

FINANCE CODE

TITLE 3. FINANCIAL INSTITUTIONS AND BUSINESSES

SUBTITLE B. SAVINGS AND LOAN ASSOCIATIONS

CHAPTER 66. ENFORCEMENT AND REGULATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 66.001. GENERAL DUTIES. The Department of Savings and Mortgage Lending and the commissioner shall regulate associations and subsidiaries of associations operating under this subtitle.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.029, eff. September 1, 2007.

Sec. 66.002. ADOPTION OF RULES. The finance commission may adopt rules relating to:

(1) the minimum amounts of capital stock and paid-in surplus required for incorporation as a capital stock association;

(2) the minimum amounts of savings liability and expense funds required for incorporation as a mutual association;

(3) the fees and procedures for processing, hearing, and deciding applications filed with the commissioner or the Department of Savings and Mortgage Lending under this subtitle;

(4) the books and records that an association is required to keep and the location at which the books and records are required to be maintained;

(5) the accounting principles and practices that an association is required to observe;

(6) the conditions under which records may be copied or reproduced for permanent storage before the original records are destroyed;

(7) the form, contents, and time of publication of statements of condition;

(8) the form and contents of annual reports and other reports that an association is required to prepare and publish or file;

(9) the manner in which assets, liabilities, and transactions in general are to be described when entered in the books of an association, so that the entry accurately describes the subject matter of the entry; and

(10) the conditions under which the commissioner may require an asset to be charged off or reserves established by transfer from surplus or paid-in capital because of the depreciation of or overstated value of the asset.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 31, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.030, eff. September 1, 2007.

SUBCHAPTER B. EXAMINATIONS

Sec. 66.051. EXAMINATIONS. (a) The commissioner shall periodically examine the affairs of each association, including the subsidiaries and transactions of the association and the dealings of any savings and loan holding company that are related to the savings and loan subsidiaries of the association.

(b) An examination must include an audit if an independent audit is not available or is unsatisfactory to the commissioner.

(c) On completion of an audit, the auditor shall sign and certify the audit report. A copy shall be filed promptly with the commissioner.

(d) An examination under this section may be made in conjunction with an examination by the Federal Home Loan Bank Board, a Federal Home Loan Bank, or the Federal Deposit Insurance Corporation. The commissioner shall accept an audit made by or accepted by one of those agencies in an examination of an association.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.052. ADDITIONAL EXAMINATIONS. (a) The commissioner at the association's cost shall conduct an additional examination or audit or devote extraordinary attention to an

association's affairs if the commissioner determines that the condition of the association makes it necessary or expedient to do so.

(b) A copy of the report of an examination or audit conducted under this section shall be furnished promptly to the association. The report shall be:

(1) presented to the board of the association at its next regular meeting or at a special meeting called for purposes of permitting the presentation of the report; and

(2) noted in the minutes of the meeting.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.053. ACCESS TO BOOKS AND RECORDS. The commissioner, a deputy commissioner, or an examiner or auditor of the commissioner shall be given free access to:

(1) the books and records of an association;

(2) the books and records of a subsidiary or savings and loan holding company of an association relating to the association's business; and

(3) the books and records kept by an officer, agent, or employee of the association, subsidiary, or savings and loan holding company relating to the association's business.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.054. SUBPOENA; ADMINISTRATION OF OATH OR AFFIRMATION. (a) In an examination conducted under this subchapter, the commissioner, the deputy commissioner, or an examiner or auditor of the commissioner may:

(1) subpoena witnesses;

(2) administer an oath or affirmation to a person, including a director, officer, agent, or employee of an association; or

(3) require and compel by subpoena the production of documents, including records, books, papers, and contracts.

(b) The commissioner may apply to a district court in Travis County for an order requiring a person to obey a subpoena or to appear or answer questions in connection with an examination.

