

BANKING CODE OF 1999 (EXCERPT)
Act 276 of 1999

487.12306 Conduct constituting breach of fiduciary duty; order of removal or prohibition.

Sec. 2306.

(1) If in the opinion of the commissioner any director or officer of an institution has committed any violation of law or rule or of a cease and desist order or other order of the commissioner which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the institution, or has committed or engaged in any act, omission, or practice which constitutes a breach of fiduciary duty as a director or officer and the commissioner determines that the institution has suffered or will probably suffer substantial financial loss or other damage or that the interests of its depositors could be seriously prejudiced by reason of the violation or practice or breach of fiduciary duty, the commissioner may serve upon the director or officer a written notice of intention to remove the person from office.

(2) If in the opinion of the commissioner any director, officer, or any other person participating, or who has participated, in the conduct of the affairs of an institution, by conduct or practice with respect to the institution or other business organization resulted in substantial financial loss or other damage, has evidenced personal unfitness to participate in the conduct of the affairs of the institution, the commissioner may serve upon the director, officer, or other person a written notice of intention to remove the person from office or to prohibit the person's further participation in any manner in the conduct of the affairs of the institution.

(3) In respect to a person to whom notice is sent under subsection (1) or (2), if the commissioner considers it necessary for the protection of the institution or the interests of its depositors that the person be suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the institution, the commissioner may serve upon the person a written notice suspending him or her from office or prohibiting him or her from further participation in any manner in the conduct of affairs of the institution. The suspension or prohibition shall be effective upon service of the notice and, unless stayed by a court in proceedings authorized by section 2307, shall remain in effect pending the completion of the administrative proceedings and the commissioner dismisses the charges specified in the notice or, if an order of removal or prohibition is issued, until the effective date of the order. Copies of the notice shall also be served upon the institution of which the person is a director or officer or in the conduct of whose affairs the person has participated.

(4) A notice of intention to remove a person from office or to prohibit participation in the conduct of the affairs of any institution shall contain a statement of the facts constituting grounds for the removal, and fix a time and place for a hearing. Except as otherwise approved by the commissioner, the hearing shall be held not earlier than 30 days nor later than 60 days after the date of service of the notice. If the person does not appear at the hearing in person or by a duly authorized representative, the person shall be considered to have consented to the issuance of an order of removal or prohibition. In the event of consent, or if upon the record made at the hearing the commissioner finds that any grounds specified in the notice have been established, the commissioner may issue an order of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the institution, as appropriate. The order is effective at the expiration of 30 days after service upon the institution and the person concerned except in the case of an order issued upon consent, which is effective at the time specified in the order. The order shall remain effective and enforceable unless it is stayed, modified, terminated, or set aside by the commissioner or a reviewing court.

History: 1999, Act 276, Eff. Mar. 1, 2000