

UNITED STATES OF AMERICA  
 BEFORE THE  
 OFFICE OF THRIFT SUPERVISION

In the Matter of:	§	
	§	
Corning Savings and Loan Association	§	No.: <u>DAL-96-29</u>
Corning, Arkansas	§	Dated: <u>December 12, 1996</u>
	§	

STIPULATION AND CONSENT TO THE ISSUANCE OF AN  
 ORDER TO CEASE AND DESIST

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, is of the opinion that grounds exist to initiate an administrative cease and desist proceeding against Corning Savings and Loan Association, Corning, Arkansas (the "Association") (OTS Docket No. 07368), pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b).<sup>1</sup>

WHEREAS, the Association desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding and, without admitting or denying that such grounds exist except those as to jurisdiction (as set forth in Paragraph 1, below) which are admitted, hereby stipulates and agrees to the following terms:

1. JURISDICTION

- a) The Association is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b), and Section 2(4) of the Home Owners' Loan Act, 12 U.S.C. § 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).
- b) Pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b), the appropriate Federal banking agency may issue a cease and desist order against any insured depository institution that engages in unsafe or unsound practices in conducting its business, and/or violates a law or regulation.
- c) Pursuant to Section 3(a) of the FDIA, 12 U.S.C. § 1813(a), the Director of the OTS is the "appropriate Federal banking agency" to maintain an administrative proceeding against such a savings association. Therefore, the Association is subject to the jurisdiction of the OTS to initiate and maintain an administrative proceeding against it pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b).

<sup>1</sup> All references to the United States Code ("U.S.C.") are as amended.

## 2. OTS FINDINGS OF FACT.

The OTS finds that:

- a) The Association failed to maintain accurate and complete records of all of its business transactions and to follow requirements for regulatory reporting as required by the OTS, in violation of 12 C.F.R. §§ 562.1(b) and 563.170(c). Among other things, the Association, in certain cases, did not have complete or specific loan purpose statements or records of the purpose and amount on loan disbursements, did not have repossessions and foreclosures reflected on the Association's books in a timely manner, did not have loans recorded on the Association's books until weeks after origination, and did not properly report loans on thrift financial reports.
- b) The Association failed to classify its assets in accordance with the standards set forth in 12 C.F.R. § 563.160, and failed to establish prudent allowances accordingly, in violation of 12 C.F.R. § 563.160, resulting in a material overstatement of the Association's capital levels.
- c) The Association, through the actions of its management and the acquiescence of the Association's board of directors (the "Board"), made certain loans solely on the basis of collateral without regard to the creditworthiness of borrowers, as reflected in the Association's lack of adequate documentation to support a determination of creditworthiness in the cases of certain borrowers, contrary to the general principles of safety and soundness.
- d) The Association, in contravention of its own policies, allowed certain transaction account customers to overdraft their accounts in substantial amounts without security and without adequate safeguards in place to ensure repayment.
- e) The Board, without taking adequate precautions designed to prevent this result, allowed the Association's management to act in substantial contravention of certain policies of the Association, including the internal loan review policy and the collection policy, contrary to general principles of safety and soundness and the requirements of 12 C.F.R. § 563.161(a).
- f) The Association renewed certain problem loans with no principal reduction or with no requirement to pay accrued interest and late charges, which constitutes an unsafe and unsound practice.
- g) Among other deficiencies at the Association in the real estate appraisal process regarding real estate loans, the Association's president prepared real estate appraisals and evaluations without abstaining from participation in the approval process on those same transactions, in violation of 12 C.F.R. Part 564 and general principles of safety and soundness. Such appraisals and evaluations also failed to comply with the guidelines of Thrift Bulletin No. 55a, contrary to general principles of safety and soundness. Among other deficiencies, such evaluations, in some cases, were limited merely to

statements of value and did not include an analysis in support of value estimates.

- h) In violation of 12 C.F.R. § 563.101, the Association failed to adopt and maintain written policies establishing appropriate limits and standards for extensions of credit secured by liens on or interests in real estate, or that were made for the purpose of financing permanent improvements to real estate, the result being that loan underwriting was poor, causing delinquent loans and adversely classified assets to reach excessive levels.
- i) In the cases of certain large loans, the Association made the loans without obtaining information, such as copies of income tax returns or items of a similar nature, to verify the borrower's income, contrary to general principles of safety and soundness.
- j) In the cases of certain construction loans, the Association failed to obtain adequate documentation to evidence that work for which a disbursement was made had been completed before the disbursement was made, in violation of 12 C.F.R. § 563.170(c)(1)(viii).

### 3. CONSENT

The Association consents to the issuance by the OTS of the accompanying Order to Cease and Desist ("Order"). It further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

### 4. FINALITY

The Order is issued under Section 8(b) of the FDIA, 12 U.S.C. § 1818(b). Upon its issuance by the Regional Director or designee for the Midwest Region, OTS, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

### 5. WAIVERS

- a) The Association waives its right to a written notice of charges and the administrative hearing provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b), and further waives any right to seek judicial review of the Order, including any such right provided by Section 8(h) of the FDIA, 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order.
- b) The Association acknowledges and agrees that its consent to the entry of the Order is for the purpose of resolving this OTS enforcement matter only, as it pertains to those findings of fact reflected in Paragraph 2 hereof only, and does not resolve, affect or preclude any other civil or criminal proceeding that may be or has been brought by the OTS or another governmental entity.

