification or allowance of expenses that a director or officer may have under any of the following:

(a) The articles of incorporation or bylaws.

(b) A written agreement between the director or officer and the mutual association.

(c) A resolution of the board.

(d) A resolution, after notice, adopted by members by an affirmative vote of a majority of votes cast in person or by proxy as provided in s. 215.43 (4).

(2) Regardless of the existence of an additional right under sub. (1), the mutual association may not indemnify a director or officer, or permit a director or officer to retain any allowance of expenses unless it is determined by or on behalf of the mutual association that the director or officer did not breach or fail to perform a duty he or she owes to the mutual association which constitutes conduct under s. 215.513 (2) (a) 1., 2., 3. or 4. A director or officer who is a party to the same or related proceeding for which indemnification or an allowance of expenses is sought may not participate in a determination under this subsection.

(3) Sections 215.512 to 215.521 do not affect a mutual association's power to pay or reimburse expenses incurred by a director or officer in any of the following circumstances:

(a) As a witness in a proceeding to which he or she is not a party.

(b) As a plaintiff or petitioner in a proceeding because he or she is or was an employe, agent, director or officer of the mutual association.

History: 1987 a. 13.

215.518 Court-ordered indemnification. (1) Except as provided otherwise by written agreement between the director or officer and the mutual association, a director or officer who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. Application shall be made for an initial determination by the court under s. 215.514 (5) or for review by the court of an adverse determination under s. 215.514 (1), (2), (3), (4) or (6). After receipt of an application, the court shall give any notice it considers necessary.

(2) The court shall order indemnification if it determines any of the following:

(a) That the director or officer is entitled to indemnification under s. 215.513 (1) or (2). If the court also determines that the mutual association unreasonably refused the director's or officer's request for indemnification, the court shall order the mutual association to pay the director's or officer's reasonable expenses incurred to obtain the court-ordered indemnification.

(b) That the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, regardless of whether indemnification is required under s. 215.513 (2).

History: 1987 a. 13.

215.519 Indemnification and allowance of expenses of employes and agents. A mutual association may indemnify and allow reasonable expenses of an employe or agent who is not a director or officer to the extent provided by the articles of incorporation or bylaws, by general or specific action of the board or by contract.

History: 1987 a. 13.

215.521 Insurance. A mutual association may purchase and maintain insurance on behalf of an individual who is an employe, agent, director or officer of the mutual association against liability asserted against and incurred by the individual in his or her capacity as an employe, agent, director or officer, regardless of whether the mutual association is required or authorized to indemnify or allow expenses to the individual against the same liability under ss. 215.513, 215.515, 215.517 and 215.519.

History: 1987 a. 13.

215.523 Reliance by directors or officers. Unless the director or officer has knowledge that makes reliance unwarranted, a director or officer of a mutual association organized under this subchapter may, in discharging his or her duties to the mutual association, rely on information, opinions, reports or statements, any of which may be written or oral, formal or informal, including financial statements and other financial data, if prepared or presented by any of the following:

(1) An officer or employe of the mutual association whom the director or officer believes in good faith to be reliable and competent in the matters presented.

(2) Legal counsel, public accountants or other persons as to matters the director or officer believes in good faith are within the person's professional or expert competence.

(3) In the case of reliance by a director, a committee of the board of which the director is not a member if the director believes in good faith that the committee merits confidence.

History: 1987 a. 13.

215.524 Consideration of interests in addition to members' interests. In discharging his or her duties to a mutual association organized under this subchapter and in determining what he or she believes to be in the best interests of the mutual association, a director or officer may, in addition to considering the effects of any action on members, consider the following:

(1) The effects of the action on employes, suppliers and customers of the mutual association.

(2) The effects of the action on communities in which the mutual association operates.

(3) Any other factors the director or officer considers pertinent.

History: 1987 a. 13.

215.525 Limited liability of directors and officers.

(1) Except as provided in subs. (2) and (3), a director or officer of a mutual association organized under this subchapter is not liable to the mutual association, its members or creditors, or any person asserting rights on behalf of the mutual association, its members or creditors, or any other person, for damages, settlements, fees, fines, penalties or other monetary liabilities arising from a breach of, or failure to perform, any duty resulting solely from his or her status as a director or officer, unless the person asserting liability proves that the breach or failure to perform constitutes any of the following:

(a) A wilful failure to deal fairly with the mutual association or its members in connection with a matter in which the director or officer has a material conflict of interest.

(b) A violation of criminal law, unless the director or officer had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

(c) A transaction from which the director or officer derived an improper personal profit.

(d) Wilful misconduct.

(2) Except as provided in sub. (3), this section does not apply to any of the following:

(a) A proceeding brought against a director or officer under s. 215.02 (10) or (15), 215.12 or 215.21 (21).

(b) A civil or criminal proceeding, other than a proceeding described under par. (a), brought by or on behalf of any governmental unit, authority or agency.

(c) A proceeding brought by any person for a violation of state or federal law where the proceeding is brought pursuant to an express private right of action created by state or federal statute.

(3) Subsection (2) (b) and (c) does not apply to a proceeding brought by a governmental unit, authority or agency in its capacity as a private party or contractor.

History: 1987 a. 13.

Cooperative indemnification. La Rowe and Weine. WBB Sept 1988.

215.528 General operation of a mutual association.

The general operations of a mutual savings and loan association shall comply with this subchapter and the applicable provisions of subch. I.

History: 1975 c. 359; 1987 a. 13 s. 26s; Stats 1987 s. 215.528.

215.53 Absorption. (1) **CONDITIONS PRECEDENT.** (a)

With the consent of the commissioner and subject to any condition that the commissioner prescribes, a mutual association organized under this chapter may, by an affirmative vote of at least two-thirds of the board of each association, do any of the following:

1. Absorb a federal savings and loan association or federal savings bank or a state-chartered association or state-chartered savings bank.

