

## SAVINGS AND LOAN ACT OF 1980 (EXCERPT)

### Act 307 of 1980

#### ARTICLE 6

#### **491.600 Savings liability; relationship between association and depositor; nonliability of depositor; depositor preference; contract with depositor.**

Sec. 600. The savings liability of an association shall consist of the aggregate amount of deposits made in the association's savings accounts, and shall be unlimited in aggregate amount. The relationship between an association and a depositor is that of debtor and creditor, respectively. Depositors shall not be subject to assessment by reason of their ownership of a savings account, nor shall they be liable for an unpaid installment on a savings account or a loss of the association that the association's savings liability is not sufficient to satisfy. Except as otherwise provided in this act, an association shall not prefer 1 of its depositors over any other as to the right to receive interest, to participate in earnings, to be granted security for deposits, or to receive a distribution of assets upon voluntary or involuntary liquidation, dissolution, or other termination of business activities. An association shall not contract with depositors with regard to the association's savings liability in a manner inconsistent with this act.

**History:** 1980, Act 307, Eff. Jan. 1, 1981.

#### **491.602 Contract as evidence of savings account; contents; evidence of ownership.**

Sec. 602. Each savings account shall be evidenced by a written contract between the association and the depositor that shall set forth the terms and provisions applicable to the savings account, the ownership of the savings account, and the conditions upon which withdrawal may be made. An account book, certificate, or other evidence of a savings account issued by the association to each depositor shall be conclusive evidence of the ownership of the savings account.

**History:** 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987.

#### **491.604 Evidence of ownership of savings account; loss or destruction; affidavit; issuance of new evidence or substitution of new account; nonliability on original evidence of ownership; bond or other security as indemnification.**

Sec. 604. Upon the filing with an association or a federal association of a sworn affidavit to the effect that the evidence of ownership of a savings account has been lost or destroyed and that the account has not been pledged or assigned in whole or in part, the association or federal association, unless it has actual knowledge that the facts set forth in the affidavit are untrue, shall either issue new evidence of ownership for an account or arrange for the substitution of a new account in the name of the depositor in place of the account for which the evidence of ownership has been lost or destroyed. The association or federal association may require that the affidavit be furnished by all owners of an account. Upon issuance of the substitute evidence or the substitution of accounts, the association or federal association shall not thereafter be liable on, or obligated to honor, the original evidence of ownership. An association or federal association may require a bond or other security as the association or federal association considers sufficient to indemnify the association against any loss which may result from issuance of the substitute evidence of ownership or the substitution of accounts.

**History:** 1980, Act 307, Eff. Jan. 1, 1981.

#### **491.606 Types of savings accounts; contract for issuance; transaction charges.**

Sec. 606. An association or a federal association may contract for the issuance of the following types of savings accounts, which may be subject to the transaction charges as the association's board prescribes:

(a) Accounts under which the association is trustee or custodian within the contemplation of the self-employed individuals tax retirement act of 1962, Public Law 87-792, 76 Stat. 809, and the employee retirement income security act of 1974, Public Law 93-406, 88 Stat. 829, and as trustee, custodian, or manager of an investment fund the authorized investments of which includes, savings accounts or real estate loans, and the beneficial interests which may be represented by transferable shares or certificates. An association exercising the limited trust powers provided in this subdivision shall keep separate books and records of the detailed transactions made for each distinct investment fund held in a fiduciary capacity and for each beneficial owner's interest in the fund, and may commingle the investment funds held in a fiduciary capacity for purposes of investment. A fund held in a fiduciary capacity shall not be used by an association in the conduct of its business, although the funds may be invested in savings accounts of the association if the trust, plan, or other governing instrument does not prohibit that investment. In the exercise of the trust powers authorized by this subdivision, an association shall be exempt from all other statutes of this state regulating trusts or trustees.

