

## Article 2.

### Incorporation and Organization.

#### **§ 54B-5. Severability.**

If any section or subsection of this Chapter, or the application thereof to any person is held invalid, the remaining sections or subsections of this Chapter, and the application of such section or subsection to any other person, shall not be invalidated or affected thereby. (1981, c. 282, s. 3.)

#### **§ 54B-6. Hearings.**

Any hearing required to be held by this Chapter shall be conducted in accordance with the applicable provisions of Article 3 of Chapter 150B of the General Statutes. (1981, c. 282, s. 3; 1987, c. 827, s. 1.)

#### **§ 54B-7. Application of Chapter on business corporations.**

All the provisions of law relating to private corporations, and particularly those enumerated in Chapter 55, of the General Statutes, entitled "North Carolina Business Corporation Act," which are not inconsistent with this Chapter, or with the proper business of savings and loan associations shall be applicable to all State associations. (1981, c. 282, s. 3; 1989 (Reg. Sess., 1990), c. 1024, s. 3.)

#### **§ 54B-8. Scope and prohibitions; existing charters; injunctions.**

(a) Nothing in this Chapter shall be construed to invalidate any charter that was valid prior to the enactment of this Chapter. All such associations shall continue operation in full force, but such associations shall be operated in accordance with the provisions of this Chapter.

(b) Repealed by Session Laws 1985, c. 659, s. 2.

(c) No person or group of persons, nor any corporation, company, or association except one incorporated and licensed in accordance with the provisions of this Chapter to operate a State association, shall operate as a State association. Unless so authorized as a State or federal association and actually engaged in transacting a savings and loan business, no person or group of persons, nor any corporation, company, or association domiciled and doing business in this State shall:

- (1) Use in its name the terms "building and loan association" or "savings and loan association" or words of similar import or connotation that lead the public reasonably to believe that the business so conducted is that of a savings and loan association; or
- (2) Use any sign, or circulate or use any letterhead, billhead, circular or paper whatsoever, or advertise or communicate in any manner that would lead the public reasonably to believe that it is conducting the business of a savings and loan association.

(d) Upon application by the Commissioner of Banks or by any savings and loan association, a court of competent jurisdiction may issue an injunction to restrain any person or entity from violating or from continuing to violate any of the foregoing provisions of subsection (c). (1981, c. 282, s. 3; 1985, c. 659, s. 2; 1987, c. 237, s. 1; 2001-193, s. 16.)

#### **§ 54B-9. Application to organize a savings and loan association.**

(a) It shall be lawful for any five or more natural persons (hereinafter referred to as the "incorporators"), who are domiciled in this State, to organize and establish a savings and loan

association in order to promote thrift and home financing, subject to approval as hereinafter provided in this Chapter. The incorporators shall file with the Commissioner of Banks a preliminary application to organize a State association, in the form to be prescribed by the Commissioner of Banks, together with the proper nonrefundable application fee.

(b) The application to organize a State association shall be received by the Commissioner of Banks not less than 60 days prior to the scheduled consideration of the application by the Commission, and it shall contain:

- (1) The original of the certificate of incorporation, which shall be signed by the original incorporators, or a majority of them, but not less than five, and shall be properly acknowledged by a person duly authorized by this State to take proof or acknowledgment of deeds; and two conformed copies;
- (2) The names and addresses of the incorporators; and the names and addresses of the initial members of the board of directors;
- (3) Statements of the anticipated receipts, expenditures, earnings and financial condition of the association for its first two years of operation, or such longer period as the Commissioner of Banks may require;
- (4) A showing satisfactory to the Commission that:
  - a. The public convenience and advantage will be served by the establishment of the proposed association;
  - b. There is a reasonable demand and necessity in the community which will be served by the establishment of the proposed association;
  - c. The proposed association will have a reasonable probability of sustaining profitable and beneficial operations within a reasonable time in the community in which the proposed association intends to locate;
  - d. The proposed association, if established, will promote healthy and effective competition in the community in the delivery to the public of savings and loan services;
- (5) The proposed bylaws;
- (6) Statements, exhibits, maps and other data which may be prescribed or requested by the Commissioner of Banks, which data shall be sufficiently detailed and comprehensive so as to enable the Commissioner of Banks to pass upon the criteria set forth in this Article.