2. Be absorbed by a state chartered mutual association.

3. Be absorbed by a state-chartered stock association or state-chartered savings bank, if the stock association or savings bank is a subsidiary of a mutual savings and loan holding company, of a mutual savings bank holding company or of an equiva-

lent mutual entity organized under the laws of a regional state, as defined in s. 215.36 (1) (f).

4. Absorb a mutual savings and loan holding company or mutual savings bank holding company under a plan, approved by the commissioner, that provides that the mutual savings and loan holding company or mutual savings bank holding company ceases to engage in activities that the absorbing association may not engage in and that provides that stock in a subsidiary association that is not held by the absorbed mutual savings and loan holding company or mutual savings bank holding company is redeemed.

(b) The absorbed association, savings bank, mutual savings and loan holding company or mutual savings bank holding company shall transfer its assets and liabilities to the absorbing association but not to defeat or defraud creditors.

(2) **EFFECT OF ABSORPTION** (a) All the rights, franchises and property interests of the absorbed association or savings bank or, subject to sub. (1) (a) 4., of the absorbed mutual savings and loan holding company or mutual savings bank holding company shall be deemed to be transferred to the absorbing association, which shall hold and enjoy same and all rights of property, franchises and interest in the same manner and to the same extent as was held and enjoyed by the absorbed association, savings bank, mutual savings and loan holding company or mutual savings bank holding company. Except as provided in s. 215.01 (17), the savers of the absorbed association or savings bank or of a subsidiary of an absorbed mutual savings and loan holding company or mutual savings bank holding company shall be members of the absorbing association or, if the absorbing association is a subsidiary of a mutual savings and loan holding company, members of the mutual savings and loan holding company, and possess and be subject to all rights, privileges and duties as provided in the bylaws of the absorbing association or mutual savings and loan holding company.

(b) Stockholders of an association or savings bank absorbed under this section may be compensated by converting the shares of the absorbed association or savings bank into, in whole or in part: obligations or other securities of the absorbing association or shares, obligations or other securities of any other association or corporation; or cash or other thing of value.

(3) **WITHDRAWAL REQUESTS**. Any saver in an absorbed association or savings bank or in a subsidiary of an absorbed mutual savings and loan holding company or mutual savings bank holding company, who intends to file a written withdrawal request for savings accounts within one year after the date of approval of such absorption by the commissioner, may do so by giving 90 days' written notice of such intention, and the savings accounts shall be withdrawn as provided in s. 215.17. Any person who has filed such written withdrawal request shall remain a member and be subject to all rights, privileges and duties under this chapter and the bylaws and the rules and regulations of the absorbing association or, if the absorbing association is a subsidiary of a mutual savings and loan holding company, of the mutual savings and loan holding company, until the withdrawal value of the savings accounts has been paid to the person.

History: 1971 c. 229; 1975 c. 359 s. 38; 1975 c. 421; Stats. 1975 s. 215.53; 1983 a. 167, 538; 1989 a. 242; 1991 a. 221, 315.

215.56 Voluntary liquidation of a mutual association. (1) **PROCEDURE FOR VOLUNTARY LIQUIDATION** (a) A mutual association may go into liquidation by a majority vote of the dollar value of the outstanding savings accounts at a members' meeting held especially for that purpose, after 30 days' notice to each saver.

(b) When an association has voted to liquidate, the board shall cause notice of this fact to be:

1. Certified to the commissioner under the seal of the association by its president and secretary;
2. Published as a class 3 notice, under ch. 985, in each county in which an office of the association is located, calling on all per-

sons who have claims against the association to present them to the association and make proof thereof at a specified place and time; and

3. Mailed to all persons who appear as creditors on its books.

(2) **PERIOD OF LIQUIDATION**. A mutual association so liquidating shall dispose of all its assets within 10 years from the date of liquidation, unless the commissioner orders otherwise.

(3) **STATUS OF BOARD OF DIRECTORS**. The board shall remain a body corporate until the association is fully liquidated.

(4) **FILLING VACANCIES ON BOARD OF DIRECTORS**. In case of a vacancy on the board, the remaining directors may fill the vacancy by electing a director from the association's savers.

(5) **APPLICABILITY OF OTHER SECTIONS**. Any association so liquidating shall be subject to ss. 215.02 (16) and 215.03 the same as an association in actual operation.

(6) **RESUMPTION OF BUSINESS**. Any mutual association in liquidation may with the approval of the commissioner resume business upon conditions approved by the commissioner.

(7) **DISPOSITION OF FUNDS** (a) Unclaimed liquidating dividends and all funds remaining unpaid in the hands of the association or its board of directors at or immediately prior to the date of final distribution, together with all final liquidating costs, shall be delivered by them to the commissioner to be deposited by the commissioner in one or more state banks, state savings banks or state-chartered savings and loan associations, to the credit of the commissioner in the commissioner's name, in trust for the various members and creditors entitled thereto. The commissioner shall include in the annual report under s. 215.02 (11) the names of the associations so liquidated and the sums of unclaimed and unpaid liquidating dividends and unclaimed funds with respect to each of them respectively, including a statement of interest or dividends earned upon the funds.

(b) The commissioner may:

1. Pay the moneys so held to the persons respectively entitled thereto, upon being furnished satisfactory evidence of their right to the same.

2. In case of doubt or conflicting claims, require an order of the circuit court authorizing and directing the payment of such moneys.

3. Apply the interest and dividends earned by the moneys so held toward defraying the expenses of the office.

(8) **RESERVED AUTHORITY OF COMMISSIONER**. This section shall not prohibit the commissioner from proceeding against any association as provided in s. 215.32.

History: 1971 c. 164; 1975 c. 359 s. 45; 1975 c. 421; Stats. 1975 s. 215.56; 1983 a. 167, 524, 538; 1991 a. 221.

Cross-reference: See Chap. 177 for disposition of unclaimed funds.

