

2012 Kansas Statutes

17-5501. Powers of association generally. Every association incorporated pursuant to or operating under the provisions of this act shall have all the powers enumerated, authorized and permitted by this act and such other rights, privileges and powers as may be incidental to or necessary for the accomplishment of the objects and purposes of the association. Among others, every association shall have the following powers: (a) To sue and be sued, complain and defend in any court of law or equity.

(b) To purchase, hold and convey real and personal estate consistent with its objects and powers; and to mortgage, pledge or lease any real or personal estate; and to take property by gifts, devise or bequest.

(c) To have a corporate seal, which may be affixed by imprint, facsimile or otherwise.

(d) To appoint officers, agents and employees as its business shall require, and allow them suitable compensation.

(e) To adopt and amend bylaws as provided in this act.

(f) To insure its shares or deposits with the federal savings and loan insurance corporation or with an insurer approved by the state commissioner of insurance under the provisions of this act for such purpose, and qualify as a member of a federal home loan bank.

(g) To accept savings and investments as payments on shares or deposits as provided in this act.

(h) Subject to such prohibitions, limitations and conditions as the commissioner may by regulation provide, an association may make loans to members on the security of savings accounts and loans specifically related to transaction accounts.

(i) Subject to such prohibitions, limitations and conditions as the commissioner may by regulation prescribe, any such association may make home loans on the security of liens upon residential real property in an amount which, when added to the amount unpaid upon prior mortgages, liens or encumbrances, if any, upon such real estate does not exceed the appraised value thereof. No such loan shall be made directly or indirectly to a director or officer except a single loan on a home property.

(j) One loan may be made to an officer, director or employee, in addition to a home loan, but no such loan secured by real estate mortgage shall be made to an officer, director or employee which at the time of granting such advance shall exceed 5% of the net worth accounts of such association or \$90,000 whichever is the smaller. Any negotiable order of withdrawal, share or deposit loan or real estate loan made to any officer, director or employee must be approved by the board of directors and such approval entered upon the minutes of the meeting approving same. All such loan restrictions applicable to loans made to an officer, director or employee of a savings and loan association shall apply to any and all loans made to any general or limited partnership, corporation, trust or association if an officer, director or employee of the savings and loan association is a general or limited partner, or the owner, member or stockholder of 10% or more of the stock or other evidence of ownership of the entity shown as obligor on the loan.

(k) Subject to such prohibitions, limitations and conditions as the commissioner may by regulation prescribe, an association shall have authority to invest in the following:

(1) Investments in obligations of or fully guaranteed as to principal and interest by, the United States;

(2) investments in the stocks and bonds of a federal home loan bank or in the stock of the federal national mortgage association;

(3) investments in mortgages, obligations or other securities which are or ever have been sold by the federal home loan mortgage corporation pursuant to section 305 or 306 of the federal home loan mortgage corporation act;

(4) investments in obligations, participations, securities or other instruments of or issued by or fully guaranteed as to principal and interest by the federal national mortgage association, the student loan marketing association or the government national mortgage association, or any other agency of the United States and an association may issue and sell securities which are guaranteed pursuant to section 306(g) of the national housing act;

(5) investments in the time deposits, certificates or accounts of any bank the deposits of which are insured by the federal deposit insurance corporation, or in the savings accounts, certificates or other accounts of any institution the accounts of which are insured by the federal savings and loan insurance corporation;

(6) investments in obligations of, or issued by, any state or any political subdivision thereof including any agency, corporation or instrumentality of a state or political subdivision, except that an association may not invest more than 10% of its capital and surplus in obligations of any one issuer, exclusive of investments in general obligations of any issuer;

(7) purchase of loans secured by liens on improved real estate which are insured under provisions of the national housing act, or insured as provided in the servicemen's readjustment act of 1944 or 38 U.S.C. chapter 37;

(8) loans made for the repair, equipping, alteration or improvement of any residential real property, and loans made for the purpose of manufactured home financing;

(9) loans as to which the association has the benefit of insurance under section 240 of the national housing act, or of a commitment or agreement therefor;