6. SIGNATURE OF DIRECTORS

Each Director signing this Stipulation attests that s/he voted in favor of a resolution authorizing the execution of the Stipulation.

WHEREFORE, the Association, by a majority of its directors, executes this Stipulation and Consent to the Issuance of an Order to Cease and Desist, intending to be legally bound hereby.

CORNING SAVINGS AND LOAN ASSOCIATION  
CORNING ARKANSAS  
by a majority of its directors

Accepted by:  
Office of Thrift Supervision

By: James D. Black  
James D. Black, Director

F. R. Casteel  
Frederick R. Casteel  
Regional Director  
Midwest Region

Robert J. Black  
Robert J. Black, Director

Bob Cochran  
Bob W. Cochran, Director

Date: 12-12-96

Stephen L. Hardin  
Stephen L. Hardin, Director

David L. Watson  
David L. Watson, Director

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Corning, Arkansas	§	Dated: <u>December 12, 1996</u>
	§	

ORDER TO CEASE AND DESIST

WHEREAS, Corning Savings and Loan Association, Corning, Arkansas (the "Association") (OTS Docket No. 07368), by and through its Board of Directors ("Board"), has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist ("Stipulation"); and

WHEREAS, the Association, in the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist ("Order") pursuant to Section 8(b) of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1818(b);<sup>1</sup> and

WHEREAS, the Director of the Office of Thrift Supervision ("OTS") has delegated to the Regional Directors of the OTS the authority to issue an Order to Cease and Desist on behalf of the OTS where a savings association has consented to the issuance of the Order.

NOW THEREFORE, IT IS ORDERED THAT the Association and its directors, officers, employees, agents, service corporations and subsidiaries shall cease and desist from any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling or aiding and abetting any unsafe or unsound practice or any violation of:

- a) 12 C.F.R. § 562.1(b) (1996) (regarding maintenance of records and reporting);
- b) 12 C.F.R. § 563.101 (1996) (regarding real estate lending standards and its successor provision, codified at 12 C.F.R. § 560.101);
- c) 12 C.F.R. § 563.160 (1996) (regarding internal classification of assets and the establishment of allowances) and its successor provision, codified at 12 C.F.R. § 560.160;

<sup>1</sup> All references to the United States Code ("U.S.C."), are as amended.

- d) 12 C.F.R. § 561.161(a) (1996) (regarding safe and sound management and safe and sound financial policies);
- e) 12 C.F.R. § 563.170 (1996) (regarding the establishment and maintenance of records and its successor provisions, codified at 12 C.F.R. §§ 560.170 and 563.170); and
- f) 12 C.F.R. Part 564 (1996) (regarding appraisals).

## CORRECTIVE PROVISIONS

### 1. BOARD OVERSIGHT.

- A. Within 30 days of the Effective Date, the Board shall adopt and submit to the Regional Director, Midwest Region, OTS, or his designee ("Regional Director") written procedures to provide oversight over the Association's management, designed, at a minimum, to ensure: (i) that the Association is operated in a safe and sound manner; (ii) that the actions of the Association's management are consistent with, and in satisfaction of, the policies and procedures set by the Board; (iii) that the Association is being operated in compliance with all applicable laws, regulations, and OTS guidelines; and (iv) to ensure compliance with this Order.
- B. The Board shall cause the Association to comply with its procedures established pursuant to subparagraph A hereof and shall, if so directed, amend such procedures as directed by the Regional Director, thereafter causing the Association to comply with those procedures as amended (if so directed).
- C. The Board shall formally meet as frequently as is warranted by the circumstances of the Association (in accordance with its bylaws) and, at a minimum, no less frequently than once per calendar month.
- D. The Board shall, no less often than once every six calendar months, with the first instance occurring no later than January 31, 1997, conduct a thorough evaluation of its managing officer and place the results in the form of a written report of the Board, adopted by resolution. Such evaluation shall, at a minimum, address the Association's managing officer's efforts to correct the deficiencies noted in the OTS Report of Examination of the Association, commenced May 20, 1996 ("ROE"), and his/her efforts to comply with the requirements of this Order. In any case in which the Board's evaluation determines that there has been any material failure of the Association's managing officer to correct the deficiencies noted in the ROE or to comply with the Order, the evaluation and written report shall address the need for management changes and the actions the Board shall take to effect such changes.
- E. At each meeting of the Board, the Board shall review (i) a listing of all loans at the Association which are delinquent at such time in excess of 29 days (which list shall be reflected in the Board's minutes); (ii) the efforts of the Association's management to collect such debt (which shall be documented in the Board's

minutes); (iii) the Association's management's plans (which shall be documented in the Board's minutes) to initiate legal action or otherwise attempt to collect on such debt; and (iv) whether such efforts and plans comply with the Board's policies and procedures.