215.57 Jurisdictional conversion of mutual associations. (1) **PROCEDURE TO EFFECT CONVERSION**. A state-chartered mutual association may convert itself into a federal association, and any federal mutual association may convert itself into a state-chartered association, as follows:

(a) A meeting of the members shall be held upon not less than 10 days' written notice to each member, served either personally or by mail, directed to the member at the member's last-known post-office address, stating the time, place and purpose of such meeting.

(b) At such meeting, by the affirmative vote, in person or by proxy, of not less than two-thirds of the dollar value of savings accounts of the association the members may by resolution declare to convert such association into a federal association or into a state-chartered association. A copy of the minutes of such meeting, verified by the affidavit of the chairperson and the secretary of the meeting, shall be filed in the office of the commissioner within 10 days after the meeting.

(c) If the members vote to convert the association, the secretary shall, within 30 days after such meeting, serve notice on all members, either personally or by mail directed to them at their last-known post-office addresses. Within 30 days after service of the

notice, any saver in the association may notify the association in writing that the saver desires to withdraw savings accounts. Each saver so notifying the association shall be entitled to the withdrawal value of the savings accounts, less any amount due the association.

(d) 1. Within 6 months after the adjournment of a meeting to convert into a federal association, the association shall do what is necessary to make it a federal association. Within 10 days after the receipt of the federal charter, the association shall file with the commissioner a copy of the federal charter certified by the federal home loan bank board. Upon such filing the association shall cease to be a state-chartered association and shall thereafter be a federal association.

2. Within 6 months after the adjournment of a meeting of the members of a federal mutual association called for the purpose of converting the association into a state-chartered association, the commissioner shall examine such association and shall determine the action necessary to qualify the converting federal mutual association for a state charter. Upon complying with the necessary requirements, a state charter shall be issued to such association.

(2) WHEN STATE SUPERVISION CEASES. When conversion from a state-chartered mutual association to a federal association becomes effective, the association shall cease to be supervised by this state.

(3) CORPORATE EXISTENCE OF ASSOCIATION DOES NOT TERMINATE UPON CONVERSION. Upon the conversion of any state-chartered mutual association into a federal association or vice versa, the corporate existence of the converting association shall not terminate, and the resulting association shall be a continuance of the converting association. All of the property and rights of the converted association shall by operation of law vest in the resulting association as of the time of the conversion; and all of its obligations become those of the resulting association. Actions and other judicial proceedings to which the converting association is a party may be prosecuted and defended as if the conversion had not been made.

(4) COMMISSIONER'S APPROVAL REQUIRED BEFORE CONVERSION BECOMES EFFECTIVE. Before any such conversion of any association shall be final and in effect, the written approval of the commissioner must be secured by such association.

History: 1975 c. 359 s. 41; 1975 c. 421; Stats. 1975 s. 215.57; 1991 a. 316; 1993 a. 184.

Conversion from a federal to a state chartered association did not render moot action to set aside resolution of federal home loan bank board authorizing establishment of branch office. *Elm Grove Sav. & L. Ass'n v. Federal Home Loan Bk. Bd.* 391 F. Supp. 1041.

215.58 Organizational conversion from mutual to stock form.

(1) CONVERSION INTO STOCK ASSOCIATION. (a) A state chartered mutual association may convert to a stock association or a mutual savings and loan holding company may convert to a stock savings and loan holding company under this section. The board shall adopt a plan of conversion which complies with this section and the rules of the commissioner. The plan of conversion is subject to the approval of the commissioner.

(b) Conversion of a mutual association or a mutual savings and loan holding company under this section is effective only if done according to a plan of conversion approved by the commissioner under par. (a) and if the plan is approved by an affirmative vote of the majority of all votes entitled to be cast by members. Notice of a meeting to vote on the plan of conversion shall be sent to each member at least 10 days prior to such meeting. The notice shall state the time, place and purpose of the meeting, and provide a summary of the plan of conversion and such other information as the commissioner requires.

(c) Within 10 days after a meeting of members at which a plan of conversion is adopted, the board shall submit to the commissioner:

1. A copy of the minutes of the meeting adopting the plan. The minutes shall be certified by the secretary or president; and shall show that, by an affirmative vote as required under par. (b),

the members voted to convert the association to a stock association or to convert the mutual savings and loan holding company to a stock savings and loan holding company.

2. Such additional information pertaining to the plan of conversion as the commissioner may require.

(2) COMMISSIONER'S APPROVAL OF PLAN OF CONVERSION; STANDARDS. The commissioner may approve a plan of conversion under this section if the commissioner finds that the plan meets all of the following conditions:

(a) The plan of conversion is fair and equitable to all savers in a converting association or to all savers in each subsidiary association of a converting mutual savings and loan holding company.

(b) The plan protects the interest of depositors and owners of savings accounts of the prospective stock association or of each subsidiary association of the prospective stock savings and loan holding company.

(c) The plan complies with any other standard which the commissioner may promulgate by rule as in the public interest.

(3) CERTIFICATE OF CONVERSION; EFFECTIVE DATE. The commissioner may issue a certificate of conversion from a mutual association to a stock association or from a mutual savings and loan holding company to a stock savings and loan holding company if the commissioner determines the plan of conversion has been implemented as approved and the association or holding company has complied with this section and any conditions to the approval. The date specified in the certificate is the effective date of conversion. The certificate shall be recorded with the register of deeds in the county where the home office of the association or the registered office of the holding company is located.

(4) RETENTION OF DIRECTORS. Unless the plan of conversion provides otherwise, the directors of the converted mutual association or the converted mutual savings and loan holding company shall continue to serve as directors of the stock association or stock savings and loan holding company for the duration of the term to which they were elected.

