

SAVINGS AND LOAN ASSOCIATIONS:
VOLUNTARY DISSOLUTION:
CUSTODY OF RECORDS:

When a savings and loan association is voluntarily dissolved and liquidated in accordance with Sections 369.465, 369.470 and 369.475 RSMo 1949, and during liquidation a director is given custody of records, that after liquidation is completed and association is legally non-existent, director not required to retain possession of records any longer.



September 15, 1955

Honorable Morris G. Gordon
Supervisor, Savings and Loan Supervision
Jefferson City, Missouri

Dear Mr. Gordon:

We are in receipt of your recent request for a legal opinion of this department upon the inquiry presented in the letter attached to your request and which reads in part as follows:

"I am a former director of Nickle Savings Investment & Building Association which was liquidated some years ago. The last payment to our clients was made in June, 1949, and I would like to have your instructions as to whether it is necessary for me to keep the records of this liquidated association any longer."

We requested further information regarding the facts relating to the above request and the reply to our request reads in part as follows:

"(1) The association was dissolved by action of unanimous vote of Board of Directors.

"(2) No proceedings in court on account of this dissolution.

"(3) I cannot locate certificate from supervisor. However, we made no move without consent of supervisor. The Director of Savings & Loan Office must have this record.

"(4) No proceedings.

"(5) If after six years without comment and criticism of any kind by stockholders who were paid the book value of their stock in full plus

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their proportion of a substantial surplus, I feel it is not necessary to hold records any longer.

"These records are in the basement of my home and, as I stated before, if they are no longer needed, I see no reason why they should clutter up my home. I might also add that the only court proceeding was caused by a former stockholder who attempted to regain two pieces of property after giving our association a quick claim deed 18 years prior to dissolution. This case was tried in Circuit Court at Clayton, Missouri before Judge John Whithouse and decided in favor of our association. His decision was appealed to the State Supreme Court who upheld the decision of a lower court."

From the correspondence before us it appears that the Nickel Savings Investment and Building Association of St. Louis, Missouri was dissolved by voluntary action of its board of directors, and that the liquidation and winding up of its affairs was completed in June 1949.

The writer of the letters quoted above was director of the association and as such had charge of the records during the liquidation and to the present time. We construe his inquiry to be, is it his duty to retain possession of said records for the benefit of the association any longer. In our discussion herein we are passing upon the necessity of the director to keep the records as required by state law and not the desirability of keeping said records for his personal protection or the protection of others.

Sections 369.465, 369.470 and 369.475 RSMo 1949, set out the statutory procedure for the voluntary dissolution and liquidation of a savings and loan association.

For the purposes of our discussion it will be assumed that these statutes have been fully complied with by the Nickel Savings Investment and Building Association, that such association has been legally dissolved, and that the association has been legally non-existent since June 1949.

In this connection we call your attention to the legal effect of the dissolution of a corporation as it was discussed by the court in the case of State ex rel. McDowell v. Libby, 238 Mo. App. 36. At l.c. 42 and 43 the court said:

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"* * * The dissolution of a corporation is the termination of its corporate existence and its extinction as an entity or body. At the common law the property of a dissolved corporation escheated to the Crown and all debts due to or from it were extinguished, and all pending suits and actions by and against it were abated. Unless there is a statute to the contrary, a judgment cannot be rendered against a dissolved corporation. Such a judgment is void.

"To obviate the harshness and effect of the common law a great number of states, including our own, have enacted statutes providing that the directors and president or manager of a dissolved corporation shall become its trustees for the purposes specified in such statutes. (See Secs. 5036, 5094, R.S. Mo. 1939.) These statutes were designed for the purpose of providing the machinery by which actions may be continued against dissolved corporations and to prevent the abatement of actions by reason of the corporation's dissolution. They provide that the named officers are and become trustees of the corporation upon its dissolution and, as such, are its legal representatives. It follows that upon the dissolution of the corporation the trustees became proper and necessary parties to the proceedings and in this case it was necessary to substitute such trustees for the corporation, and parties defendant, in order that the actions might have proceeded. They could no longer be maintained in the name of the dissolved corporation and the judgments rendered against it were void.* * *"

It is believed that Section 369.470, belongs to that class of statutes to which the court referred in the above quoted opinion. However, said section is applicable only to the dissolution and liquidation of savings and loan corporations.

Ordinarily the dissolution ends the existence of a corporation, after which it is unauthorized to exercise any of the powers conferred upon it by law or its charter, unless some statute authorizes it to continue its existence and to exercise certain powers for a limited time only for the purposes provided in said statute.

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Section 369.470, is a statute which authorizes the continued existence of an association and the exercise of such powers as may be necessary for liquidation purposes. Said section also provides that the board of directors shall be trustees in charge of the association's property for such liquidation purposes and what their duties shall be.

Incidental to the performance of the duties specified in said section, is the keeping of records of business transactions and of the financial affairs of the association. Section 369.475 requires the board to render a report and financial accounting at the completion of the liquidation and dissolution of the association, which must be approved by the supervisor.

While we have not been fully advised, we assume that the records of the association referred to in the opinion request are of the kind mentioned in Sections 369.470 and 369.475.

We further assume that the records were in the possession of the writer of the opinion request for the purpose of making the necessary entries during the liquidation period and that such records have been in the possession of the director from such time to the present, and that he now desires to part with possession and have the records removed from the basement of his home where they have been stored.

It was the legal duty of such director-trustee to have possession and make the necessary entries in the records committed to his charge until the affairs of the savings and loan association had been wound up.

The records in question belong to the association and are not public records required to be kept by the supervisor of savings and loan, as no statute requires the supervisor to keep the records of a dissolved association. This principle was held to be the law in a legal opinion of this department furnished to the Honorable T. Victor Jeffries, Supervisor, Bureau of Building and Loan Supervision, Jefferson City, Missouri, upon July 14, 1943. A copy of such opinion is enclosed for your consideration.

After the Nickel Savings Investment and Building Association was dissolved, liquidation proceedings finally completed, and approved by the supervisor of Savings and Loan Supervision, said association was legally non-existent from that time.

The board of directors as officers and trustees of the association lost their status as such at the same time and, of course, were not required to perform any of their former official

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duties any longer. This being true, the director referred to in the opinion request is not required to make entries in the records of the association after such liquidation, nor is he required to have the physical possession of said records any longer.

CONCLUSION

It is the opinion of this department that when a savings and loan association is voluntarily dissolved by action of its board of directors and is liquidated in accordance with the provisions of Sections 369.465, 369.470 and 369.475 RSMo 1949, and during the liquidation period one of the directors is given custody of the association's records, that after the liquidation process has been completed and the association becomes legally non-existent, said director is not required to retain possession of such records any longer.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Paul N. Chitwood.

Yours very truly,

John M. Dalton
Attorney General

Enclosure - T. Victor Jeffries
7-14-43

PNC:ma,ld,vlw