(c) The application shall be signed by the original incorporators or a majority of them but not less than five, and shall be properly acknowledged by a person duly authorized by this State to take proof and acknowledgement of deeds. (1981, c. 282, s. 3; 1989, c. 76, s. 2; 2001-193, s. 16.)

#### **§ 54B-10. Certificate of incorporation.**

(a) The certificate of incorporation of a proposed mutual savings and loan association shall set forth:

- (1) The name of the association, which must not so closely resemble the name of an existing association doing business under the laws of this State as to be likely to mislead the public;
- (2) The county and city or town where its principal office is to be located in this State; and the name of its registered agent and the address of its registered office, including county and city or town, and street and number;

- (3) The period of duration, which may be perpetual. When the certificate of incorporation fails to state the period of duration, it shall be considered perpetual;
  - (4) The purposes for which the association is organized, which shall be limited to purposes permitted under the laws of this State for savings and loan associations;
  - (5) The amount of the entrance fee per withdrawable account based upon the amount pledged;
  - (6) The minimum amount on deposit in withdrawable accounts before it shall commence business;
  - (7) Any provision not inconsistent with this Chapter and the proper operation of a savings and loan association, which the incorporators shall set forth in the certificate of incorporation for the regulation of the internal affairs of the association;
  - (8) The number of directors, which shall not be less than seven, constituting the initial board of directors (which may be classified in the certificate of incorporation), and the name and addresses of each person who is to serve as a director until the first meeting of members, or until his successor be elected and qualified;
  - (9) The names and addresses of the incorporators.
- (b) The certificate of incorporation of a proposed stock savings and loan association shall set forth:
- (1) The name of the association, which must not so closely resemble the name of an existing association doing business under the laws of this State as to be likely to mislead the public;
  - (2) The county and city or town where its principal office is to be located in this State; and the name of its registered agent and the address of its registered office, including county and city or town, and street and number;
  - (3) The period of duration, which may be perpetual. When the certificate of incorporation fails to state the period of duration, it shall be considered perpetual;
  - (4) The purposes for which the association is organized, which shall be limited to purposes permitted under the laws of this State for savings and loan associations;
  - (5) With respect to the shares of stock which the association shall have authority to issue:
    - a. If the stock is to have a par value, the number of such shares of stock and the par value of each;
    - b. If the stock is to be without par value, the number of such shares of stock;
    - c. If the stock is to be of both kinds mentioned in paragraphs a and b of subdivision (5) of this subsection, particulars in accordance with those paragraphs;
    - d. If the stock is to be divided into classes, or into series within a class of preferred or special shares of stock, the certificate of incorporation shall also set forth a designation of each class, with a designation of each

series within a class, and a statement of the preferences, limitations, and relative rights of the stock of each class or series;

- (6) The minimum amount of consideration to be received for its shares of stock before it shall commence business;
- (7) A statement as to whether stockholders have preemptive rights to acquire additional or treasury shares of the association and any provision limiting or denying said rights;
- (8) Any provision not inconsistent with this Chapter or the proper operation of a savings and loan association, which the incorporators shall set forth in the certificate of incorporation for the regulation of the internal affairs of the association;
- (9) The number of directors, which shall not be less than seven, constituting the initial board of directors (which may be classified in the certificate of incorporation) and the name and address of each person who is to serve as a director until the first meeting of the stockholders, or until his successor be elected and qualified;
- (10) The names and addresses of the incorporators.

(c) The certificate of incorporation, whether for a mutual association or stock association, shall be signed by the original incorporators, or a majority of them, but not less than 10, and shall be acknowledged before an officer duly authorized under the law of this State to take proof or acknowledgement of deeds, and shall be filed along with two conformed copies in the office of the Commissioner of Banks as provided in G.S. 54B-9. (1981, c. 282, s. 3; 1983, c. 144, s. 3; 1989 (Reg. Sess., 1990), c. 806, s. 17; 1991, c. 707, s. 1; 2001-193, s. 16.)