(5) CONTINUATION OF CORPORATE EXISTENCE AFTER CONVERSION; ASSUMPTION OF PRIVILEGES AND OBLIGATIONS. (a) Upon conversion of a mutual association or mutual savings and loan holding company under this section, the legal existence of the association or holding company shall not terminate. The stock association shall be a continuation of the mutual association and the stock savings and loan holding company shall be a continuation of the mutual savings and loan holding company. All property of the mutual association or mutual savings and loan holding company and every right, privilege, interest and asset of every conceivable value or benefit then existing or pertaining to it, or which would inure to it, shall immediately, without any conveyance, transfer or further act, remain and vest in the stock association or stock savings and loan holding company. The stock association or stock savings and loan holding company shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by the mutual association or mutual savings and loan holding company.

(b) The stock association or stock savings and loan holding company resulting from a conversion under this section shall continue to have and succeed to all the rights, obligations and relations of the mutual association or mutual savings and loan holding company. No pending action or judicial proceeding to which the mutual association or mutual savings and loan holding company is a party shall be abated or discontinued by reason of the conversion. Such an action or proceeding may be prosecuted to final judgment, order or decree in the same manner as if the conversion had not been made, and the stock association or stock savings and loan holding company resulting from the conversion may continue the action in its corporate name as a mutual association or mutual savings and loan holding company. Any judgment, order or decree may be rendered for or against the stock association or stock savings and loan holding company that might have been rendered for or against the mutual association or mutual savings and

loan holding company previously involved in the proceedings. Each owner of a savings account in the mutual association or a subsidiary association of the mutual savings and loan holding company continues ownership of the account in the stock association or the subsidiary association of the stock savings and loan holding company under the same terms applicable to the account prior to conversion.

(6) **RESERVED AUTHORITY OF COMMISSIONER.** The commissioner may issue rules governing the conversion of a mutual association or mutual savings and loan holding company, including:

- (a) Procedural rules.
- (b) The fixing of a record date or dates for determining the respective rights of owners of savings accounts.
- (c) Provisions of the plan of conversion and the restated articles of incorporation.
- (d) Voting rights.
- (e) The composition, qualification and experience of principal officers and directors.
- (f) Voting trust agreements.
- (g) Employment contracts.
- (h) The disposition, if any, of retained earnings.
- (i) The distribution, issuance, sale and subscription of capital stock and additional paid-in capital.
- (j) Any other requirement for converting a mutual association to a stock association or a mutual savings and loan holding company to a stock savings and loan holding company.

History: 1975 c. 359, 421; 1983 a. 167, 538; 1989 a. 242.

215.59 Mutual savings and loan holding companies. (1) FORMATION. (a) *Reorganization.* A mutual association may reorganize as a mutual savings and loan holding company under this section.

(b) *Plan.* A reorganizing mutual association shall prepare a reorganization plan. Under a reorganization plan, a mutual association shall do all of the following:

1. Charter a stock association.
2. Transfer to the stock association a substantial part of its assets and liabilities, including all of its savings account liabilities.
3. Prepare articles of incorporation and bylaws for the mutual savings and loan holding company.

(c) *Capital asset retention.* Subject to the approval of the commissioner, if the net worth of the stock association chartered under the reorganization plan exceeds the minimum net worth under s. 215.24, a plan may permit a mutual savings and loan holding company to retain capital assets of the reorganizing mutual association.

(d) *Approval required.* A mutual association may not implement a reorganization plan unless the plan is approved by all of the following:

1. Two-thirds of the directors of the mutual association.
2. The members of the mutual association under par. (e).
3. The commissioner under par. (f).

(e) *Member approval.* 1. Notice of a meeting to vote on a reorganization plan shall be sent to members at least 10 days before the meeting. The notice shall state the time, place and purpose of the meeting, shall provide a summary of the reorganization plan and shall provide any other information that the commissioner requires.

2. An affirmative vote by a majority of all votes entitled to be cast by members shall be required to approve a reorganization plan.

3. Within 10 days after a reorganization plan receives member approval, the mutual association shall submit to the commissioner a copy of the minutes of the meeting at which the plan is approved. The secretary of the mutual association shall certify that the minutes show that the members approved the reorganization plan.

(f) *Commissioner approval.* The commissioner may approve a reorganization plan if the commissioner finds that all of the following conditions exist:

1. The reorganization plan is fair to all members in the reorganizing mutual association.

2. The reorganization plan protects the interest of savers whose savings accounts are transferred to the stock association.

3. The reorganization plan complies with rules promulgated by the commissioner governing the reorganization of a mutual association into a mutual savings and loan holding company and the operation of a mutual savings and loan holding company.

(g) *Certificate of reorganization.* If the commissioner determines that the mutual association has complied with the requirements of this subsection and has implemented the reorganization plan as approved, the commissioner shall issue a certificate of reorganization evidencing that the mutual association has been reorganized into a mutual savings and loan holding company. The date specified in the certificate shall be the effective date of reorganization. On the date specified in the certificate, the mutual association ceases to exist but its legal existence continues as a mutual savings and loan holding company. The certificate shall be recorded with the register of deeds in the county in which the home office of the mutual association was located and in the county in which the registered office of the mutual savings and loan holding company is located.

(h) *Retention of directors, proxies.* 1. Unless the reorganization plan provides otherwise, a director of a mutual association continues to serve as a director of the mutual savings and loan holding company for the duration of the director's term.

2. Unless the reorganization plan or the proxy provides otherwise, a proxy that may be cast on behalf of a mutual association member may be cast on behalf of a mutual savings and loan holding company member until the proxy is revoked or superseded under sub. (2) (d).

(2) **MEMBER AND MEMBER RIGHTS** (a) *Effect of reorganization or absorption.* When a mutual association reorganizes under sub. (1) or is absorbed by a subsidiary of a mutual savings and loan holding company under s. 215.53, a member of the mutual association becomes a member of the mutual savings and loan holding company. On the effective date of the reorganization or absorption, a member's rights in the mutual association end and a member's rights in the mutual savings and loan holding company begin.

(b) *Who may be a member.* A person becomes a member of a mutual savings and loan holding company by owning a savings account in an association that is a subsidiary of the savings and loan holding company, unless the savings account is evidenced by a negotiable certificate of deposit that is not in registered form.