(b) Accounts for issuance to federal, state, political subdivision, other governmental units or agencies, school districts, or other authorities created by statute in connection with the deposit of public or state money or federal taxes. Depositors of public or state money or federal taxes shall not be considered members of an association. An association or federal association may contract with the depositor of public or state money or federal taxes to provide for the withdrawal of public or state money or federal taxes without previous notice of withdrawal. An association or federal association, with the written consent of the supervisor or under rules promulgated by the supervisor, may pledge its assets in an amount not to exceed 10% of the association's savings liability to secure deposits by or for the credit of any of the following:

(i) The United States or any officer, instrumentality, or agency of the United States.

(ii) The courts of the United States or any trustee or receiver acting under authority granted by the courts of the United States.

(iii) The state treasurer.

(iv) The Mackinac bridge authority under 1950 (Ex Sess) PA 21, MCL 254.301 to 254.304.

(v) The international bridge authority under 1954 PA 99, MCL 254.221 to 254.240.

(vi) The Michigan state housing development authority under the state housing development authority act of 1966, 1966 PA 346, MCL 125.1401 to 125.1499c.

(vii) The Michigan employment security commission.

(viii) Funds belonging to any political subdivision of this state.

(c) Accounts under which the association may participate and implement a thrift or savings plan at a public or nonpublic elementary or secondary school or institution of higher education, a public or charitable institution caring for minors, or an institution or facility engaged in housing or caring for the aged or infirm. An association may accept deposits to the savings accounts at the site of a school, institution, or facility either by the association's own employees or by a representative of the school, institution, or facility who is designated as the association's agent for that purpose, without prior approval by the supervisor.

(d) Accounts of the classification, in the form, and under the terms and conditions as may be established, and which may provide for the transfer of funds from the account to third parties upon order or authorization, which third party transfer orders or authorizations shall be nonnegotiable. An association may provide that an order or authorization for withdrawal or transfer of funds from an account to third parties may be negotiable or transferable.

**History:** 1980, Act 307, Eff. Jan. 1, 1981;—Am. 1981, Act 114, Imd. Eff. July 17, 1981;—Am. 1987, Act 106, Imd. Eff. July 7, 1987;—Am. 1997, Act 51, Imd. Eff. June 30, 1997.

#### **491.608 Application for withdrawal of money from savings account; identification; cancellation; payment or numbering of application; interest; rotation plan; amount of payment; notice; pro rata payments; payment without application; apportionment of funds; definition.**

Sec. 608. (1) Unless a rotation plan has been approved by the supervisor under this section, a depositor may withdraw all or part of the money from a savings account, pursuant to the terms applicable to withdrawals under the written contract between a depositor and the association. An association may require that each application for withdrawal be accompanied by identification considered sufficient by the association to assure that the withdrawal is being made by a person entitled to do so. An application for withdrawal shall request withdrawal of a stated amount or the balance of the account pursuant to this section. A depositor may cancel an application at any time in whole or in part by providing written notice to the association. An association shall pay or number, date, and file in the order of actual receipt, every withdrawal application. An association shall not obligate itself to pay withdrawals on a plan other than as provided in this act. Depositors who are members and who have filed written application for withdrawal remain members until paid, and shall not have greater rights as creditors. Interest shall not be paid upon that portion of an account which has been noticed for withdrawal, and a portion noticed for withdrawal shall be deducted from the latest previous additions to an account, if the application for withdrawal is on file.

(2) If action is necessary to preserve the assets of an association and protect the claims of the association's depositors, with the approval of the supervisor an association may institute a rotation plan for the payment of withdrawal applications pursuant to this section with respect to savings accounts other than those authorized by section 606(b). A rotation plan pursuant to this section may also be required of an association upon issuance of an order for a rotation plan by the supervisor. On the first day of each month, each application that has been on file since the fifteenth day of the preceding month and which is reached in the order the application was received shall be paid \$1,000.00 on account if funds are available for that purpose, or in full if the unpaid amount or balance of the withdrawal application is less than \$1,000.00. Each application for more than \$1,000.00 so paid, shall be considered refiled for purposes of the succeeding monthly payments. Not less

than 1/3 of the net receipts of an association during the preceding calendar month shall be applied on the first day of each month to the payment of applications under the rotation plan. An association may apply to withdrawals an amount larger than 1/3 of the net receipts, but shall not obligate itself to do so. When an application to withdraw is reached for payment, a written notice shall be sent to the applicant by mail at the applicant's last address recorded on the books, and unless the applicant applies in person or in writing for the withdrawal within 15 days after the date of the notice, payment on account of the application shall not be made and the application shall be canceled. If the aggregate sum called for by applications for withdrawal on file exceeds 5% of the savings liability of the association, the association's board may direct, with the approval of the supervisor, that the sums available each month for payment upon withdrawals shall be paid by distribution of the sums to the withdrawing depositors in proportion to their savings account to be withdrawn.

