

Article - Financial Institutions

§9-307.

(a) Each director, officer, and controlling person of a savings and loan association shall:

(1) Act in a fiduciary capacity towards the association, and the association's members, stockholders, and depositors; and

(2) Discharge duties and their respective positions in good faith, and with the same diligence and care that an ordinarily prudent person would exercise under a similar circumstance in a like position.

(b) A director, officer, controlling person, or employee of a savings and loan association may not place himself in a position that creates a conflict of interest.

(c) Except as otherwise provided in subsection (d) of this section, a savings and loan association or a related entity may not make or renew a loan or extension of credit directly or indirectly to:

(1) Any controlling person, director, officer, or employee of the association, or a member of any of their immediate families; or

(2) Any corporation, association, partnership, trust or other entity in which an interest of 10 percent or more is owned by the controlling persons, directors, officers, or employees of the association, or members of any of their immediate families.

(d) (1) Subject to the provisions of paragraphs (3) and (4) of this subsection, a loan by a savings and loan association or a related entity is not prohibited to any controlling person, director, officer, or employee of an association or a member of any of their immediate families if the loan is:

(i) Secured by the borrower's principal residence, including a principal residence under construction; or

(ii) Secured by the borrower's savings account in the association, subject to the requirement that the loan secured by a savings account does not exceed the withdrawal value of the account.

(2) Subject to the provisions of paragraph (4) of this subsection, a consumer loan by a savings and loan association or related entity is not prohibited to any employee of an association or a member of the employee's immediate family.

(3) With respect to loans permitted under paragraph (1)(i) of this subsection, the loan or loans in the aggregate:

(i) May not exceed 80 percent of the appraised value of the borrower's principal residence; or

(ii) May exceed 80 percent of the appraised value if:

1. The difference between that percentage and the total amount of the loan or loans does not exceed 15 percent; and

2. The difference is insured by an agency of the federal government or a private mortgage insurance company.

(4) Any loan permitted by paragraphs (1) and (2) of this subsection shall comply with the following requirements:

(i) The loans shall be in the ordinary course of business of the association or subsidiary, may not involve more than the normal risk of collectibility or present other unfavorable features, and may not exceed the loan amount that would be available to members of the general public of similar credit status applying for loans;

(ii) The loans shall be approved in advance by a resolution duly adopted after full disclosure by at least a majority of the entire board of directors of the association, but not including any director who has an interest in the loan transaction;

(iii) The disclosure of the loan transactions shall include whether the loan is made on substantially the same terms, including interest rate and collateral, as those prevailing at the time for comparable loans to members of the general public;

(iv) The interest rate on the loans shall be at least 100 basis points above the current cost of funds of the association, and the resolution required by subparagraph (ii) of this paragraph shall set forth the association's current cost of funds, including the elements of its computation; and

(v) In the case of a loan secured by a savings account, the interest rate shall be at least 100 basis points above the rate of return on the savings account, and the borrower may not withdraw funds from the account below the level of the amount of the outstanding balance of the loan.

(e) (1) A controlling person, director, officer, employee, or agent of a savings and loan association, or a member of any of their immediate families, directly, or indirectly may not assent to receive, or receive any money or other property of value as a fee, commission, gift, or remuneration of any type from any person or business entity, for procuring, endeavoring to procure, or performing any service, in connection with any loan from, investment by, or deposit in the association.

(2) This subsection does not prohibit an employee or agent of an association who is not a controlling person, director, or officer or a member of their immediate family from receiving fees in the nature of loan origination commissions from the association.

(f) (1) Except as provided in paragraph (2) of this subsection, a controlling person, director, officer, employee or attorney of a savings and loan association, or

member of that individual's immediate family, directly or indirectly, may not purchase from, sell to, or lease from or to the association.

(2) The prohibition contained in paragraph (1) of this subsection does not apply if the Division Director makes a prior written determination that the purchase, sale, or lease to or from the association would be economically advantageous to, fair to, and in the best interest of the association.

(3) Nothing in this subsection may be construed to affect any bona fide lease, purchase order, or other contractual obligation entered into before June 1, 1986, between an association and a controlling person, director, officer, employee, or attorney of an association or a member of that individual's immediate family.

(g) (1) Except as provided in paragraph (2) of this subsection, an association may not honor an overdraft to a controlling person, director, officer, or employee of the association or a member of any of their immediate families on any account or accounts at the association.

(2) If an employee has overdraft protection on an account with the association, an association may honor an overdraft to an employee or a member of the employee's immediate family to the extent of the maximum amount of the overdraft protection on the account.

(h) (1) A director, officer, or controlling person may not take advantage of a business opportunity for the director's, officer's, or controlling person's personal profit or the benefit or the personal profit or benefit of a member of the immediate family when the opportunity is:

(i) Within the corporate powers of the association or its service corporations; and

(ii) Of present or potential advantage to the association.

(2) Nothing in this subsection may be construed to affect any contractual obligations entered into before January 15, 1986 by a director, officer, or controlling person.

(i) An association, its holding company, subsidiaries, or affiliates may employ its officers, directors, and controlling persons in a capacity other than as officer or director only if the employment:

(1) Does not create a conflict of interest;

(2) Is for reasonable compensation; and

(3) Is in a capacity in which the officers, directors, and controlling persons are qualified.

(j) An association may not make a loan to, or transact business with, any person or entity for the purpose of frustrating or avoiding any prohibition in this section or any regulations adopted under this section.

(k) Any controlling person, director, officer, employee, or attorney who knowingly violates or causes a violation of this section on conviction is subject to imprisonment in the penitentiary for a period not more than 10 years, or a fine of not more than \$100,000, or both.