#### **§ 54B-11. Commissioner of Banks to consider application.**

Upon receipt of an application to organize and establish a savings and loan association, the Commissioner of Banks shall examine or cause to be examined all the relevant facts connected with the formation of the proposed association. If it appears to the Commissioner of Banks that the proposed association has complied with all the requirements set forth in this Chapter and the rules and regulations for the formation of a savings and loan association and is otherwise lawfully entitled to be organized and established as a savings and loan association, the Commissioner of Banks shall present the application to the Commission for its consideration. (1981, c. 282, s. 3; 1983, c. 144, s. 4; 2001-193, s. 16.)

#### **§ 54B-12. Criteria to be met before the Commissioner of Banks may recommend approval of an application.**

(a) The Commissioner of Banks may recommend approval of an application to form a mutual association only when all of the following criteria are met:

- (1) The proposed association has an operational expense fund, from which to pay organizational and incorporation expenses, in an amount determined by the Commissioner of Banks to be sufficient for the safe and proper operation of the association, but in no event less than seventy-five thousand dollars (\$75,000). The moneys remaining in such expense fund shall be held by the association for at least one year from its date of licensing. No portion of such fund shall be released to an incorporator or director who contributed to it, nor to any other

contributor, nor to any other person and no dividends shall be accrued or paid on such funds without the prior approval of the Commissioner of Banks.

- (2) The proposed association has pledged for withdrawable accounts in an amount determined by the Commissioner of Banks to be sufficient for the safe and proper operation of the association, but in no event less than four million dollars (\$4,000,000).
- (3) All entrance fees for withdrawable accounts of the proposed association have been made with legal tender of the United States.
- (4) All initial pledges for withdrawable accounts of the proposed association are made by residents of North Carolina.
- (5) The name of the proposed association will not mislead the public and is not the same as an existing association or so similar to the name of an existing association as to mislead the public.
- (6) The character, general fitness and responsibility of the incorporators and the initial board of directors of the proposed association who shall be residents of North Carolina are such as to command the confidence of the community in which the proposed association intends to locate.
- (7) There is a reasonable demand and necessity in the community which will be served by the establishment of the proposed association.
- (8) The public convenience and advantage will be served by the establishment of the proposed association.
- (9) The proposed association will have a reasonable probability of sustaining profitable and beneficial operations in the community.
- (10) The proposed association, if established, will promote healthy and effective competition in the community in the delivery to the public of savings and loan services.

(b) The Commissioner of Banks may recommend approval of an application to form a stock association only when all of the following criteria are met:

- (1) The proposed association has prepared a plan to solicit subscriptions for capital stock in an amount determined by the Commissioner of Banks to be sufficient for the safe and proper operation of the association, but in no event less than three million dollars (\$3,000,000).
- (2) Repealed by Session Laws 1989, c. 76, s. 3.
- (3) All subscriptions for capital stock of the proposed association have been purchased with legal tender of the United States.
- (4) to (7) Repealed by Session Laws 1983, c. 144, s. 5.
- (8) The name of the proposed association will not mislead the public and is not the same as an existing association or so similar to the name of an existing association as to mislead the public; and contains the wording "corporation," "incorporated," "limited," or "company," an abbreviation of one of such words or other words sufficient to distinguish stock associations from mutual associations.
- (9) The character, general fitness, and trustworthiness of the incorporators, initial board of directors, and initial stockholders of the proposed association are such as to command the confidence of the community in which the proposed association intends to locate.

- (10) There is a reasonable demand and necessity in the community which will be served by the establishment of the proposed association.
- (11) The public convenience and advantage will be served by the establishment of the proposed association.
- (12) The proposed association will have a reasonable probability of sustaining profitable and beneficial operations in the community.
- (13) The proposed association, if established, will promote healthy and effective competition in the community in the delivery to the public of savings and loan services.

(c) The minimum amount of pledges for withdrawable accounts or subscriptions for capital stock may be adjusted in the discretion of the Commissioner of Banks if he determines that a greater requirement is necessary or that a smaller requirement will provide a sufficient capital base. Such a finding and recommendation to the Commission shall be based upon due consideration of (i) the population of the proposed trade area, (ii) the total deposits of the depository financial institutions operating in the proposed trade area, (iii) the economic conditions of and projections for the proposed trade area, (iv) the business experience and reputation of the proposed management, (v) the business experience and reputation of the proposed incorporators and directors, and (vi) the projected deposit growth, capitalization, and profitability of the proposed association. (1981, c. 282, s. 3; 1983, c. 144, s. 5; 1985, c. 659, s. 3; 1989, c. 76, s. 3; 2001-193, s. 16.)