(3) At the discretion of the board and to meet the necessities of the association's depositors, an association may pay out to depositors who have not filed applications for withdrawal an amount not to exceed \$200.00 to a depositor in a month, but the payments shall not be made from or charged against the 1/3 of net receipts applicable to the payment of written applications for withdrawal.

(4) With the approval of the supervisor the board may provide that all funds available for withdrawal shall be apportioned and paid pro rata with respect to all unpledged savings accounts of an association, without regard to applications for withdrawal and the sums may be distributed as determined by the board, but not less than 2 times a year.

(5) As used in this section, "net receipts" means the cash received by an association from investments, interest, loan repayments, fines, service charges, and any other source except borrowings, deposits, and payments which are to be held in escrow or as agent for another, less disbursements for expenses necessary and incidental to the association's business, expenses of maintaining and improving its real estate, taxes and insurance related to its properties or business, renewals of obligations, interest payments to depositors and other lenders to the association, and the creation of required reserves.

**History:** 1980, Act 307, Eff. Jan. 1, 1981.

#### **491.610 Redemption of savings accounts.**

Sec. 610. If sufficient funds are on hand, an association may redeem all or part of its savings accounts which by the terms of the governing written contract permit the action, by giving 30 days' notice by certified mail addressed to depositors at their last address on the books of the association. An association shall not redeem a savings account if the association is in an insolvent condition or if the association has applications for withdrawal that have been on file for more than 30 days and which have not been honored. The redemption amount for savings accounts shall be the full value of the account on the redemption date together with any interest to which a depositor is entitled under the savings contract with the association. If funds are set aside by the association on or before the redemption date for the purpose of redemption under this section so as to be continuously available for redemption, interest on savings accounts called for redemption shall cease to accrue and all other rights and privileges otherwise provided to depositors, as members and otherwise, shall terminate on the redemption date, except the right of the depositor to receive the redemption amount and any interest to which the depositor is entitled.

**History:** 1980, Act 307, Eff. Jan. 1, 1981.

#### **491.612 Opening and holding of savings accounts; representation of savings account; treating depositor as owner of funds; evidence of identity.**

Sec. 612. A savings account may be opened by an association or a federal association and held solely and absolutely by, or in trust for, any person, including an adult or minor individual, male or female, single or married, a partnership, association, or corporation. A savings account may be opened and held by this state or a political subdivision of this state, or by an officer or agency of this state or a political subdivision of this state for any purpose permitted by law. A savings account shall be represented only by the account of each depositor on the books of the association. An association or a federal association may treat a depositor as the owner of the funds for all purposes without being affected by a notice to the contrary until the association has acknowledged in writing notice of a pledge or assignment of the savings account. If an account is to be opened in the name of 1 or more individuals, an association or federal association may require evidence that the association or federal association considers sufficient to assure itself of a prospective depositor's identity.

**History:** 1980, Act 307, Eff. Jan. 1, 1981.

#### **491.614 Issuance of savings account to minor; rights of minor; death of minor.**

Sec. 614. An association and a federal association may issue a savings account to a minor as the sole and absolute owner of the account, and pay withdrawals and act with respect to the account on the order of the

minor. Unless the written savings account contract provides otherwise, a payment or delivery of rights to a minor by an association or a federal association, or a receipt or acquittance signed by a minor who is a depositor, shall be a valid and sufficient release and discharge of the association for any payment or delivery of rights so made. The receipt, acquittance, or other action required by the association to be taken by the minor, and any action taken by a minor to pledge, or grant a power of attorney with respect to, an account shall be binding upon the individual with the same effect as if the minor were of full legal capacity. The parent or guardian of a minor shall not, in the person's capacity as parent or guardian, attach or in any manner transfer a savings account issued to or in the name of the minor. In the event of the death of a minor, the receipt or acquittance of either parent, or of a person standing in loco parentis to the minor is a valid and sufficient discharge of an association for any sum not exceeding in the aggregate \$3,000.00 unless the minor has given written notice to the association not to accept the signature of the parent or other person.