(c) The court shall issue an order under Subsection (b) if the court finds good cause to issue the subpoena or to take testimony.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER C. SUPERVISORY INTERVENTION

Sec. 66.101. INTERVENTION FOR VIOLATIONS AND UNSAFE AND UNSOUND PRACTICES. The commissioner may intervene in the affairs of an association if the association or a person who participates in the affairs of the association or a subsidiary of the association:

(1) engages in or is about to engage in an unsafe and unsound practice in conducting the affairs of the association; or

(2) violates or is about to violate:

(A) the articles of incorporation or bylaws of the association;

(B) a law or supervisory order applicable to the association; or

(C) a condition that the commissioner or the finance commission has imposed on the association by written order or agreement.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.102. INTERVENTION FOR FILING INAPPROPRIATE INFORMATION. The commissioner may intervene in the affairs of an association if the association or a person who participates in the affairs of the association or a subsidiary of the association files materially false or misleading information in a filing required by Subchapter L, Chapter 62.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.103. INTERVENTION FOR ACTIVITY RESULTING IN ACTUAL OR POTENTIAL LOSS. (a) The commissioner may intervene in the affairs of an association if a person who participates in the affairs of the association or a subsidiary or savings and loan holding company of the association commits or is about to commit:

(1) a fraudulent or criminal act in conducting the

affairs that may cause the association or a subsidiary of the association to become or be in danger of becoming insolvent;

(2) an act that threatens immediate or irreparable harm to the public or the association, a subsidiary of the association, or the account holders or creditors of the association; or

(3) a breach of fiduciary duty that results in actual or probable substantial financial losses or other damages to the association or a subsidiary of the association or that would seriously prejudice the interest of savings account holders or holders of other security issued by the association.

(b) The commissioner may intervene in the affairs of an association if the association:

(1) is insolvent;

(2) is in imminent danger of insolvency; or

(3) makes or is about to make:

(A) a loan the value of the security for which is materially overstated; or

(B) an investment the market value of which is materially overstated.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.104. INTERVENTION RELATING TO EXAMINATION OF AFFAIRS. (a) The commissioner may intervene in the affairs of an association if a person who participates in the affairs of the association or a subsidiary or savings and loan holding company of the association:

(1) refuses or is about to refuse to submit to interrogation under oath by the commissioner or the commissioner's agent with respect to the association's affairs; or

(2) materially alters, conceals, removes, or falsifies or is about to materially alter, conceal, remove, or falsify a book or record of the association or a subsidiary of the association.

(b) The commissioner may intervene in the affairs of an association if the association:

(1) fails to maintain books and records from which the

true financial condition of the association or the state of the association's affairs can be determined; or

(2) refuses to direct a person having possession of the books, papers, records, or accounts of the association or the association's subsidiary to permit the commissioner or the commissioner's authorized representative to inspect or examine those documents or accounts.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.105. TEMPORARY SUPERVISORY ORDER. (a) If the commissioner has reasonable cause to believe that one or more of the grounds for intervention under Section 66.101 exists or is imminent, the commissioner may issue without notice and hearing one or more of the following types of temporary supervisory orders to correct and eliminate the grounds for supervisory action:

(1) an order to cease and desist from continuing a particular action, an order to take affirmative action, or both;

(2) an order suspending or prohibiting a person who participates in the affairs of the association from further participating in the affairs of the association or of another association;

(3) an order requiring divestiture of control of an association obtained under Subchapter L, Chapter 62; or

(4) an order placing the affairs of the association under the control of a conservator designated in the order, who may take possession and control of the books, records, property, assets, liabilities, and business of the association and manage the association under the direction of the commissioner.

(b) An order under this section:

(1) must contain a reasonably detailed statement of the facts on which the order is based; and

(2) takes effect when issued.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.106. SERVICE OF TEMPORARY SUPERVISORY ORDER. (a) A temporary supervisory order may be served by personal delivery by an agent of the commissioner or by certified or registered mail.

(b) Service is complete when an officer or director of the association receives the order.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.107. HEARING ON TEMPORARY SUPERVISORY ORDER; FINAL ORDER. (a) A temporary supervisory order issued under Section [66.105](#) becomes final and unappealable on the 16th day after the date on which the order is issued unless before that day the association or a person affected by the order requests a hearing before the commissioner to determine whether the order should be vacated, made permanent, or modified.