(c) *Voting rights.* A member of a mutual savings and loan holding company shall have one vote for each \$100 or additional fraction of \$100 of the withdrawal value of each of the member's savings accounts in a subsidiary association of the mutual savings and loan holding company, as the savings accounts appear on the books of an association at the end of a day selected by the board of directors of the mutual savings and loan holding company. The board may not select a day to determine the withdrawal value of savings accounts that is more than 60 days before the day at which a vote is taken.

(d) *Proxies.* Members of a mutual savings and loan holding company may vote in person or by proxy at any meeting. A proxy shall be in writing and signed by the member or the member's authorized attorney. A proxy filed with the secretary shall, unless specified in the proxy, continue in force until revoked by a written notice to the secretary or until superseded by another proxy.

(e) *Member termination.* Membership in a mutual savings and loan holding company ends if the member withdraws the full withdrawal value of all savings accounts in subsidiary associations. A member who requests the full withdrawal value of the

member's savings accounts remains a member until the withdrawal value is paid in full.

(3) POWERS. (a) *Powers of holding company.* A mutual savings and loan holding company may do any of the following:

1. Invest in or acquire an association or a savings bank.
2. Acquire an association or savings bank by the absorption of the association or savings bank by a subsidiary association of the savings and loan holding company.
3. Acquire or merge with a mutual savings and loan holding company or a mutual savings bank holding company.
4. Invest in securities an association may invest in under s. 215.13 (26).
5. Engage in activities an association may engage in under s. 215.13 (27) to (29).
6. Convert to a stock savings and loan holding company under s. 215.58 or to a stock savings bank holding company.
7. Furnish or perform management services for a subsidiary.
8. Hold, manage or liquidate assets owned by or acquired from a subsidiary.
9. Hold or manage property used by the mutual savings and loan holding company or a subsidiary.
10. Unless limited or prohibited by the commissioner, engage in any activity that the federal reserve board permits a bank holding company to engage in under 12 CFR 225, subpart C, promulgated pursuant to 12 USC 1843 (c) or any activity that the federal savings and loan insurance corporation authorized a multiple savings and loan holding company to engage in directly on March 5, 1987.

11. Be absorbed by a mutual association under s. 215.53 (1) (a) 4. or by a mutual savings bank.

12. Dissolve itself and the stock association chartered under sub. (1) (b) 1. and convert itself and the stock association into a mutual association or mutual savings bank under a plan, approved by the commissioner, that provides that the converting mutual savings and loan holding company ceases to engage in activities that the converted association or savings bank may not engage in and that provides that stock in a subsidiary association or savings bank that is not held by the converting mutual savings and loan holding company is redeemed.

(b) *Powers of subsidiaries.* This subsection does not limit the powers of an association that is a subsidiary of a mutual savings and loan holding company.

(4) STOCK IN SUBSIDIARY. Under a plan approved by the commissioner, a stock association that is a subsidiary of a mutual savings and loan holding company may issue any number of nonvoting shares and less than 50% of the voting shares of the stock association to persons other than the mutual savings and loan holding company.

History: 1989 a. 242; 1991 a. 221.

SUBCHAPTER III

CAPITAL STOCK SAVINGS AND LOAN ASSOCIATIONS; ORGANIZATION AND MANAGEMENT

215.60 Incorporation of a capital stock savings and loan association. (1) **USE OF NAME.** (a) A corporation organized under this subchapter shall be known as a capital stock association. The words "savings and loan association" or "savings association" shall form part of the name of every capital stock association so organized.

(b) No corporation other than a corporation organized under this subchapter or subch. II may use a name embodying those words. No association may adopt a name identical to that of any other association or so similar to an existing association name as to be misleading.

(c) An association shall include the word "savings" in its name if its name includes the word "bank". This paragraph does not apply to an association name if the association obtained approval for use of the name from the commissioner before February 12, 1992.

(2) MINIMUM REQUIREMENTS. The commissioner by rule shall determine:

(a) The minimum number of stockholders required to organize a capital stock association in any locality.

(b) The minimum amount of capital stock and additional paid-in capital.

(c) Such other requirements as the commissioner deems necessary or desirable.

(3) WHO MAY ORGANIZE. Any individual who is a resident of this state may apply to the commissioner for authority to incorporate a stock association under this section. The individual applying is the incorporator.

(4) APPLICATION TO ORGANIZE. The application to organize a capital stock association shall set forth:

- (a) The name of the proposed association.
- (b) The location of the proposed association.
- (c) The name, residence and occupation of each incorporator.
- (d) The amount of initial capital stock and additional paid-in capital.
- (e) The amount of initial savings accounts.
- (f) The need for an association in the locality in which the proposed association intends to locate.
- (g) The name and addresses of the initial directors.
- (h) Such other information as the commissioner requires.

(5) APPLICATION FEE. The incorporators shall pay to the commissioner a \$500 fee, which sum shall be paid by the commissioner into the general fund to the credit of the office. Applicants shall also be liable for any other direct costs incurred by the commissioner or review board for any transcripts of hearings, per diems and travel expenses.

(6) NOTICE OF APPLICATION AND HEARING THEREON. Upon receipt of a properly executed application, the commissioner shall, within 30 days, assign a date and place for hearing on the application and notice thereof shall be given as provided in s. 215.40 (7).

(7) CERTIFICATE OF AUTHORITY; WHEN ISSUED. If the application to organize a capital stock association is approved, the commissioner shall issue to the incorporators a certificate of authority to effect a temporary organization, consisting of a chairperson, a secretary and a treasurer; to adopt articles of incorporation; to adopt bylaws; to adopt rules for the procedure of the incorporators; to conduct meetings; and to open subscription books for the sale of capital stock and also open subscription books for savings accounts.

(8) POWERS OF INCORPORATORS. Until completion of its organization, incorporators of a stock association may exercise such other powers as are conferred upon the incorporators of other corporations, if such powers are not in conflict with this chapter.