**History:** 1980, Act 307, Eff. Jan. 1, 1981.

#### **491.616 Joint savings account; contract; nature of joint tenancy; power of depositors; instructions; discharge of association from liability.**

Sec. 616. (1) One or more individuals may open a savings account with an association or a federal association in the names of 2 or more minor or adult individuals. The savings account contract executed with an association or federal association shall do all of the following:

(a) Designate that the money on deposit in the account may be withdrawn by 1 or more of the depositors during the lifetimes of all of them.

(b) Specify that the account and all additions to the account shall be the property of the depositors as joint tenants, tenants by the entireties, or as tenants in common.

(2) If specification is not made in the savings account contract concerning the nature of the joint tenancy created, the account and all additions to the account shall be the property of the persons as joint tenants, and in the absence of fraud or undue influence, the opening of an account shall be conclusive evidence in an action or proceeding of the intention of all parties to the account to vest title to the account and all additions to the account in the survivor.

(3) The power of the depositors, or any 1 or more of them to obtain substitute evidence of the savings account or a substituted account upon loss or destruction of the evidence of ownership of the account, to pledge the account in whole or in part, and to execute a power of attorney with respect to the account shall be coextensive with the right of the depositors to make withdrawals from the account during the time all depositors to the account are living. By written instructions given to the association by a depositor to an account, the signatures of a named depositor or of more than 1 of the depositors during their lifetimes or of a named depositor or of more than 1 of the surviving depositors after the death of any 1 of them may be required on a check, receipt, or withdrawal application, in which case the association shall pay the money in the account only pursuant to the instructions. Payment of all or any of the money in a joint account shall discharge the association from liability with respect to the money paid, before the association's receipt of written instructions from a depositor directing the association not to permit withdrawals pursuant to the terms of the account or the instructions. After receipt of the written instructions, an association may refuse, without liability, to honor a check, receipt, or withdrawal order on the account pending determination of the rights of the parties. Written instructions given to an association regarding a joint account shall not affect a right of survivorship on the account unless the instructions specifically state otherwise.

**History:** 1980, Act 307, Eff. Jan. 1, 1981.

#### **491.618 Pledge of joint account.**

Sec. 618. The pledge to an association or a federal association or any other third party of all or part of a joint account signed by a person who is authorized in writing to make withdrawals from the account, unless the terms of the savings account provide specifically to the contrary, is a valid pledge and transfer to the association or other third party of that part of the account pledged, and shall not operate to sever or terminate the joint ownership of all or a part of the account.

**History:** 1980, Act 307, Eff. Jan. 1, 1981.

#### **491.620 Nonresident depositor; payment of account to administrator, personal representative, executor, or guardian; letters of administration; affidavit; release and discharge of association.**

Sec. 620. If a depositor in an association or a federal association resides in another state or country, the account or a part of the account, may be paid to an administrator, personal representative, or executor appointed in the state or country where the depositor resided at the time of death, or to a duly appointed

guardian for the estate of the depositor if the depositor is still living, if the administrator, personal representative, executor, or guardian has furnished the association with authenticated copies of the letters of administration authorizing the person to act as fiduciary of the estate of the depositor and to collect and receive the depositor's estate, together with a sworn affidavit by the fiduciary that to his or her knowledge letters of administration are not outstanding in this state and a petition for letters of administration by an heir, legatee, devisee, or creditor of the nonresident depositor is not pending regarding the estate in this state, and that there are not any creditors of the estate in this state. Upon payment or delivery to the fiduciary acting on behalf of a nonresident depositor, the association shall be released and discharged to the same extent as if the payment or delivery had been made to a legally qualified resident executor, administrator, personal representative, or other fiduciary, and the association shall not be required to see to the application or disposition of the property.