(b) The commissioner shall set the matter for hearing to be held not earlier than the 11th day or later than the 30th day after the date of the request. The hearing must be held at the offices of the Department of Savings and Mortgage Lending in Austin.

(c) After the hearing, the commissioner may enter a final order that vacates the temporary order or makes the temporary order permanent in its original form or a modified form that is consistent with the facts found by the commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. [3167](#)), Sec. 6.031, eff. September 1, 2007.

Sec. 66.108. PLAN OF OPERATION OF ASSOCIATION AFTER ORDER OF TEMPORARY CONSERVATORSHIP. (a) Before or during a hearing under Section [66.107](#) on a temporary supervisory order placing an association under the control of a conservator, the board of the association may present to the commissioner a plan to continue the operation of the association in a manner that will correct or eliminate the grounds on which the order is based.

(b) If the commissioner approves the plan or a modification of the plan, the commissioner shall vacate the order placing the association under conservatorship, conditioned on the implementation and diligent prosecution of the plan.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.109. ENFORCEMENT OF SUPERVISORY ORDER. (a) The commissioner, after giving notice, may assess against an association or another person designated in a final supervisory order who violates the order, or both, an administrative penalty of not more than \$1,000 each for each day of the violation. The association may not reimburse or indemnify a person for any part of the penalty.

(b) In addition to any other remedy provided by law, the commissioner may institute in a district court in Travis County:

(1) a suit for injunctive relief to stop or prevent a violation of a supervisory order; or

(2) a suit for injunctive relief and to collect the administrative penalty.

(c) A bond is not required of the commissioner with respect to injunctive relief granted under this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.110. STAY OF SUPERVISORY ORDER. (a) A temporary supervisory order may not be stayed pending a hearing unless the commissioner orders a stay.

(b) A final supervisory order may not be stayed pending judicial review unless the reviewing court orders a stay for good cause.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.111. DISCLOSURE OF INFORMATION IN SUPERVISORY ORDER; CONFIDENTIALITY. (a) Except as provided by Subsection (b) or (c), information contained in a temporary or final supervisory order or a notice, correspondence, or other record relating to the order is confidential.

(b) The commissioner, for good reason as determined by the commissioner, may disclose the information described by Subsection (a) in a hearing or judicial proceeding under Section 66.107, 66.109, or 66.110 or in a proceeding to assert a defense under Section 66.403.

(c) The commissioner may disclose the information described by Subsection (a) to a department, agency, or instrumentality of

this or another state or the United States if the commissioner determines that disclosure is necessary or proper to enforce the laws of this or another state or the United States.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER D. CONSERVATORSHIP

Sec. 66.151. PLACEMENT OF ASSOCIATION UNDER CONSERVATORSHIP. If the commissioner does not approve a plan to continue the operation of an association under Section 66.108, the conservator shall continue to manage the affairs of the association unless the temporary conservatorship order is modified or vacated:

- (1) by order of the commissioner; or
- (2) as a result of judicial review.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.152. DUTIES OF CONSERVATOR. (a) The conservator and any deputy or assistant conservator appointed by the commissioner, under the direction and supervision of the commissioner, shall:

- (1) take possession and control of the books, records, property, assets, liabilities, and business of the association; and
- (2) conduct the business and affairs of the association.

(b) The conservator shall:

- (1) undertake to remove the causes and conditions that made the conservatorship necessary; and
- (2) during the conservatorship, report to the commissioner as required by the commissioner.

(c) The conservator shall take measures necessary to preserve, protect, and recover the assets or property of the association, including a claim or cause of action that belongs to or may be asserted by the association. The conservator may deal with that property in the capacity of conservator.

(d) The conservator may file, prosecute, or defend a suit brought by or against the association if the conservator considers

it necessary to protect the interested party or property affected by the suit.