(9) SURETY BONDS OF OFFICERS. The incorporators of a capital stock association shall provide a surety bond in a suitable amount from the treasurer and other officers who may handle funds of the temporary organization.

(10) CERTIFICATE OF AUTHORITY, WHEN VOIDED. The certificate of authority as described in sub. (7) shall be void after 180 days from its date, but the commissioner may, for cause, extend the life of the certificate for such time as the commissioner deems advisable.

(11) CERTIFICATE OF COMPLIANCE. (a) Within the time prescribed in sub. (10), the incorporators of the proposed capital stock association shall file with the commissioner a certificate stating:

1. That articles of incorporation have been executed, filed with and approved by the commissioner and recorded;

2. That a meeting of stockholders was held and that directors and officers acceptable to the commissioner were elected at the meeting;

3. That bylaws were adopted and filed with and approved by the commissioner;

4. That the minimum number of required stockholders subscribing for capital stock was obtained, and that the stockholders, in the aggregate, paid to the association the required minimum amount of capital stock and additional paid-in capital;

5. That the funds, representing the initial sale of capital stock and additional paid-in capital, have been deposited in the association's designated depository bank;

6. That ground floor, independent office quarters have been obtained for the proposed association;

7. That insurance of savings accounts has been obtained from the federal savings and loan insurance corporation or other instrumentality approved by the commissioner; and

8. That a competent person, fully conversant with savings and loan laws and regulations, has been engaged to handle the affairs of the proposed association.

(b) No business, other than that of completing the organization of the proposed capital stock association, may be transacted until such time as the commissioner issues a certificate of incorporation to the association to commence business.

(12) CERTIFICATE OF INCORPORATION, WHEN ISSUED Upon receipt of the certificate of compliance from the incorporators, described in sub. (11), and after all fees have been paid, the commissioner may within 90 days issue a certificate of incorporation to the association under the commissioner's hand and seal authorizing such association to commence business. The date appearing on the certificate of incorporation shall be the date of the corporate existence of the association.

(13) CERTIFICATE OF INCORPORATION, WHEN VOIDED Any capital stock association failing to commence business within 6 months from the date of the certificate of incorporation shall have its corporate existence terminated, and its articles of incorporation and certificate of incorporation shall be voided, but the commissioner may for cause, extend the life of such certificate for such time as the commissioner deems advisable.

(14) DISCRETIONARY AUTHORITY OF COMMISSIONER The commissioner shall have the discretionary power in the granting of certificates of authority to incorporators desiring to organize capital stock associations. The commissioner may refuse to issue certificates of incorporation to the incorporators of a capital stock association to commence business when, in the commissioner's opinion, the incorporators or any of them are not of such character and general fitness as to warrant belief that the association will be conducted for the best interests of the public; the location of the proposed association is so close to an existing association that undue harm might result, or the support of the new association might not be such as to assure its success; or when other good and sufficient reasons exist for such refusal.

(15) APPEAL BY APPLICANTS If the commissioner refuses to grant a certificate of authority or a certificate of incorporation and the applicants feel aggrieved thereby, they may appeal to the review board to review the commissioner's determination.

(16) APPLICABILITY OF CHAPTER 180 The provisions of ch. 180 not in conflict with this chapter shall apply to all capital stock associations.

History: 1971 c. 229; 1975 c. 359 ss. 11, 30; 1975 c. 421; Stats. 1975 s. 215.60; 1983 a. 167; 1991 a. 221, 316; 1993 a. 184.

215.61 Articles of incorporation for capital stock associations. (1) **FORM** The articles of incorporation of a stock association shall be approved by the commissioner. The commissioner shall, with the approval of the review board, promulgate rules governing articles of incorporation.

(2) **FILING AND APPROVAL** Duplicate originals of the articles of incorporation executed by the incorporators, and any subsequent amendments thereto adopted by the stockholders of the association, shall be filed with and approved by the commissioner.

(3) **RECORDING** Articles of incorporation and amendments to the articles shall be recorded in the office of the register of deeds of the county in which the home office of the association is located.

(4) **AMENDMENT PROCEDURE** Amendments to the articles of incorporation may be made at any annual or special meeting of the stockholders duly called for that purpose. A statement of the nature of the proposed amendment shall be included in the notice of the meeting. The vote required for adoption of an amendment shall be prescribed in the articles but shall not be less than the affirmative vote of a majority of the eligible votes.

(5) **EFFECTIVE DATE** The effective date of the articles of incorporation and amendments thereto shall be the date when left for record in the office of register of deeds. The register of deeds shall forward a certificate of recording to the commissioner.

History: 1975 c. 359, 421; 1979 c. 287; 1983 a. 167.

215.62 Bylaws of stock associations. (1) **FORM** The bylaws of a stock association shall be approved by the commissioner. The commissioner shall, with the approval of the review board, promulgate rules governing bylaws.

(2) **FILING AND APPROVAL** Duplicate originals of the bylaws and amendments thereto shall be filed with and approved by the commissioner.

(3) **EFFECTIVE DATE** The effective date of bylaws and subsequent amendments thereto shall be the date on which such bylaws or amendments are approved by the commissioner.

(4) **BYLAWS AVAILABLE TO STOCKHOLDERS** Each stock association shall have its bylaws in convenient form and upon request shall furnish a copy to any stockholder.

(5) **AMENDMENT TO BYLAWS** The bylaws of the association may be amended as prescribed in the association's bylaws or articles of incorporation.

History: 1975 c. 359, 421; 1983 a. 167.

