



## Ohio Revised Code

### Section 1761.18 Unsafe or unsound practices.

Effective: September 14, 1988

Legislation: House Bill 796 - 117th General Assembly

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(A)(1) If, in the opinion of the superintendent of credit unions, a credit union share guaranty corporation or a director, officer, or employee of the corporation is engaged in any unsafe or unsound practice in conducting the business of the corporation, has knowingly participated in or consented to a violation of this chapter or rules adopted thereunder, or has failed to comply with a supervisory agreement, he may serve upon such corporation, director, officer, or employee notice that he is considering issuing an order against the corporation, director, officer, or employee pursuant to division (A)(2) or (3) of this section.

If, in the opinion of the superintendent of insurance, a credit union share guaranty corporation or a director, officer, or employee of the corporation is engaged in any unsafe or unsound practice in conducting the business of the corporation, has knowingly participated in or consented to a violation of those chapters of Title XXXIX of the Revised Code specified in division (A) of section 1761.04 of the Revised Code or rules adopted thereunder, or has failed to comply with a supervisory agreement, he may serve upon such corporation, director, officer, or employee notice that he is considering issuing an order against the corporation, director, officer, or employee pursuant to division (A)(2) or (3) of this section.

(2) A notice served under division (A)(1) of this section that relates to matters other than an alleged violation of a supervisory agreement shall contain a statement of the alleged facts constituting the basis for an order and fix a time and place for a hearing. The hearing shall be conducted in accordance with section 119.09 of the Revised Code, except that, notwithstanding division (E) of section 119.01 of the Revised Code, the hearing shall not be a public hearing. The date for the hearing shall be not less than thirty nor more than forty-five days after such notice has been given by the superintendent of credit unions or the superintendent of insurance to the corporation, director, officer, or employee.

If, after conducting such hearing, the superintendent of credit unions determines that the corporation, director, officer, or employee is or has knowingly participated in or consented to a violation of this



chapter, or engaged in an unsafe or unsound practice, he may issue a final cease-and-desist order. Such final cease-and-desist order may direct the corporation, director, officer, or employee to remedy the violation of this chapter, the unsafe or unsound practice, or the failure to comply, in addition to refraining from such violations or unsafe or unsound practices in the future.

If, after conducting such hearing, the superintendent of insurance determines that the corporation, director, officer, or employee is or has knowingly participated in or consented to a violation of those chapters of Title XXXIX of the Revised Code specified in division (A) of section 1761.04 of the Revised Code, or engaged in an unsafe or unsound practice, he may issue a final cease-and-desist order. Such final cease-and-desist order may direct the corporation, director, officer, or employee to remedy the violation of such chapters of Title XXXIX of the Revised Code, the unsafe or unsound practice, or the failure to comply, in addition to refraining from such violations or unsafe or unsound practices in the future.

Such final order of the superintendent of credit unions or the superintendent of insurance becomes effective upon service on the corporation, director, officer, or employee and remains effective and enforceable as its terms provide, except to such extent as it is stayed, modified, terminated, or set aside by action of the superintendent or a reviewing court.

(3) If the superintendent of credit unions or the superintendent of insurance proposes to issue a cease-and-desist order based on the violation of a supervisory agreement, he shall serve the corporation, director, officer, or employee with a notice of noncompliance. Such notice shall specify the actions that are alleged to be in violation of the supervisory agreement. The notice shall also set a time and place for a hearing, which shall occur not less than thirty nor more than forty-five days after the notice has been served on the corporation, director, officer, or employee. The hearing shall be conducted in the manner prescribed in section 119.09 of the Revised Code, except that, notwithstanding division (E) of section 119.01 of the Revised Code, such hearing shall not be a public hearing.

If, after such hearing, the superintendent of credit unions or the superintendent of insurance determines that the corporation, director, officer, or employee has knowingly violated the supervisory agreement, he may issue a final cease-and-desist order.