(10) loans to financial institutions with respect to which the United States or an agency or instrumentality thereof has any function of examination or supervision, or to any broker or dealer registered with the securities and exchange commission, secured by loans, obligations or investments in which the association has the statutory authority to invest directly;

(11) investments which at the time of making, are assets eligible for inclusion toward the satisfaction of any liquidity requirement imposed by the federal home loan bank board, but only to the extent the investment is permitted to be so included under regulations of the federal home loan bank board or is otherwise authorized;

(12) investments in shares of stock issued by a corporation authorized to be created pursuant to title IX of the housing and urban development act of 1968, and investments in any partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of such act;

(13) loans as to which the association has the benefit of any guarantee under title IV of the housing and urban development act of 1968, under part B of the urban growth and new community development act of 1970, or under section 802 of the housing and community development act of 1974 as in effect on or after the date of enactment of the depository institutions deregulation and monetary control act of 1980, or of a commitment of agreement therefor;

(14) investments in, commitments to invest in, loans to, or commitments to lend to any state housing corporation, provided that such obligations or loans are secured directly or indirectly through an agent or fiduciary, by a first lien on improved real estate which is insured under the provisions of the national housing act and that in

the event of default, the holder of such obligations or loans would have the right directly or indirectly through an agent or fiduciary, to cause to be subject to the satisfaction of such obligations or loans the real estate described in the first lien or the insurance proceeds under the national housing act;

(15) invest in, redeem or hold shares or certificates in any open-end management investment company which is registered with the securities and exchange commission under the investment company act of 1940 and the portfolio of which is restricted by such management company's investment policy, changeable only if authorized by shareholder vote, solely to any such investments as an association by law or regulation may, without limitation as to percentage of assets, invest in, sell, redeem, hold, or otherwise deal with;

(16) stock obligations, or other securities of any small business investment company formed pursuant to section 301(d) of the small business investment act of 1958, for the purpose of aiding members of the federal home loan bank system. Such investments shall not exceed an aggregate investment of 1% of the assets of the association;

(17) in other securities approved by the commissioner.

(l) Without restriction upon the general powers of the association to invest in:

(1) Real estate whereon there is or may be erected a building or buildings for the transaction of the business of the association, from portions of which, not required for its own use, a revenue may be derived by rentals or otherwise. An association may invest in such real estate an amount representing the cost of land and improvements not exceeding the sum of its net worth accounts. It may, however, invest in such real estate, a larger sum with the approval of the commissioner;

(2) real estate purchased at sheriff's sale or at any other sale, public or private, judicial or otherwise, upon which the association has a lien or claim, legal or equitable;

(3) real estate accepted by the association in satisfaction of any debt;

(4) real estate acquired by the association in exchange for real estate owned by the association;

(5) real estate acquired by the association in connection with salvaging the value of property owned by the association;

(6) title to all real estate shall be taken and held in the name of the association and such title shall immediately be recorded in accordance with law.

(m) If and when an association is not a member of a federal home loan bank, to borrow not more than an aggregate amount equal to 1/4 of its capital on the date of borrowing. If and when an association is a member of a federal home loan bank, to secure advances of not more than an aggregate amount equal to its capital. Within an amount equal to its capital, the association may borrow from sources other than such federal home loan bank an aggregate amount not in excess of 25% of its capital. A subsequent reduction of capital shall not affect in any way outstanding obligations for borrowed money. All such loans and advances may be secured by property of the association.

(n) To repurchase and redeem shares in accordance with the provisions of this act.

(o) To pay a bonus to members in accordance with the provisions of the bylaws.

(p) If and when an association is a member of a federal home loan bank, to act as fiscal agent of the United States, and when designated for that purpose by the secretary of the treasury, it shall perform under such regulations as such secretary may prescribe, all such reasonable duties as fiscal agent of the United States as such secretary may require, and shall have power to act as agent for any other instrumentality and as agent of the state in accordance with the laws of this state.

(q) To dissolve, merge or reorganize in the manner provided in this act.

(r) To sell and assign notes and mortgages without recourse, except that notes and mortgages may be assigned with recourse to any federal home loan bank of which the association is a member.