215.64 Control of association by holding company.

(1) A savings and loan holding company shall be deemed to be engaged in the savings and loan business and shall be subject to the supervision and control of the office of the commissioner. Such savings and loan holding company shall file reports of its financial condition when requested by the commissioner, and the commissioner may order an examination of its solvency and economic condition whenever, in the commissioner's opinion, an examination is required. The cost of the examination shall be paid by the savings and loan holding company. Whenever in the opinion of the commissioner, the condition of the savings and loan holding company shall endanger the safety of the savings capital of any savings and loan association which it owns or in any manner controls, or the operation of such savings and loan holding company shall be carried on in a manner which endangers the safety of such savings and loan association or its savers, or is contrary to the public interest, the commissioner may order the savings and loan holding company to remedy such condition or policy within 90 days. If the commissioner's order is not complied with, the commissioner may fully direct the operation of such savings and loan association or savings and loan holding company until the order is complied with, and may withhold all dividends from the institution whose operation the commissioner directs during the period in which the commissioner exercises such authority.

(2) Subsection (1) shall apply to any foreign corporation, association, investment trust, or other form of trust which shall be authorized to do business in Wisconsin.

(3) All of the foregoing provisions of this section relating to companies shall apply equally to all other forms of organization, whether so specifically stated or not, but nothing contained in this section shall be construed to prohibit any trust company bank, or

state or national bank, authorized to administer or execute trusts, to accept and carry out the provisions of any personal trust, or any trust created by will where the owner of savings and loan association stock shall create a trust for the owner's benefit during the owner's lifetime, or shall provide by will a trust in savings and loan association stock for the benefit of the owner's heirs, and trusts so created shall not be deemed to come within the provisions of this section.

History: 1971 c. 229; 1975 c. 359 s. 40; Stats. 1975 s. 215.64; 1989 a. 242; 1991 a. 316

215.67 Dividends. The board of a stock association may declare and pay dividends, subject to the orders and rules of the commissioner.

History: 1975 c. 359; 1983 a. 167.

215.70 Directors of a stock association. (1) MANAGEMENT RESPONSIBILITY. The management of a stock association shall be vested in a board of directors, who are charged with the responsibility of complying with this chapter, orders of the commissioner, rules of the commissioner promulgated under ch. 227, the articles of incorporation and bylaws of the association, and other laws applicable to savings and loan operations.

(2) DIRECTORS TO FIX COMPENSATION. The compensation of officers, directors, employees and committee members, including but not limited to pension or deferred compensation agreements, shall be fixed by a majority vote of the board of directors in accordance with the bylaws.

(3) MEETINGS OF DIRECTORS. (a) The board shall hold meetings in accordance with the bylaws.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board may permit any or all directors to participate in a regular or special meeting or in a committee meeting of the board by, or to conduct the meeting through the use of, any means of communication by which any of the following occurs:

1. All participating directors may simultaneously hear each other during the meeting.

2. All communication during the meeting is immediately transmitted to each participating director, and each participating director is able to immediately send messages to all other participating directors.

(c) If a meeting will be conducted through the use of any means described in par. (b), all participating directors shall be informed that a meeting is taking place at which official business may be transacted. A director participating in a meeting by any means described in par. (b) is deemed to be present in person at the meeting. If requested by a director, minutes of the meeting shall be prepared and distributed to each director.

(4) PROMULGATION OF RULES. The board may by resolution adopt rules for the conduct of business by the association, provided they are consistent with this chapter, the rules of the commissioner, and the articles of incorporation and bylaws of the association.

(5) QUALIFICATION OF DIRECTORS. At least two-thirds of the directors shall reside in this state.

History: 1975 c. 11, 199; 1975 c. 359 ss. 18, 49; 1975 c. 421, 422; 1983 a. 167; 1989 a. 308; 1991 a. 16.

215.71 Officers of stock association. (1) GENERAL OFFICERS. (a) The general officers of a stock association shall be:

1. A president;
2. One or more vice presidents;
3. A secretary;
4. A treasurer; and
5. Such other officers as the board of directors by resolution designate.

(b) The president shall also be a director.

(2) WHEN ELECTED. Immediately following each annual meeting of stockholders the directors shall convene and elect general officers for the ensuing year, in accordance with the bylaws.

(3) DUTIES OF OFFICERS. In addition to the duties and functions prescribed in the articles of incorporation and the bylaws, the officers shall perform such other duties as are delegated by the directors.

(4) FILLING VACANCIES. If a vacancy occurs in any general office, the directors shall, as soon as practicable, fill such vacancy by an election for the duration of the unexpired term.

History: 1975 c. 359; 1983 a. 167.

215.72 General operations of a stock association.

The general operation of a stock association shall comply with this subchapter and applicable provisions of subch. I.

History: 1975 c. 359.

215.73 Absorption of or by other association.

(1) CONDITIONS PRECEDENT. (a) With the consent of the commissioner and subject to any condition that the commissioner prescribes, a stock association organized under this chapter may, by an affirmative vote of at least two-thirds of the board of each association, do any of the following:

1. Absorb a federal stock savings and loan association or stock savings bank or a state-chartered stock association or stock savings bank.

2. Be absorbed by a state-chartered stock association or stock savings bank.

3. Absorb a federal mutual savings and loan association or mutual savings bank or a state-chartered mutual association or mutual savings bank, if the absorbing association is a subsidiary of a mutual savings and loan holding company or an equivalent mutual entity organized under the laws of a regional state, as defined in s. 215.36 (1) (f).

(b) The absorbed association or savings bank shall transfer its assets and liabilities to the absorbing association but not to defeat or defraud creditors.

(2) EFFECT OF ABSORPTION. (a) Upon absorption the rights, franchises and property interests of the absorbed association or savings bank shall be deemed to be transferred to the absorbing stock association, which shall hold and enjoy same, in the same manner and to the same extent as the absorbed association or savings bank.

(b) Stockholders of a stock association or stock savings bank absorbed under this section may be compensated by converting the shares of the absorbed association or savings bank into, in whole or in part: shares, obligations or other securities of the absorbing association or of any other association or corporation; or cash or other thing of value.

(c) All savers in the absorbed association or savings bank shall be owners of savings accounts of the same withdrawal value in the absorbing association.