(e) A suit filed by the conservator under Subsection (c) must be brought in Travis County.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.153. TERM OF CONSERVATOR. The conservator shall serve until the purposes of the conservatorship are accomplished.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.154. TRANSFER OF MANAGEMENT OF REHABILITATED ASSOCIATION. If the association is rehabilitated, the conservator shall return the management of the association to the association's board under terms that are reasonable and necessary to prevent a recurrence of the conditions that created the need for the conservatorship.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.155. SCOPE OF AUTHORITY OF OTHER PERSONS DURING CONSERVATORSHIP. During the conservatorship, a person who participates in the affairs of the association shall act according to the conservator's instructions and may exercise only the authority that the conservator expressly grants.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.156. COST OF CONSERVATORSHIP. (a) The commissioner shall determine the cost of the conservatorship.

(b) The cost of conservatorship shall be paid from the association's assets.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.157. VENUE. A suit filed against an association or its conservator while a conservatorship order is in effect must be brought in Travis County.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER E. VOLUNTARY SUPERVISORY CONTROL

Sec. 66.201. PLACEMENT OF ASSOCIATION UNDER VOLUNTARY SUPERVISORY CONTROL. (a) An association's board may consent to the commissioner's placement of the association under supervisory control.

(b) The commissioner may appoint the supervisor and one or more deputy supervisors.

(c) Supervisory control continues until the conditions for which the supervisory control was imposed are corrected.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.202. POWERS OF SUPERVISORS. A supervisor or deputy supervisor has the powers of a conservator under Subchapter D and any other power established by agreement between the commissioner and the association's board of directors.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.203. COST OF SUPERVISORY CONTROL. The cost of the supervisory control of an association shall be set by the commissioner and paid by the association.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER F. CLOSING

Sec. 66.251. CLOSING OF ASSOCIATION BY BOARD RESOLUTION. An association's board, by resolution and with the commissioner's consent, may close the association and tender to the commissioner for disposition as provided by this subchapter the assets and all the affairs of the association.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.252. CLOSING OF ASSOCIATION BY COMMISSIONER'S ORDER. The commissioner or the commissioner's representative may close an association if the commissioner determines after an examination that:

(1) the interests of the depositors and creditors of the association are jeopardized because of:

(A) the association's insolvency or imminent insolvency; or

(B) a substantial dissipation of the association's assets or earnings because of a violation of a law or an unsafe or unsound practice; and

(2) it is in the best interest of the depositors and creditors to close the association and liquidate the association's assets.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.253. NOTICE OF CLOSING. (a) Immediately after an association is closed by its board or by the commissioner under this subchapter, the commissioner shall post at the main entrance of the association an appropriate notice of the closure. After notice is posted, a judgment lien, attachment lien, or other voluntary lien may not attach to an asset of the association, and a director or an officer or agent of the association may not:

(1) act for the association; or

(2) convey, transfer, assign, pledge, mortgage, or encumber an asset of the association.

(b) An attempt to take an action prohibited under Subsection (a)(2) after the notice is posted or in anticipation of posting the notice, including preferring in any manner a depositor or creditor of the association, is void.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.254. EFFECT OF CLOSING. (a) On closing an association under this subchapter, the commissioner may:

(1) liquidate the association as provided by Subchapter E; or

(2) tender the association's assets and all the association's affairs to the Federal Deposit Insurance Corporation and appoint the Federal Deposit Insurance Corporation as receiver or liquidating agent to act in accordance with this chapter or federal law.

(b) The Federal Deposit Insurance Corporation on accepting the tender and appointment prescribed by Subsection (a)(2) may:

(1) act without bond or other security as to the appointment; and

(2) without court supervision, exercise any right, power, or privilege provided by the laws of this state to a receiver or liquidating agent, as applicable, and any applicable right, power, or privilege available under federal law.