(s) Subject to such prohibitions, limitations and conditions as the commissioner may prescribe, the following loans or investments are permitted:

(1) An association may make commercial real estate loans on the security of liens upon other improved real estate. The resulting aggregate of such loans shall not exceed an amount equal to 40% of such association's assets;

(2) an association may make secured or unsecured loans for personal, family or household purposes, including loans reasonably incident to the provision of such credit, and may invest in, sell or hold commercial paper and corporate debt securities, as defined and approved by the commissioner. The resulting aggregate of such loans shall not exceed an amount equal to 30% of such association's assets;

(3) an association may invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment or furniture, for rental or sale. The resulting aggregate of such investments shall not exceed an amount equal to 10% of such association's assets;

(4) an association may make secured or unsecured loans for commercial, corporate, business or agriculture purposes. No association may make loans to one borrower under the authority of this paragraph in excess of the amount a national bank having identical total capital and surplus could lend such borrower. The resulting aggregate of such loans made by an association and by a corporation owned by the association under paragraph (2) of subsection (z) of this section shall not exceed an amount equal to 5% of such association's assets prior to January 1, 1984, or 10% of such association's assets thereafter.

(t) Any association may, upon adoption of such a loan plan by its board of directors, make or purchase:

(1) Any unsecured loan at least 20% of which is guaranteed under the provisions of the servicemen's readjustment act of 1944, as now or hereafter amended;

(2) simple interest, discount or gross charge loans for property alteration, repair, equipping or improvement without the security of a lien upon such property, subject to such prohibitions, limitations and conditions as the commissioner may by regulation prescribe. The resulting aggregate amount of all such loans shall not exceed an amount equal to 20% of such association's assets. No association may make any unsecured loan to a director, officer or employee of the association, or to any person or firm regularly serving the association in the capacity of attorney, except for the alteration, repair, equipping or improvement of the home or combination of home and business property owned and occupied by such borrowing director, officer, employee, attorney or firm;

(3) line of credit real estate loans for home property, secured or unsecured, subject to such prohibitions, limitations and conditions as the commissioner may by regulation prescribe. The resulting aggregate amount of all such loans shall not exceed an amount greater than 5% of the association's assets or all of its net worth accounts.

(u) Subject to such prohibitions, limitations and conditions as the commissioner may by regulation prescribe, any such association may sell to, purchase from or participate with other lenders in loans of any type that such an

association may otherwise make if the other participants are approved federal housing administration lenders, instrumentalities or corporations owned wholly or in part by the United States or this state, or are associations or corporations insured by the federal savings and loan association corporation or the federal deposit insurance corporation. Such loans may be outside the regular lending area of such association.

(v) Subject to such prohibitions, limitations and conditions as the commissioner may by regulation prescribe, the following loans or investments are permitted, but the authority conferred in the following paragraphs is limited to an amount not to exceed 5% of the assets of the association for each paragraph:

(1) Loans made for the payment of educational expenses;

(2) investments in real property and obligations secured by liens on real property located within a geographic area or neighborhood receiving concentrated development assistance by a local government under title I of the housing and community development act of 1974, except that no investment under this paragraph in such real property may exceed an aggregate investment of 2% of the assets of the association;

(3) loans upon the security of or respecting real property or interests therein used for primarily residential or farm purposes that do not otherwise comply with the limitations of this section;

(4) investments not exceeding the greater of: (A) The sum of the association's net worth accounts; or (B) five percent of the assets of the association, in loans the principal purpose of which is to provide financing with respect to what is or is expected to become primarily residential real estate where: (i) The association relies substantially for repayment on the borrower's general credit standing and forecast of income without other security; or (ii) the association relies on other assurances for repayment, including but not limited to a guaranty or similar obligation of a third party. Investments under this subsection shall not be included in any percentage of assets or other percentage referred to in this section.

(w) Subject to such prohibitions, limitations and conditions as the commissioner may by regulation prescribe, any such association may make any loan for the purpose of mobile home financing.