**§ 54B-13. State Banking Commission to review findings and recommendations of Commissioner of Banks.**

(a) If the Commissioner of Banks does not have the completed application within 120 days of the filing of the preliminary application, the application shall be returned to the applicants.

(b) When the Commissioner of Banks has completed his examination and investigation of the facts relevant to the establishment of the proposed association, he shall present his findings and recommendations to the Commission at a public hearing. The State Banking Commission must approve or reject an application within 180 days of the submission of the preliminary application.

(c) Not less than 45 days prior to the public hearing held for the consideration of the application to establish a savings and loan association, the incorporators shall cause to be published a notice in a newspaper of general circulation in the area to be served by the proposed association. Such notice shall contain:

- (1) A statement that the application has been filed with the Commissioner of Banks;
- (2) The name of the community where the principal office of the proposed association intends to locate;
- (3) A statement that a public hearing shall be held to consider the application; and
- (4) A statement that any interested or affected party may file a written statement either favoring or protesting the creation of the proposed association. Such statement must be filed with the Commissioner of Banks within 30 days of the date of publication.

(d) The Commission, at the public hearing, shall consider the findings and recommendation of the Commissioner of Banks and shall hear such oral testimony as he may wish to give or be called upon to give, and shall also receive information and hear testimony from the incorporators of the proposed association and from any and all other interested or affected parties.

The Commission shall hear only testimony and receive only information which is relevant to the consideration of the application and the operation of the proposed association. (1981, c. 282, s. 3; 1989, c. 76, s. 4; 2001-193, ss. 16, 17.)

**§ 54B-14. Grounds for approval or denial of application.**

(a) After consideration of the findings and recommendation of the Commissioner of Banks and his oral testimony, if any, and the consideration of such other information and evidence, either written or oral, as has come before it at the public hearing, the Commission shall approve or disapprove the application within 30 days after the public hearing. The Commission shall approve the application if it finds that the certificate of incorporation is in compliance with the provisions of G.S. 54B-10, that all the criteria set out in G.S. 54B-12 have been complied with, and that all other applicable provisions of this Chapter, rules and regulations, and the General Statutes have been complied with.

(b) If the Commission approves the application, the Commissioner of Banks shall so notify the Secretary of State with a certificate of approval, accompanied by the original of the certificate of incorporation and the two conformed copies.

(c) Upon receipt of the certificate of approval, the original of the certificate of incorporation, and the two conformed copies, the Secretary of State shall, upon the payment by the newly chartered association of the appropriate organization tax and fees, file the certificate of incorporation in accordance with G.S. 55-1-20. He shall certify under his official seal the two conformed copies of the certificate of incorporation, one of which shall forthwith be forwarded to the incorporators or their representative, for the purpose of recordation in the office of the register of deeds of the county where the principal office of the association shall be located, the other of which shall be forwarded to the office of the Commissioner of Banks for filing. Upon the recordation of the certificate of incorporation by the Secretary of State, the association shall be a body politic and corporate under the name stated in such certificate, and shall be authorized to begin the savings and loan business when duly licensed by the Commissioner of Banks.

(d) The said certificate of incorporation, or a copy thereof, duly certified by the Secretary of State, or by the register of deeds of the county where the association is located, or by the Commissioner of Banks, under their respective seals, shall be evidence in all courts and places, and shall, in all judicial proceedings, be deemed prima facie evidence of the complete organization and incorporation of the association purporting thereby to have been established. (1981, c. 282, s. 3; 1983, c. 144, s. 9; 1985, c. 369; 1989 (Reg. Sess., 1990), c. 806, s. 18; 2001-193, s. 16.)

**§ 54B-15. Final decision.**

The Commission shall present the Commissioner of Banks with a final decision which shall be in accordance with the applicable provisions of Chapter 150B of the General Statutes. (1981, c. 282, s. 3; 1987, c. 827, s. 1; 2001-193, s. 16.)

**§ 54B-16. Appeal.**

The final decision of the Commission may be appealed in accordance with Chapter 150B of the General Statutes. (1981, c. 282, s. 3; 1987, c. 827, s. 1.)