(c) On acceptance of the appointment prescribed by Subsection (a)(2), possession of and title to all the assets, business, and property of the association pass to the Federal Deposit Insurance Corporation without the execution of any instrument transferring title or right of use.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.255. HEARING ON COMMISSIONER'S ORDER. (a) Not later than the second day, excluding legal holidays, after the date on which the commissioner closes an association under Section [66.252](#), the association, by resolution of its board, may sue in a district court of Travis County to enjoin the commissioner from taking further action under this subchapter.

(b) The court, without notice or hearing, may restrain the commissioner from taking further action until after a hearing on the suit is held. If the court restrains the commissioner, the court shall instruct the commissioner to hold the assets and affairs of the association in the commissioner's possession until disposition of the suit. On receipt of this instruction, the commissioner shall refrain from taking further action, other than a necessary or proper action approved by the court to prevent loss or depreciation in the value of the assets.

(c) The court as soon as possible shall hear the suit and shall enter a judgment enjoining or refusing to enjoin the commissioner from proceeding under this subchapter.

(d) The commissioner, regardless of the judgment entered by the court or any supersedeas bond filed, shall retain possession of the association's assets until final disposition of any appeal of the judgment.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER G. LIQUIDATION

Sec. 66.301. LIQUIDATION OF ASSOCIATION. (a) If the commissioner doubts that an association subject to a conservatorship order can be rehabilitated, the commissioner may set a hearing to determine whether the association should be liquidated. Not later than the 10th day before the hearing date, notice of the hearing shall be given by certified mail to the officers and directors of the association and by publication in a newspaper of general circulation in the county in which the principal office of the association is located.

(b) If the commissioner finds that the association cannot be rehabilitated and it is in the public interest and the best interest of the savings account holders and creditors of the association that the bank be closed and its assets liquidated, the commissioner by liquidation order may appoint a liquidating agent and dissolve the association.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.302. REMOVAL OR REPLACEMENT OF LIQUIDATING AGENT.

(a) The commissioner, with or without cause, may remove a liquidating agent and appoint another agent.

(b) If a liquidating agent resigns, dies, or otherwise becomes unable to serve, the commissioner shall promptly appoint another agent.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.303. DUTIES OF LIQUIDATING AGENT. (a) Under the commissioner's supervision, the liquidating agent shall:

(1) receive and take possession of the books, records, assets, and property of the association;

(2) sell, enforce collection of, and liquidate the assets and property of the association;

(3) sue in the name of the liquidating agent or the association;

(4) defend an action brought against the liquidating agent or the association;

(5) receive, examine, and pass on a claim brought against the association, including a claim of a depositor;

(6) make distributions to and pay creditors, depositors, shareholders, and members of the association as their interests appear;

(7) from time to time make a ratable liquidation dividend on claims that have been proved to the satisfaction of the association's board of directors or the liquidating agent or that have been adjusted by a court;

(8) after the association's assets have been liquidated, make further liquidation dividends on claims previously proved or adjusted; and

(9) execute documents and perform any other action that the liquidating agent considers necessary or desirable to the liquidation.

(b) For purposes of making a further liquidation dividend under Subsections (a)(7) and (8), the liquidating agent may accept the statement of an amount due a claimant as shown on the association's books and records instead of a formal proof of claim filed on the claimant's behalf.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.304. NOTICE. (a) Under the commissioner's supervision, the liquidating agent shall give notice to creditors and savings account holders directing them to present and prove their claims and requiring them to file a written proof of claim at the address designated in the notice.

(b) The notice shall be published once a week for three successive weeks in a newspaper of general circulation in each county in which the association maintained an office or branch to transact business on the date the association ceased unrestricted operations.

(c) Not later than the 30th day after the date on which the notice is first published, the liquidating agent shall mail a similar notice to each depositor and creditor named in the books of the association at the address shown in those books.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.305. PRESENTATION OF CLAIM. (a) To be entitled to priority, each person asserting a claim against an association being liquidated under this subchapter must present the claim in writing to the commissioner or the liquidating agent at the address designated in the notice under Section 66.304 before the last day of the 18th month after the date the notice is first published.