(x) Subject to such prohibitions, limitations and conditions as the commissioner may by regulation prescribe, any such association may maintain safety deposit boxes and rent the same for public use.

(y) Subject to such prohibitions, limitations and conditions as the commissioner may by regulation prescribe, any such association may issue credit cards, extend credit in connection therewith, and otherwise engage in or participate in credit card operations.

(z) Subject to such prohibitions, limitations and conditions as the commissioner may by regulation prescribe, any such association shall have the power and authority to make the following additional loans and other investments to the extent authorized as follows:

(1) An association whose net worth accounts in the aggregate exceed 5% of its withdrawable capital is authorized to invest in, lend to or to commit itself to lend to, any business development credit corporation incorporated in the state of Kansas, but the aggregate amount of such investments, loans and commitments of any such association shall not exceed 1/2% of the total outstanding loans of the association or \$250,000, whichever is less;

(2) investments in the capital stock, obligations or other securities of any corporation organized under the laws of the state of Kansas, if the entire capital stock of such corporation is available for purchase only by savings and loan associations of Kansas and by federal associations having their home offices in the state of Kansas. No association may make any investment under this paragraph if its aggregate outstanding investment under this paragraph would exceed 3% of the assets of the association. Any investment permitted under this paragraph which exceeds 2% of assets shall be used primarily for community, inner-city or community development purposes;

(3) investments in: (A) Loans secured by mortgages for which the association has the benefit of insurance under title X of the national housing act or of a commitment or agreement for such insurance;

(B) investments in housing project loans having the benefit of any guaranty under section 221 of the foreign assistance act of 1961 or loans having the benefit of any guaranty under section 224 of such act, or any commitment or agreement with respect to such loans made pursuant to either of such sections and in the share capital and capital reserve of the inter-American savings and loan bank. This authority extends to the acquisition, holding, and disposition of loans having the benefit of any guaranty under section 221 or 222 of such act, or of any commitment or agreement for any such guaranty;

(C) investments under subparagraph (A) of this paragraph shall not be included in any percentage of assets or other percentage referred to in this subsection. Investments under subparagraph (B) of this paragraph shall not exceed, in the case of any association, 1% of the assets of such association;

(4) an association whose net worth in aggregate exceeds that amount which is determined by the national housing act is authorized to invest in obligations which constitute prudent investments, as defined by the commissioner, of Kansas and its political subdivisions thereof, including any agency, corporation or instrumentality if the proceeds of such obligations are to be used for rehabilitation, financing or the construction of residential real estate, and the aggregate amount of all investments under this paragraph shall not exceed the amount of the association's net worth accounts.

(aa) Subject to such prohibitions, limitations and conditions as the commissioner may by regulation provide an association may engage in financial futures transactions and financial options transactions.

(bb) Subject to such prohibitions, limitations and conditions as the commissioner may by regulation provide an association may establish or maintain a data processing office with functions limited to providing data processing services for its own use or primarily for other depository institutions without observing the application and approval procedures for branch offices as provided for in K.S.A. 17-5225, and amendments thereto. An association may participate with others in establishing or maintaining a data processing office, except that the association may participate in establishing or maintaining a data processing office controlled by an entity not subject to a federal or state agency regulating financial institutions only if such entity has agreed in writing with the commissioner that it will permit and pay for such examination of the office as the commissioner deems necessary, and that it will make available for such purposes any records in its possession relating to the operation of the office.

(cc) Subject to such prohibitions, limitations and conditions as the commissioner may by regulation provide an association may provide correspondent services primarily to other depository institutions. An association may receive noninterest-bearing deposits from correspondent institutions for use as compensating balances, for settlement purposes or for other purposes incidental to a correspondent relationship. Such deposits may be payable on demand and subject to withdrawal by negotiable or transferable instrument, order or authorization. Such deposits shall not give rise to voting rights or other rights of membership in a mutual

association. An association may maintain a noninterest-bearing account at any institution whose accounts are insured by the federal savings and loan insurance corporation or the federal deposit insurance corporation, and an association may maintain such an account at an institution whose accounts are insured pursuant to a state deposit insurance program if such account is necessary or incidental to a correspondent relationship.