If, after such hearing, the superintendent of credit unions or the superintendent of insurance determines that the corporation, director, officer, or employee has violated the supervisory agreement but that the conduct in question does not constitute a knowing violation, the superintendent shall give the corporation, director, officer, or employee an opportunity to remedy the violation. The superintendent shall issue a statement of specific actions that must be taken by the corporation, director, officer, or employee, and establish a time frame in which the corporation, director, officer, or employee must take such corrective action to comply with the supervisory agreement. If, by the end of such time frame, the corporation, director, officer, or employee has failed to implement the corrective actions required by the superintendent, the superintendent may issue a final cease-and-desist order.

Nothing in this division shall be construed to prevent the superintendent of credit unions from issuing a cease-and-desist order pursuant to divisions (A)(1) and (2) of this section or division (B) of this section based on the violation of this chapter, or on an unsafe or unsound practice of the corporation, director, officer, or employee, even though such violation or practice may also constitute a violation of an outstanding supervisory agreement.

Nothing in this division shall be construed to prevent the superintendent of insurance from issuing a cease-and-desist order pursuant to divisions (A)(1) and (2) of this section or division (B) of this section based on the violation of those chapters of Title XXXIX of the Revised Code specified in division (A) of section 1761.04 of the Revised Code, or on an unsafe or unsound practice of the corporation, director, officer, or employee, even though such violation or practice may also constitute a violation of an outstanding supervisory agreement.

(B) If, in the opinion of the superintendent of credit unions, the corporation, director, officer, or employee is or has engaged in any unsafe or unsound practice, or has participated in or consented to a violation of this chapter or rules adopted thereunder, he may issue a summary order requiring the corporation, director, officer, or employee to cease and desist from such violation or practice.

If, in the opinion of the superintendent of insurance, the corporation, director, officer, or employee is or has engaged in any unsafe or unsound practice, or has participated in or consented to a violation of those chapters of Title XXXIX of the Revised Code specified in division (A) of section 1761.04 of the Revised Code or rules adopted thereunder, he may issue a summary order requiring the



corporation, director, officer, or employee to cease and desist from such violation or practice.

The summary cease-and-desist order, which shall contain a statement of the facts allegedly constituting grounds for the order, shall be served upon the corporation, director, officer, or employee and becomes effective upon receipt. The summary order shall include notification of the time and place of a hearing, which shall be held in accordance with division (A)(2) of this section. Unless the superintendent of credit unions or the superintendent of insurance issues a final cease-and-desist order within ten days after conclusion of the hearing, the summary order issued pursuant to this division is void. Otherwise, the summary order remains effective and enforceable until it is replaced by the final order, except to such extent as it is stayed, modified, terminated, or set aside by action of the superintendent.

(C) The corporation, director, officer, or employee who is adversely affected by a final cease-and-desist order may appeal from the order to the court of common pleas in accordance with section 119.12 of the Revised Code.

(D) In lieu of a hearing pursuant to division (A) or (B) of this section, the corporation, director, officer, or employee may consent to the issuance of an order requiring such corporation, director, officer, or employee to cease and desist from engaging in any activity or practice as specified in such order. A consent cease-and-desist order has the full force and effect of a final cease-and-desist order issued pursuant to division (A)(2) of this section and is enforceable in accordance with division (E) of this section. Any corporation, director, officer, or employee that fails to attend a hearing set pursuant to division (A) or (B) of this section is deemed to have consented to the issuance of a final cease-and-desist order.

(E) If the superintendent of credit unions or the superintendent of insurance has reasonable cause to believe that a lawful final or summary cease-and-desist order issued pursuant to this section has been violated, he may request the attorney general to commence and prosecute any appropriate action or proceeding. A court of competent jurisdiction shall enforce a lawful final order issued pursuant to this section and may grant such other relief as the facts warrant.

(F) Service on the corporation, director, officer, or employee as provided for in this section shall be by actual written notice or certified mail to the director, officer, or employee or, in the case of the



corporation, to the managing officer of such corporation.

(G) When any proceeding or action is begun under this section, the superintendent of credit unions and the superintendent of insurance shall provide the other with notice of the proceeding or action and shall provide an opportunity to the other to join and participate in the proceeding or action.