**History:** 1980, Act 307, Eff. Jan. 1, 1981.

**491.622 Savings account in name of fiduciary in trust for named beneficiary or in name of nominee or escrow agent; powers of record owner; payment or delivery; release and discharge; death of fiduciary; payment or delivery to beneficiary or beneficiary's estate; death of trustee; payment or delivery to designated beneficial owner.**

Sec. 622. An association or a federal association may accept savings accounts in the name of an administrator, personal representative, custodian, executor, guardian, trustee, or other fiduciary in trust for a named beneficiary or in the name of a nominee or an escrow agent. The record owner shall have all powers with respect to the account as if the account were owned by the record owner absolutely, to open, to make additions to, and to withdraw funds from the account in whole or in part. The withdrawal value of the account, and interest on the account, or other rights relating to the account may be paid or delivered, in whole or in part, to the fiduciary without regard to any notice to the contrary if the fiduciary is living. The payment or delivery to the fiduciary or a receipt or acquittance signed by the fiduciary to whom a payment or delivery of rights is made is a valid and sufficient release and discharge of an association for the payment or delivery made. If a person holding an account in a fiduciary capacity dies and written notice of the revocation or termination of the fiduciary relationship has not been given to an association and the association does not have notice of any other disposition of the beneficial estate, the withdrawal value of the account, and interest on the account, or other rights relating to the account, at the option of the association, may be paid or delivered, in whole or in part, to the beneficiary or, if the beneficiary has also died, to the beneficiary's estate. If an account is opened by a person, describing himself or herself in opening the account as trustee for the benefit of another person and other or further notice of the existence and terms of a legal and valid trust has not been given in writing to the association, in the event of the death of the person described as trustee, the withdrawal value of the account or a part of the account, together with dividends or interest on the account, may be paid to the beneficial owner for whom the account was stated to have been opened, and the account and all additions to the account shall be the property of the beneficial owner. Payment or delivery to a designated beneficial owner, or a receipt or acquittance signed by a designated beneficial owner, is a valid and sufficient release and discharge of an association for the payment or delivery made.

**History:** 1980, Act 307, Eff. Jan. 1, 1981.

**491.624 Attorney-in-fact; recognition of authority; notice of revocation of authority.**

Sec. 624. An association or a federal association may recognize the authority of an attorney-in-fact, authorized in writing by a person who has power to make withdrawals from a savings account, including a fiduciary of a depositor, until the association receives written notice or is on actual notice of the revocation of the authority from a person who previously granted the authority. For purposes of this section, written notice of the death or adjudication of incompetency of a depositor constitutes written notice of revocation of the authority of the depositor's attorney-in-fact.

**History:** 1980, Act 307, Eff. Jan. 1, 1981.

**491.626 Savings accounts as legal investments.**

Sec. 626. Savings accounts of associations and federal associations are legal investments for administrators, personal representatives, executors, custodians, guardians, trustees, and other fiduciaries of every kind and nature, insurance companies and other businesses, banks, credit unions, and all other types of financial institutions, charitable, educational, and eleemosynary corporations or organizations, political subdivisions, state agencies, other governmental units, and other corporations and bodies.

**History:** 1980, Act 307, Eff. Jan. 1, 1981.

**491.628 Savings accounts subject to garnishment or similar process; payment pursuant to action or judgment.**

Sec. 628. Savings accounts of associations shall be subject exclusively to garnishment and shall not be subject to seizure and sale on execution, or proceedings supplementary to those proceedings, but an amount in a savings account which is \$500.00 or less shall not be liable to garnishment or a similar process, except as to an indebtedness due to the association. Without inquiry into the validity of a garnishment or similar process, an association may pay any funds in excess of \$500.00 in a savings account into a court or to a qualified official making demand for the funds, pursuant to an action or on a judgment pursuant to an action.

**History:** 1980, Act 307, Eff. Jan. 1, 1981.

**491.630 Repealed. 1987, Act 106, Imd. Eff. July 7, 1987.**

**Compiler's note:** The repealed section pertained to statement as to insured or guaranteed accounts.