

**Building and Loan Associations, Definition of. Corporations,
When Not Governed by Building and Loan Association Laws.
State Examiner, Authority Over Corporations Other Than Building
and Loan.**

A building and loan association is a corporation organized for the purpose of making loans among its members. Therefore, a corporation which makes loans upon real estate, not to members, does not come within the provisions of the law relating to building and loan associations.

Helena, Montana, January 28, 1910.

Hon. H. H. Pigott,
State Examiner,
Helena, Montana.

Dear Sir:—

I am in receipt of your letter of January 27, in which you state that the Standard Home Company and the Standard Guaranty Investment Company, both organized under the laws of the state of Delaware, have filed articles of incorporation, and otherwise complied with the foreign corporation laws of this state. You further state that these companies are doing business very similar to that carried on by building and loan associations, and therefore request an opinion as to whether such companies come under the supervision of your office and the laws of this state governing building and loan associations. (Sections 4190 to 4208, revised codes.)

Section 4190 defines a building and loan association as follows:

“That a corporation for the purpose of raising money to be loaned among its members shall be known, in this Act, as a ‘Building and Loan Association.’”

While section 4208 provides that,

“It shall be unlawful for any building and loan association, or other person, association or corporation doing a similar business, to do business in this state without having first complied with the

provisions of this Act, and received a certificate of authority to do business from the state examiner."

You will observe that the definition of a building and loan association, as given in section 4190, is that it is a corporation "for the purpose of raising money to be loaned among its members," and, therefore, under the general rule of construction, the phrase "doing a similar business," as used in section 4208, applies only to a corporation organized "for the purpose of raising money to be loaned among its members."

See Lewis' Sutherland Statutory Const., Secs. 422-424.

The foregoing definition of a building and loan association agrees with the definition given by all the standard text-books which attempt to define what a building and loan association is.

The United States Commissioner of Labor in his Ninth Annual Report, (1893), page 12, accurately describes a building association and its difference from other associations in the following words:

"Every member of a building association must be a stockholder; but the difference between a stockholder in such an association and that in an ordinary corporation for usual business purposes lies in the fact that in the latter the member or stockholder buys his stock and pays for it at once, and usually is not called upon for any further payment. His profits, or the results of his investment in such stock, are derived through dividends the value of the shares depending upon the successful operation of the business. They often go above par when the corporation is doing profitable business, and the value often drops far below par when disaster comes. In the building and loan association, on the contrary, the stockholder or member pays a stipulated sum, say one dollar, when he takes his membership and buys a share of stock. He then continues to pay a like sum each month until the aggregate of sums paid, augmented by the profits, amounts to the maturing value of the stock, usually two hundred dollars, and at this time the stockholder is entitled to the full maturity value of the shares, and surrenders the same. It is seen clearly, then, that the capital of a building and loan association consists of the combined savings of its members, paid to the association upon shares of stock, increased by the interest and premium which the association has received from loans made by it from the savings of its members thus paid to the association and from all other sources of income. The amount of the capital of the association, therefore, increases from month to month and from year to year."

To the same effect see also:

Thompson's Building Associations, p. 5;

Thornton & Blackledge on Building Associations, p. 5;

4 Am. & Eng. Enc. Law (2nd Ed), 1003;

Endlich on Building Associations, pp. 6-16.

On the other hand an examination of the charter and contract of the Standard Home Company and the Standard Guaranty & Investment

Company will show the absolute absence of this distinctive and distinguishing element of mutuality in the sharing of profits and losses. This company has no shareholders. Its only stockholders are those who contributed to its capital stock and they have no rights and liabilities save those of the stockholders of an ordinary corporation. The funds from which its loans are made are derived from the sale of a certain, fixed and definite contract, under which the company itself assumes all of the liabilities of the contract toward the contract holder. It guarantees him payment of a portion of his money, should he continue his contract for a certain time; a loan if continued for a certain time; the repayment of the money he has paid on his contract in the event of his death and a participation in the profits, if any, to a fixed and certain extent in the event he continues his contract in force for eighty months. He has nothing to do with the losses of the company. Its prosperity or adversity, do not affect him under his contract. When he becomes entitled to a loan under his contract, if he accepts it, he is required to surrender his contract, secure the loan made him by the company by a first mortgage on real estate, to be satisfied by small monthly installment and from the instant of his acceptance of the loan and surrender of his contract and the execution of the mortgage, he has no other or further relation to the company, than that of a simple debtor, whose debt is secured by a mortgage on real estate. Under no circumstances could he ever become liable for any losses sustained by the company and any right he may have to any participation in its profits, is purely one of contract with the company itself. It thus clearly appears that the mutuality of interest in profit and loss, which is a distinctive characteristic of every building and loan association, is entirely eliminated under the plans of the Standard Loan or Standard Guaranty Investment Company. Therefore, it is apparent from the above definitions of building and loan associations, and from the method of doing business of the corporations now under consideration, that they are not building and loan associations within the meaning of sections 4190 to 4209, revised codes of this state.

It is true the business they engage in is that of loaning money upon real estate, but they do not loan to members of the corporation; and, therefore, the corporation is no more a building and loan association, within the well defined legal meaning of that term, than is a banking corporation which loans money upon real estate, or a stock life insurance company which has entered into a contract with an individual by which it agrees to pay him a certain sum in the future upon condition that he pays in certain stated premiums for a definite length of time.

Therefore, in our opinion, these corporations, not being organized upon the plan of building and loan associations, do not come under the provisions of the building and loan association law nor under your supervision as state examiner.

While from the very nature of the business engaged in by these corporations it might be advisable to have some method of examining into their financial standing, or of having deposits of securities filed in

this state to protect persons entering into contracts with them, such matters are subjects for future legislation in this state.

Very truly yours,

ALBERT J. GALEN,

Attorney General.