(b) The claim must:

(1) contain a statement of the facts on which the claim is based;

(2) set out any right of payment priority or other specific right asserted by the claimant; and

(3) be signed and sworn to by the claimant.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.306. PRIORITY OF CLAIMS. On liquidation of an association, claims for payment have the following priority:

(1) obligations incurred by the commissioner or the liquidating agent, fees and assessments due the Department of Savings and Mortgage Lending, and expenses of liquidation, all of which may be covered by the proper reserve of money;

(2) approved claims of creditors, to the extent that the claims are secured by, or constitute a lien on, the assets or property of the association;

(3) approved claims of depositors against the general liquidating account of the association;

(4) approved claims of general creditors and the unsecured portion of a creditor obligation described by Subdivision (2);

(5) otherwise approved claims that were not filed within the time prescribed by Section 66.305;

(6) approved claims of subordinated creditors; and

(7) claims of shareholders of the association.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.032, eff. September 1, 2007.

Sec. 66.307. ACTION ON CLAIM. (a) Within three months after the date of receipt of a claim against an association being liquidated, the liquidating agent shall approve or reject the claim in whole or in part, unless that period is extended by written agreement with the claimant.

(b) A liquidating agent who approves the claim or a part of the claim shall classify the claim and enter the claim and the action taken in a claim register.

(c) A liquidating agent who rejects the claim in whole or in part, or who denies a right of payment priority or any other right asserted by the claimant, shall notify the claimant of the action by registered mail.

(d) An approved claim presented after the declaration and payment of any dividend and on or before the last day of the 18th month after the date on which notice is first published under Section 66.304 qualifies to participate in dividends previously paid before an additional dividend is declared. A claim that was not presented during that period does not qualify to participate in a dividend or distribution of assets until all approved claims filed during that period are fully paid.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.308. HEARING ON CLAIM; APPEAL OF ADVERSE DETERMINATION OF CLAIM. (a) A claimant may appeal an adverse determination of a claim by filing suit on the claim in a district court of Travis County within three months after the date on which notice is mailed under Section 66.307.

(b) The determination on a claim becomes final and is not subject to review if suit is not filed in accordance with Subsection (a).

(c) Review by a district court under Subsection (a) is by trial de novo.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.309. PAYMENT OF FINAL DIVIDEND. (a) The liquidating agent may not pay a final dividend before the first day

of the 19th month after the date notice is first published under Section 66.304.

(b) The liquidating agent shall declare and pay a final dividend after:

(1) the period provided by Subsection (a) expires; and

(2) the liquidating agent liquidates each asset of the association capable of being liquidated or receives sufficient money from the liquidation to:

(A) pay the costs of the liquidation;

(B) pay all claims that have been presented and established; and

(C) leave money available to pay all nonclaiming depositors and creditors of the association.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.310. DEPOSIT OF MONEY BY LIQUIDATING AGENT. The liquidating agent shall deposit all unclaimed dividends and all money available for nonclaiming depositors and creditors in one or more state-chartered financial institutions for the benefit of the depositors and creditors entitled to the dividends or money.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.311. PAYMENT OF NONCLAIMING DEPOSITORS AND CREDITORS. (a) Except as provided by Subsection (b), the liquidating agent, on demand, shall pay a depositor or creditor of the association who does not make a claim under Section 66.305 any amount held by the liquidating agent for the benefit of the depositor or creditor.

(b) If the liquidating agent has a doubt about the identity of a claimant or the claimant's right to the money, the liquidating agent shall reject the claim and notify the claimant by registered mail.

(c) The liquidating agent's rejection of a claim becomes final if the claimant does not file suit against the liquidating agent to recover the money in a district court of Travis County within three months after the date on which the notice is mailed.

(d) A suit under Subsection (c) is an action in rem. Judgment is binding on all persons interested in the money. Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.312. COST OF LIQUIDATION. (a) The commissioner shall determine the cost of the liquidation.