(dd) (1) Subject to such prohibitions, limitations and conditions as the commissioner may by regulation provide an association:

(A) May become the legal or beneficial owner of tangible personal property or real property for the purpose of leasing such property;

(B) may obtain an assignment of a lessor's interest in a lease of such property; and

(C) may incur obligations incidental to its position as the legal or beneficial owner and lessor of the leased property if the lease is a net, full-payout lease representing a noncancelable obligation of the lessee, notwithstanding the possible early termination of the lease and at the expiration of the lease, the association's interest in the property shall be liquidated or released on a net basis as soon as practicable;

(2) a lease of tangible personal property made to a natural person for personal, family or household purposes pursuant to this subsection shall be subject to all limitations applicable to the amount of an association's investment in consumer loans. A lease made for commercial, corporate, business or agricultural purposes pursuant to this subsection shall be subject to all limitations applicable to the amount of an association's investment in commercial loans. A lease of residential or commercial real property made pursuant to this subsection shall be subject to all limitations applicable to the amount of an association's investment in residential or commercial real property loans;

(3) for the purposes of this subsection:

(A) "Net lease" means a lease under which the association will not, directly or indirectly, provide or be obligated to provide for:

(i) The servicing, repair or maintenance of the leased property during the lease term;

(ii) the purchasing of parts and accessories for the leased property, except that improvements and additions to the lease property may be leased to the lessee upon its request in accordance with the full-payout requirements of this section;

(iii) the loan of replacement or substitute property while the leased property is being serviced;

(iv) the purchasing of insurance for the lessee, except where the lessee has failed to discharge a contractual obligation to purchase or maintain insurance; or

(v) the renewal of any license, registration or filing for the property unless such action by the association is necessary to protect its interest as an owner or financier of the property;

(B) "full-payout lease" means a lease from which the lessor can reasonably expect to realize a return of its full investment in the leased property, plus the estimated cost of financing the property over the term of the lease, from rentals, estimated tax benefits and the estimated residual value of the property at the expiration of the initial term of the lease. The estimated residual value of the property shall not exceed 25% for personal property or 20% for real property, of the acquisition cost of the property to the lessor unless the estimated residual value is guaranteed by a manufacturer, the lessee or a third party not an affiliate of the association and the association makes the determination that the guarantor has the resources to meet the guarantee. In all cases, however, both the estimated residual value of the property and that portion of the estimated residual value relied upon by the lessor to satisfy the requirements of a full-payout lease must be reasonable in light of the nature of the leased property and all relevant circumstances so that realization of the lessor's full investment plus the cost of financing the property depends primarily on the creditworthiness of the lessee and of any guarantor of the residual value, and on the residual market value of the leased property. The maximum term of a full-payout lease shall be 40 years;

(4) if, in good faith, an association believes that there has been an unanticipated change in conditions which threaten its financial position by significantly increasing its exposure to loss, the provisions of this subsection shall not prevent the association:

(A) As the owner and lessor under a net, full-payout lease, from taking reasonable and appropriate action to salvage or protect the value of the property of its interest arising under the lease;

(B) as the assignee of a lessor's interest in a lease, from becoming the owner and lessor of the leased property pursuant to its contractual right, or from taking any reasonable and appropriate action to salvage or protect the value of the property or its interest arising under the lease; or

(C) from including any provisions in a lease, or from making any additional agreements, to protect its financial position or investment in the circumstances set forth in this paragraph.

History: L. 1943, ch. 133, § 79; L. 1947, ch. 188, § 1; L. 1949, ch. 193, § 1; L. 1955, ch. 140, § 3; L. 1961, ch. 125, § 2; L. 1963, ch. 145, § 1; L. 1965, ch. 156, § 3; L. 1969, ch. 131, § 3; L. 1971, ch. 82, § 1; L. 1972, ch. 68, § 1; L. 1973, ch. 97, § 1; L. 1975, ch. 141, § 1; L. 1975, ch. 142, § 3; L. 1978, ch. 83, § 1; L. 1981, ch. 105, § 5; L. 1983, ch. 86, § 3; April 21.