

# MAINE STATE LEGISLATURE

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BEING THE

ANNUAL REPORTS

OF THE VARIOUS

DEPARTMENTS AND INSTITUTIONS

For the Year 1902.

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VOLUME I.

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AUGUSTA  
KENNEBEC JOURNAL PRINT  
1903

STATE OF MAINE

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REPORT

OF THE

ATTORNEY-GENERAL

FOR THE TWO YEARS ENDING

November 30, 1902.

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LOAN AND BUILDING ASSOCIATIONS. KINDRED ASSOCIATIONS DOING BUSINESS SIMILAR IN MANNER TO THAT OF LOAN AND BUILDING ASSOCIATIONS.

Foreign associations, whether incorporated or not, doing business in a like manner to that employed by loan and building associations, are subject to the provisions of the laws of this State before they can do business here.

PORTLAND, ME., December 6, 1902.

*Hon. F. E. Timberlake, Bank Examiner, Augusta, Me.:*

Dear Sir: In answer to your official inquiry whether or not the New England Home Buyers Association of Boston, Mass., being an association for the accumulation of funds from its members for the purpose of buying and improving real estate or building homes for its members, and similar associations whether incorporated or not, can operate within this State without complying with the provisions set out in chapter 79, section 2, of the Public Laws of 1891, I submit the following opinion.

Said New England Home Buyers Association is based on a trust agreement between certain individuals, residents of Massachusetts. The property of the association, however acquired, is held and controlled by a board of trustees. The beneficiary interests in said association are held and controlled by a board of stockholders, for it is provided under said trust agreement, that the trustees therein named thereby declare that all moneys and other property, rights and interests of whatever description, conveyed or transferred to them or acquired by them as aforesaid, are and are to be held by them for account of said shareholders, their assigns and legal representatives, in the proportions shown by the number of shares set against their respective names, and are to be managed and administered upon the trusts, in the manner following, etc. The shareholders herein named are parties to the trust deed and reap the profits of the business.

From a further inspection of the trust agreement herein referred to, it appears that this association is no more nor less than a co-partnership. It has never been incorporated, hence we

will treat it on the ground of its legal status, to wit, that of a co-partnership.

Section 6, which section relates to the powers conferred upon the trustees, provides, among other things, that the trustees shall have no power to bind the shareholders personally by any contract express or implied, or by any act, neglect or default; that neither trustees nor shareholders shall be personally liable on any such contract or for any such act, neglect or default, shall have re-course for satisfaction or payment or for indemnity solely to the trust estate.

It appears, therefore, that although this association is a co-partnership in every sense of the word, yet an effort has been made to relieve the parties thereto of any personal liability by reason of their neglect or default in the management of the affairs of the association, whether stockholders or trustees.

It would seem, therefore, that this attempted provision of the trust agreement would bring the matter directly under that clause of section 2 of chapter 79 of the Public Laws of 1891, if this association falls within said chapter 79, which provides as follows: "Whenever upon examination or otherwise, it is the opinion of the bank examiner that any such association or corporation is transacting business in such manner as to be hazardous to the public," etc., for there seems to be no protection further than the fund of the association to which parties who have paid in money to the association can resort, if the provision of the trust agreement herein referred to, relating to the negligence or default of either stockholders or trustees in the management of the business, can be sustained in law.

Section 1 of said chapter 79 of the Public Laws of 1891, provides as follows: "Except as hereinafter provided, no person, association or corporation shall carry on the business of accumulating the savings of its members and loaning to them such accumulations in the manner of loan and building associations, within this State, unless incorporated under the laws thereof for such purpose.

Section 2 of the same chapter provides, in general, that such association or corporation established under the laws of another state, may be authorized by the bank examiner to do business in this State after complying with certain provisions therein set out.

The question then arises, is the business of the New England Home Buyers Association in the nature of that of a loan and building association business? If it is shown from the methods and manner in which the New England Home Buyers Association does business, that it is similar in manner and kind to that of loan and building associations, then it must become subject to section 2 of said chapter 79, and must comply with the provisions thereof before it can do business in this State. It is important, therefore, to inquire the meaning of the term "building and loan associations" and the kind of business done thereunder.