(b) The cost of liquidation shall be paid from the association's assets as the commissioner directs. Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.313. FINAL REPORT. After paying a final dividend as provided by Section 66.309 and performing any necessary or proper action in liquidating the association's assets for the benefit of the depositors and creditors of the association, the liquidating agent shall file with the commissioner a final report of the liquidation.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.314. CONTINUED EXISTENCE OF ASSOCIATION FOLLOWING LIQUIDATION. For the purposes of adjusting and settling claims not disposed of during the liquidation, the association continues to exist until the third anniversary of the date the liquidation order is issued.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.315. SPECIAL LIQUIDATING AGENT. At the completion of the liquidation, the commissioner may appoint a special liquidating agent if necessary to adjust and settle undisposed claims.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.316. CLOSING OF LIQUIDATION; ORDER AND LIABILITY. (a) The liquidating agent shall certify the completion of the liquidation to the commissioner, who shall then issue an order closing the liquidation.

(b) After the commissioner issues the order, the commissioner and the liquidating agent are discharged from any

further duty or liability in connection with the administration of the association's affairs.

(c) After the closing order, a person does not have a claim, suit, or action against the commissioner or the liquidating agent, individually or in an official capacity, except a suit to recover an unclaimed deposit as provided by this subchapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.317. ADMINISTRATIVE PROCEDURE. The procedures for a contested case hearing under Chapter 2001, Government Code, apply to a hearing set by the commissioner under this subchapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER H. RECEIVERSHIP OF UNINSURED ASSOCIATIONS

Sec. 66.351. PLACEMENT OF CERTAIN ASSOCIATIONS IN RECEIVERSHIP. (a) After a final liquidation order has been issued under Subchapter F or G for an association the deposits of which are not insured by the Federal Deposit Insurance Corporation or another state or federal agency, the commissioner or liquidating agent may apply to a district court of Travis County to appoint a receiver for the association.

(b) The court shall appoint a receiver if the court finds substantial evidence that:

(1) the commissioner has met all applicable requirements of Subchapter F or G for issuing the liquidation order;

(2) service of the liquidation order has been completed as provided by Section 66.106; and

(3) the order is a final unappealable order under Subchapter F or G.

(c) The court shall appoint the liquidating agent appointed during the liquidation of the association to serve as transitional receiver during the first 60 days of the receivership. The court may appoint a different receiver for the remainder of the receivership.

(d) After the court appoints a receiver, liquidation of the

association under the supervision of the commissioner ends and the receiver shall liquidate the association under the supervision of the court.

(e) A receiver is governed by:

(1) Subchapter F, to the extent that subchapter is not inconsistent with this section;

(2) Subchapter G, other than Sections 66.302 and 66.316, and to the extent that subchapter is not inconsistent with this section; and

(3) state law applicable to receiverships generally to the extent the law is not inconsistent with this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.352. DUTIES OF RECEIVER. On appointment, the receiver shall:

(1) immediately take charge of the affairs of the association, subject to the direction of the court; and

(2) conduct the business of the association or act as necessary to conserve the assets and protect the rights of the depositors or creditors and shareholders and members of the association.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.353. COMPENSATION OF RECEIVER. The receiver is entitled to compensation as determined by the court.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.354. EFFECT OF RECEIVERSHIP ON COMMISSIONER AND LIQUIDATING AGENT. (a) On appointment of the receiver, the commissioner and liquidating agent are discharged from further duty in connection with the administration or regulation of the affairs of the association and are not liable, individually or in an official capacity, for an action or a failure to act while the association was in liquidation under this chapter.

(b) The appointment or the action of a receiver under this subchapter does not invalidate an authorized action taken by the liquidating agent under Subchapter G. The prior action of the

liquidating agent is considered valid as if the action had been approved by the court in the receivership proceedings.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.355. RECEIPT OF ITEMS AS EVIDENCE IN RECEIVERSHIP PROCEEDING; CERTIFICATION. (a) A book, record, document, or paper of the association received and held by the receiver during the receivership proceeding or a certified copy of one of those items, under the hand and official seal of the receiver, is admissible as evidence in a case brought by or against the receiver without additional evidence of authenticity except for a certificate of the receiver stating that the item was received from the custody of the association or found among the association's effects.