**§ 54B-17. Insurance of accounts required.**

All State associations must obtain and maintain insurance on all members' and customers' withdrawable accounts. Contracts for such insurance may be made only with an insurance

corporation created by an act of Congress. Prior to the licensing of an association, a certificate of incorporation duly recorded under the provisions of G.S. 54B-14(c), shall be deemed to be sufficient certification to the insuring corporation that the association is a legal corporate entity. Such insurance must be obtained within the time limit prescribed in G.S. 54B-18. (1981, c. 282, s. 3; 1987, c. 237, s. 2.)

**§ 54B-18. Time allowed to commence business.**

A newly chartered association shall commence business within six months after the date upon which its corporate existence shall have begun. An association which shall not commence business within such time, shall forfeit its corporate existence, unless the Commissioner of Banks, before the expiration of such six-month period, shall have approved an extension of the time within which the association may commence business, upon a written request stating the reasons for which such request is made. Upon such forfeiture, the certificate of incorporation shall expire, and any and all action taken in connection with the incorporation and chartering of the association, with the exception of fees paid to the Division, shall become null and void. The Commissioner of Banks shall determine if an association has failed to commence business within six months, without extension as provided in this section, and shall notify the Secretary of State and the register of deeds in the county in which the association is located that the certificate of incorporation has expired. (1981, c. 282, s. 3; 2001-193, s. 16.)

**§ 54B-19. Licensing.**

A newly chartered association shall be entitled to a license to operate upon payment to the Division of the appropriate license fee as prescribed by the Commissioner of Banks, when it shows to the satisfaction of the Commissioner of Banks evidence of capable, efficient and equitable management, and when it passes a final inspection by the Commissioner of Banks or his representatives preceding the opening of its doors for business. (1981, c. 282, s. 3; 2001-193, s. 16.)

**§ 54B-20. Amendments to certificate of incorporation.**

(a) Any addition, alteration or amendment to the certificate of incorporation of any State association shall be made at any annual or special meeting of such association, held in accordance with the provisions of G.S. 54B-106 and G.S. 54B-107, by a majority of votes or shares cast by members or stockholders present in person or by proxy at such meeting. Any such addition, alteration or amendment shall be signed, submitted to the Commissioner of Banks for his approval or rejection, and if approved, then certified by the Commissioner of Banks and recorded as provided in G.S. 54B-14 for certificates of incorporation.

(b) Notwithstanding the provisions of subsection (a) of this section, any State association may change its registered office or its registered agent or both in accordance with the provisions of G.S. 55D-31. A copy of the statement or certificate certified by the Secretary of State shall be filed in the office of the Commissioner of Banks. (1981, c. 282, s. 3; 1981 (Reg. Sess., 1982), c. 1238, s. 4; 1985, c. 659, s. 17; 1989 (Reg. Sess., 1990), c. 806, s. 19; 2001-193, s. 16; 2001-358, s. 47(g); 2001-387, s. 173; 2001-413, s. 6.)

**§ 54B-21. List of stockholders to be maintained.**

Every stock association organized and operated under the provisions of this Chapter or its predecessor shall at all times cause to be kept an up-to-date list of the names of all its stockholders. Whenever called upon by the Commissioner of Banks, a stock association shall file in the office of



the Commissioner of Banks a correct list of all its stockholders, the resident address of each, the number of shares of stock held by each, and the dates of issue. (1981, c. 282, s. 3; 1983, c. 144, s. 10; 2001-193, s. 16.)

**§ 54B-22. Branch offices.**

(a) Any State association may apply to the Commissioner of Banks for permission to establish a branch office. The application shall be in such form as may be prescribed by the Commissioner of Banks and shall be accompanied by the proper branch application fee. Branch applications shall be approved or denied by the Commissioner of Banks within 120 days of filing.

(b) The Commissioner of Banks shall approve a branch application when all of the following criteria are met:

- (1) The applicant has gross assets of at least ten million dollars (\$10,000,000);
- (2) The applicant has evidenced financial responsibility;
- (3) The applicant has a net worth equal to or exceeding the amount required by the insurer of the applicant's withdrawable accounts;
- (4) The applicant has an acceptable internal control system. Such a system would include certain basic internal control requirements essential to the protection of assets and the promotion of operational efficiency regardless of the size of the applicant. Some of the factors which require extensive internal control requirements such as the use of the controller or internal auditor and more distinctive placement responsibilities include the applicant's size, number of personnel and history of and anticipated plans for expansion.

