

534.405 Conservatorship operation termination.

1. If the superintendent, as a result of any examination or from a report made to the superintendent finds that a savings and loan association is violating a provision of its certificate of incorporation, or bylaws, or the laws of this state, or of the United States, or a lawful order of the superintendent, or is conducting its business in an unsafe manner, the superintendent may by an order direct discontinuance of the violation or unsafe practice, and conformance with all requirements of law. A conservator shall not be appointed for a solvent association if a violation or unsafe practice can be corrected otherwise.

2. *a.* If an association refuses or neglects to comply with the order within the time specified in it, or if it appears to the superintendent that an association is in an unsafe condition or is conducting its business in an unsafe manner, or if the superintendent finds that an impairment of capital exists to such extent that it threatens loss to the members, or if an association refuses to submit its books, papers, and accounts to the inspection of the superintendent or the superintendent's representative, the superintendent, by written order signed by the superintendent, may appoint a conservator to take charge of the association and manage its business until the superintendent permits the board of directors to resume management of the business or reorganizes the association, or until a receiver is appointed to liquidate its affairs.

b. A conservator so appointed has, subject to approval of the superintendent, all the rights, powers, and privileges possessed by the officers, board of directors, and members of the association. The conservator shall not retain special counsel or other experts, or incur any expenses other than normal operating expenses, or liquidate assets, except in the ordinary course of operations. The directors and officers shall remain in office and the employees shall remain in their respective positions, but the superintendent may remove any director, officer, or employee. While the association is in the charge of a conservator, members of the association shall continue to make payments to the association in accordance with the terms of their contracts and the conservator, in the conservator's discretion, may permit members to withdraw in the ordinary course of business, or under and subject to rules the superintendent may prescribe.

c. The conservator may accept savings but savings received by the conservator may be segregated if the superintendent so orders in writing and if so ordered such savings are not subject to offset and shall not be used to liquidate an indebtedness of the association existing at the time the conservator was appointed for it, or any subsequent indebtedness incurred for the purpose of liquidating the indebtedness of the association existing at the time a conservator was appointed. All expenses of the association during conservatorship shall be paid by the association.

d. The appointment of a conservator shall be evidenced by the superintendent issuing a certificate, signed by the superintendent, delivered to the president, or the vice president, or to at least three members of the board of directors of the association, certifying that a conservator has been appointed pursuant to this section. Within six months from the date upon which the conservator takes charge of an association, the superintendent shall determine whether to restore the management of the association to the board of directors. The determination shall be evidenced by the superintendent's certificate under the seal of the office, delivered to the president, or vice president, or to the board of directors of the association, that the conservator is redelivering the management of the association to the board of directors of the association then in office.

3. After the management of the association has been redelivered to the board of directors of an association, the association shall be managed and operated as though no conservator had been appointed. At any time prior to the redelivery of the management to the board of directors, the superintendent shall determine whether the association shall be required to reorganize. That determination shall be evidenced by a certificate, signed by the superintendent, under the seal of the office, delivered to an executive officer of the association, stating that unless the association reorganizes under the laws of this state within a period of sixty days from the date of the certificate, or within such further time as the superintendent approves, the superintendent shall liquidate the association.

4. If the association has the insurance protection provided by the federal deposit insurance corporation's deposit insurance fund, a signed and sealed copy of each order and certificate mentioned in this section shall be promptly sent by the superintendent by registered mail to the federal office of thrift supervision, Washington, D.C. and to the federal deposit insurance corporation. The superintendent may name the federal deposit insurance corporation as receiver if the superintendent has determined the need for a receivership in accordance with the provisions of this section.

5. Actions taken by the superintendent under this section are not subject to section 17A.18, subsection 3.

[C39, § **9361**; C46, 50, 54, 58, § 534.58; C62, 66, 71, 73, 75, 77, 79, 81, § 534.46]

C85, § 534.405

88 Acts, ch 1158, §81; 90 Acts, ch 1208, § 15; 91 Acts, ch 92, §14; 2007 Acts, ch 88, §34