(b) In a case brought by or against the receiver, the receiver may:

(1) certify the correctness of a paper, document, or record of the receiver's office, including an item described by Subsection (a); and

(2) certify under seal of the receiver to a fact contained in the paper, document, or record in evidence in a case in which the original would be evidence.

(c) When admitted into evidence, the original or a certified copy or part of an item described by Subsection (b) becomes prima facie evidence of the facts disclosed in the item.

(d) This section applies to a case brought by or against the liquidating agent before the appointment of a receiver as if the case had been brought by or against the receiver.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.356. TITLE AND CUSTODY OF ASSOCIATION'S ASSETS.

(a) The property and assets of the association are in the custody of the court from the date the receivership begins.

(b) The receiver and a receiver's successor in office have title to all property, contracts, and rights of action of the association, wherever located, beginning on the date the order directing the receiver to take possession is entered. The title of the receiver relates back to the date the liquidation of the

association begins unless the court provides otherwise.

(c) The filing or recording of the order in a record office of the state has the same effect for notice purposes as a filed or recorded deed, bill of sale, or other evidence of title.

(d) If the court considers it desirable to protect the assets of the association, the court may require a bond from the receiver, in an amount set by the court, to be paid from the association's assets.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER I. MISCELLANEOUS PROVISIONS

Sec. 66.401. DERIVATIVE SUIT. (a) The commissioner may bring a derivative suit on behalf of an association on an unpursued cause of action if:

(1) the commissioner determines that the suit should be brought to protect the public interest or the interest of the association or the shareholders, members, or creditors of the association; and

(2) the association has not brought suit on the action before the 31st day after the date on which the commissioner gives notice to the association that suit should be brought.

(b) Except as provided by another statute that provides for mandatory venue, venue is in a district court of Travis County.

(c) The commissioner may employ legal counsel to bring and prosecute a derivative suit. The commissioner may:

(1) pay the counsel from funds appropriated for the operation of the Department of Savings and Mortgage Lending; or

(2) require the association for which the suit is brought to pay the counsel directly or to reimburse the Department of Savings and Mortgage Lending for the payment.

(d) The association shall be paid an amount equal to the amount of the proceeds of a judgment on a suit brought under this section less unreimbursed costs and expenses, including attorney's fees, incurred by the Department of Savings and Mortgage Lending in prosecuting the suit.

(e) In this section, "unpursued cause of action" means an

existing claim belonging to an association on which a suit or other effective action has not been filed or taken by or on behalf of the association on or before the last day of the sixth month after the date on which the cause of action arose, involving:

(1) a claim for monetary damages or recovery of property;

(2) a claim for equitable relief;

(3) a cause of action for breach of contract or for enforcement of a contract; or

(4) a claim on a fidelity bond.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 6.033, eff. September 1, 2007.

Sec. 66.402. PAYMENT OF INSURED DEPOSIT LIABILITIES BY FDIC. If the Federal Deposit Insurance Corporation pays the insured deposit liabilities of an association that has been closed or is being liquidated under this chapter, regardless of whether the Federal Deposit Insurance Corporation has become receiver or liquidating agent, the Federal Deposit Insurance Corporation is subrogated, to the extent of the payment, to all rights that the owners of the savings accounts or deposits have against the association.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 66.403. ENFORCEABILITY OF LOAN PROMISE OR AGREEMENT MADE BY ASSOCIATION BEFORE CONSERVATORSHIP OR SUPERVISORY CONTROL. If a promise or agreement to lend money is not otherwise unenforceable under Chapter 26, Business & Commerce Code, and if the promise or agreement is made by the association before the association is placed under conservatorship or supervisory control, the promise or agreement or a memorandum of the promise or agreement is enforceable against the association only if the promise or agreement or memorandum:

(1) is in writing and states the material terms of the loan and the loan's repayment;

(2) is signed by an authorized officer or employee of the association and the person to whom the promise or agreement was made; and

(3) is approved by the association's board.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.