(c) Upon receipt of a branch application, the Commissioner of Banks shall examine or cause to be examined all the relevant facts connected with the establishment of the proposed branch office. If it appears to the satisfaction of the Commissioner of Banks that the applicant has complied with all the requirements set forth in this section and the regulations for the establishment of a branch office and that the association is otherwise lawfully entitled to establish such branch office, then the administrator shall approve the branch application.

(d) Not more than 10 days following the filing of the branch application with the Commissioner of Banks, the applicant shall cause a notice to be published in a newspaper of general circulation in the area to be served by the proposed branch office. Such notice shall contain:

- (1) A statement that the branch application has been filed with the Commissioner of Banks;
- (2) The proposed address of the branch office, including city or town and street; and
- (3) A statement that any interested or affected party may file a written statement with the Commissioner of Banks, within 30 days of the date of the publication of the notice, protesting the establishment of the proposed branch office and requesting a hearing before the Commissioner of Banks on the application.

(e) Any interested or affected party may file a written statement with the Commissioner of Banks within 30 days of the date of initial publication of the branch application notice, protesting the establishment of the proposed branch office and requesting a hearing before the Commissioner of Banks on the application. If a hearing is held on the branch application, the Commissioner of Banks shall only receive information and hear testimony from the applicant and from any interested or affected party which is relevant to the branch application and the operation of the proposed branch office. The Commissioner of Banks shall issue his final decision on the branch

application within 30 days following the hearing. Such final decision shall be in accordance with the applicable provisions of Chapter 150B of the General Statutes.

(f) If a hearing is not held on the branch application, the Commissioner of Banks shall issue his final decision within 120 days of the filing of the application. Such final decision shall be in accordance with the applicable provisions of Chapter 150B of the General Statutes.

(g) to (i) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1238, s. 3.

(j) Any party to a branch application may appeal the final decision of the Commission at any time after final decision, but not later than 30 days after a written copy of the final decision is served upon the party and his attorney of record by personal service or by certified mail. Failure to file such appeal within the time stated shall operate as a waiver of the right of such party to review by the Commission and by a court of competent jurisdiction in accordance with Chapter 150B of the General Statutes, relating to judicial review. (1981, c. 282, s. 3; 1981 (Reg. Sess., 1982), c. 1238, s. 3; 1987, c. 827, s. 1; 2001-193, s. 16.)

#### **§ 54B-23. Application to change location of a branch or principal office.**

(a) The board of directors of a State association may change the location of a branch office or the principal office of the association by submitting to the Commissioner of Banks an application for such change on forms prescribed by the Commissioner of Banks.

(b) Upon receipt of an application accompanied by the proper application fee, the Commissioner of Banks shall conduct, or cause to be conducted, an examination and investigation of the facts and circumstances connected with the consideration of the application. After such examination and investigation, the Commissioner of Banks shall approve or deny the application.

(c) If an application filed under this section is approved by the Commissioner of Banks and the association fails to change the location of such branch office or principal office within six months after the date of the order approving such application, such approval shall be revoked. Such a six-month period may be extended upon a showing to the satisfaction of the Commissioner of Banks of good cause. (1981, c. 282, s. 3; 1983, c. 144, s. 11; 2001-193, s. 16.)

#### **§ 54B-24. Approval revoked; branch office.**

The Commission may, for good cause and after a hearing, order the closing of a branch office. Such order shall be made in writing to the association and shall fix a reasonable time after which the association shall close the branch office. (1981, c. 282, s. 3.)

#### **§ 54B-25. Branch offices closed.**

The board of a State association may discontinue the operation of a branch office upon giving at least 90 days' prior written notice to the Commissioner of Banks and depositors, the notice to include the date upon which the branch office shall be closed. (1981, c. 282, s. 3; 1983, c. 144, s. 12; 1989, c. 76, s. 5; 1991 (Reg. Sess., 1992), c. 829, s. 2; 2001-193, s. 16.)

#### **§ 54B-26: Repealed by Session Laws 1991, c. 680, s. 3.**

#### **§§ 54B-27 through 54B-29. Reserved for future codification purposes.**