One authority says, "a building and loan association may be defined as an organization created for the purpose of accumulating a fund by means, primarily, of the gradual payment of the stock subscriptions of its members, in installments, due periodically, from which fund sums are to be advanced to the members to assist them in acquiring land and erecting buildings thereon."

This definition, as the author admits, is a limited definition and is descriptive of the typical building and loan association and is not inclusive of all forms of organization which may be denominated building and loan associations.

The author further says, "the term has no exact legal significance which is adhered to in all jurisdictions. It is rather a popular name or a class of associations whose rights, powers and duties depend upon the particular statutes under which they are organized."

He further says, "The terms 'building and loan associations,' 'building associations,' and 'building societies' \* \* \* are synonymous. Besides these names various others are used by virtue of custom or legislation, to denote either the same class of organizations or associations having much in common with them and governed largely by the same principles."

The particular name, therefore, of an association or corporation has little or nothing to do in designating the exact kind of business which is carried on by it, but its methods and manner of doing business are the important questions to be considered in this connection.

Is, then, the modus operandi of the New England Home Buyers Association similar in manner, kind and results to that of the loan and building association as generally understood? A

Careful examination of all the papers covering the entire method by which said association does business has fully convinced me that its plan is nothing more nor less than that of the loan and building association plan, except that it is disguised by the use of certain terms and methods which, nevertheless, result the same as those of the loan and building association, although differently named.

A loan and building association provides for stock, for the payment of stated payments or dues; for the accumulation of its capital and the loan of the same to its members or others on real estate or otherwise; to wit, the purchase or repair of real estate; the building of houses; and the final payment of such loans by said monthly installments; to take deeds and mortgages and such other conveyances as are necessary to carry out the purposes of the company.

The gist of said section 1, to which any association or corporation may be compared to judge as to the kind of business it is doing, is as follows: "the business of accumulating the savings of its members and loaning to them such accumulations," in the manner of loan and building associations. Does the New England Home Buyers Association do this?

Said association first provides an agreement which is made a part of the trust deed to be executed by the trustees and by the party called the party of the second part but who really is the party that desires to accumulate moneys in the association for the purposes ostensibly of purchasing real estate or a home, or making improvements on real estate. This agreement sets out the various conditions under which he may make payments, accumulate funds, purchase real estate or any interest therein, and the method by which the association assists such purchaser. There are very many provisions in this agreement, but the following are those which particularly call for our attention.

The agreement itself takes the place of the stock issued by loan and building associations to parties who pay monthly sums to such associations.

It provides specifically:

1st. To provide the purchaser with a fund of \$1,000, or more, to purchase a home, farm, or other real estate, or to discharge existing encumbrances thereon, or to pay for improvements thereon.

2nd. It provides for the payment of monthly installments at stated times and the accumulation of funds thereby.

3rd. It provides that after paying in a certain amount, the purchaser, or second party as he is called, may then have a loan of a certain amount of money per month for the purpose of purchasing a home or making improvements on real estate, etc.

4th. It provides that the association shall be protected for such money advanced, by giving the necessary lien claims on the property purchased, which are finally discharged by the accumulation of the monthly payments.

5th. It provides for the surrender of the agreement before and after it becomes "vested;" that is, it provides for the disposal before it becomes vested through the association.

It will readily be seen that the foregoing provisions of the agreement completely cover the method and manner employed by loan and building associations.

While the New England Home Buyers Association makes use of the methods employed by loan and building associations, it possesses scarcely any of the protective features of loan and building associations, as provided by our laws.

My opinion then is, from the foregoing discussion, that if the New England Home Buyers Association or other associations from out of the State similar thereto desire to do business in this State, then they must comply with the requirements of said chapter 79 of the Public Laws of 1891; otherwise they will be subject to the fine therein set out.

Respectfully submitted,

GEO. M. SEIDERS, Attorney-General.