(3) WITHDRAWAL REQUESTS. Any saver in an absorbed association or savings bank, who intends to file a written withdrawal request for savings accounts within one year after the date of approval of such absorption by the commissioner, may do so by giving 90 days' written notice of such intention, and the savings accounts shall be withdrawn as provided in s. 215.17.

History: 1975 c. 359, 421; 1983 a. 167; 1989 a. 242; 1991 a. 32, 221

215.76 Voluntary liquidation of a stock association.

(1) PROCEDURE FOR VOLUNTARY LIQUIDATION. (a) A stock association may go into liquidation by a majority vote of the outstanding capital stock of the association at a stockholders' meeting held especially for that purpose, after 30 days' notice to each stockholder.

(b) When an association has voted to liquidate, the board shall cause notice of this fact to be:

1. Certified to the commissioner under the seal of the association, by its president and secretary.

2. Published as a class 3 notice, under ch. 985, in the county in which an office of the association is located, calling on all persons who have claims against the association to present them to

the association and make proof thereof at a specified place and time.

3. Mailed to all persons who appear as creditors on the books of the association and to all savers in the association.

(2) **PERIOD OF LIQUIDATION** A stock association so liquidating shall dispose of its assets within 10 years from the date of liquidation, unless the commissioner orders otherwise.

(3) **STATUS OF BOARD OF DIRECTORS** The board shall remain a body corporate until the association is fully liquidated.

(4) **FILLING VACANCIES ON BOARD OF DIRECTORS** In case of a vacancy on the board, the remaining directors may fill the vacancy by electing a director.

(5) **APPLICABILITY OF OTHER SECTIONS** A stock association liquidating under this section shall be subject to ss. 215.02 (16) and 215.03, the same as an association in actual operation.

(6) **RESUMPTION OF BUSINESS** A stock association in liquidation may resume business with the approval of the commissioner upon conditions approved by the commissioner.

(7) **DISPOSITION OF FUNDS.** (a) Unclaimed liquidating dividends and all funds remaining unpaid in the hands of the association or its board at or immediately prior to the date of final distribution, together with all final liquidating costs, shall be delivered to the commissioner to be deposited in one or more state banks, state savings banks or state-chartered savings and loan associations, to the credit of the commissioner, in trust for the various stockholders, owners of savings accounts or creditors entitled thereto. The commissioner shall include in the annual report under s. 215.02 (11) the names of the associations so liquidated and the sums of unclaimed and unpaid liquidating dividends and unclaimed funds with respect to each of them respectively, including a statement of interest or dividends earned upon such funds.

(b) The commissioner may:

1. Pay the moneys so held to the persons respectively entitled thereto, upon being furnished satisfactory evidence of their right to the same.

2. In case of doubt or conflicting claims, require an order of the circuit court authorizing and directing the payment of such moneys.

3. Apply the interest and dividends earned by the moneys so held toward defraying the expenses of the office.

(8) **RESERVED AUTHORITY OF COMMISSIONER** This section does not prohibit the commissioner from proceeding against any association as provided in s. 215.32.

History: 1975 c. 359, 421; 1983 a. 167, 524; 1991 a. 221.

Cross-reference: See Chapter 177 for disposition of unclaimed funds

215.77 Jurisdictional conversion of capital stock associations. (1) **PROCEDURE TO EFFECT CONVERSION** A state-chartered stock association may convert itself into a federal association, and any federal stock association may convert itself into a state-chartered association, as follows:

(a) A meeting of the stockholders shall be held upon not less than 10 days' written notice to each stockholder, served either per-

sonally or by mail to the last-known post-office address. The notice shall state the time, place and purpose of such meeting.

(b) At such meeting, the stockholders may by the affirmative vote, in person or by proxy, of not less than two-thirds of the outstanding capital stock of the association the stockholders may by resolution declare to convert the association into a federal association, or in the case of a federal capital stock association into a state-chartered association. A copy of the minutes of the meeting, verified by the affidavit of the chairperson and the secretary of the meeting, shall be filed in the office of the commissioner within 10 days after the meeting.

(c) If the stockholders vote to convert the association, the secretary shall, within 30 days after such meeting serve notice on all stockholders and savers of the association, either personally or by mail directed to them at their last-known post-office addresses. Within 30 days after service of the notice, any saver in the association may notify the association in writing that the saver desires to withdraw savings accounts. Each saver so notifying the association shall be entitled to the withdrawal value of the savings accounts, less any amount due the association.

(d) 1. Within 6 months after the adjournment of a meeting to convert into a federal association, the association shall do what is necessary to make it a federal association. Within 10 days after receipt of the federal charter, the association shall file with the commissioner a copy of the federal charter, certified by the federal home loan bank board. Upon such filing the association shall cease to be a state-chartered association and shall thereafter be a federal association.

2. Within 6 months after the adjournment of a meeting of the stockholders of a federal stock association called for the purpose of converting the association into a state-chartered association, the commissioner shall examine such association and shall determine the action necessary to qualify the converting federal stock association for a state charter. Upon complying with the necessary requirements, a state charter shall be issued to such association.

(2) **WHEN STATE SUPERVISION CEASES** When conversion from a state-chartered stock association to a federal association becomes effective, the association shall cease to be supervised by this state.

(3) **CORPORATE EXISTENCE OF ASSOCIATION DOES NOT TERMINATE UPON CONVERSION** Upon conversion of any state-chartered stock association into a federal association or vice versa, the corporate existence of the converting association shall not terminate, and the resulting association shall be a continuance of the converting association. All of the property and rights of the converted association shall by operation of law vest in the resulting association as of the time of conversion, and all of its obligations become those of the resulting association. Actions and other judicial proceedings to which the converting association is a party may be prosecuted and defended as if the conversion had not been made.

(4) **COMMISSIONER'S APPROVAL REQUIRED BEFORE CONVERSION BECOMES EFFECTIVE** Before any conversion under this section is final and in effect, the written approval of the commissioner must be secured by the converting association.

History: 1975 c. 359, 421; 1993 a. 184