2. RECORDS, ACCOUNTING, AND REPORTING.

- A. The Association shall establish and maintain its books, records, and schedules in a manner that is thorough, accurate, and reconcilable with both the business of the Association and the records it submits to the OTS.
- B. The Board of the Association shall establish and maintain an accurate and thorough written record of its deliberations and actions in the form of minutes. Such minutes shall reflect the efforts of the Board to oversee the Association's management.
- C. The Association shall, in a timely manner, book and report to the OTS all real estate owned and repossessed property in compliance with all applicable laws and regulations and Generally Accepted Accounting Principles.
- D. The Association shall ensure that its Thrift Financial Reports properly account for each troubled debt restructuring ("TDR").

3. APPRAISALS AND EVALUATIONS OF ASSETS.

- A. The Association shall obtain and maintain in its possession a new, independent appraisal, reflected in written form, on real estate owned and repossessed property at any time in which either: (i) there is good reason to believe that such property has significantly declined in value; or (ii) such property has been held by the Association for 24 months since the immediately prior independent appraisal of such property.
- B. The Association shall make no Real Estate Loan in an amount of \$30,000 or more unless it has and maintains in its possession: (i) a prior, independent, outside appraisal by a state-certified appraiser, reflected in written form; and (ii) an internal determination, documented in the form of a written certification of an officer of the Association, that such outside appraisal is in compliance with the requirements of 12 C.F.R. Part 564.
- C. The Association shall make no Real Estate Loan in an amount of less than \$30,000 unless it has, and maintains in its possession, an evaluation, documented in written form, that satisfies all guidelines of Thrift Bulletin 55a.
- D. For purposes of this Paragraph 3, an appraisal or evaluation shall not be deemed to be in the possession of the Association unless it is expressly prepared for the benefit of the Association and is current. In order for an appraisal or evaluation to be deemed to be current, it must expressly reflect valuation: (i) in the case of subparagraph 3A, within one month of the date of the written appraisal; and (ii) in the case of subparagraphs 3B and 3C, within both one month of the date of the written appraisal or written evaluation and within twelve months of the

making of the Real Estate Loan. For such purpose, any such written appraisal or written evaluation must clearly and expressly reflect the date of valuation in order to be deemed an evaluation or appraisal.

#### 4. ASSET CLASSIFICATIONS AND ALLOWANCES.

- A. The Association shall, within five days of the Effective Date, ensure that all adverse classifications made by the OTS, as reflected in the "ITEMS SUBJECT TO ADVERSE CLASSIFICATION" section of the ROE, are booked by the Association. Thereafter, the Association shall not, without the written approval of the Regional Director, assign any classification to any asset which has been adversely classified by the OTS, as reflected in the "ITEMS SUBJECT TO ADVERSE CLASSIFICATION" section of the ROE, that is less severe than that classification so assigned by the OTS.
- B. The Association shall, except as otherwise authorized in writing by the Regional Director, maintain minimum levels of \$200,000 in allowances for loan and lease losses and of \$15,000 in general allowances.
- C. The Association shall, on no less than a quarterly basis, conduct, or have conducted on its behalf, a thorough review of the Association's assets to identify problem assets, classify assets, and determine the adequacy of loss allowances. Each such review, along with its findings, shall be placed in writing and reviewed by the Board at its following meeting.
- D. The reviews conducted pursuant to subparagraph C hereof shall each include a review of the current status and performance history of each of the Association's TDRs and other refinanced and modified loans ("Refinancing"), at which time each Refinancing shall be considered for adverse internal classification. For such purpose, the Association shall maintain a written list of each Refinancing, which list, at a minimum, shall contain for each Refinancing the loan number, name of borrower(s), loan type, collateral type, current payment status, collateral valuation date, collateral value, and the assigned internal classification. The Association shall not classify a Refinancing any less severely than the underlying loan would have been in the absence of such Refinancing unless there is clear, reasonable, and thoroughly-documented evidence that the position of the Association has been strengthened sufficiently to justify the improved classification. Notwithstanding the foregoing, for purposes of the requirements of the first two sentences of this subparagraph, but not for purposes of the requirement of the third sentence of this subparagraph, a refinanced or modified loan shall not be deemed to be a Refinancing if that loan was paid in full compliance with the terms of the written, outstanding loan agreement to which it was subject during the entire twelve months immediately preceding the time at which it was refinanced or modified.

#### 5. POLICIES AND PROCEDURES.

- A. By no later than December 31, 1996, the Board shall submit to the Regional Director, in written form, duly-adopted, revised policies and procedures addressing internal asset review, internal asset classification, lending, appraisals,

collections, and interest-rate risk. Such revised policies and procedures shall be designed to address, at a minimum, the items noted in the "MATTERS REQUIRING BOARD ATTENTION" section of the ROE.

- B. For purposes of subparagraph 5A, the Board shall ensure that the Association's lending policies and procedures:
- (i) are clarified to ensure that the limitations on loan-to-value ratios are to be applied to the aggregate of all indebtedness secured by the same collateral, regardless of whether the Association holds all such debt;
  - (ii) require that Loan Transactions be conducted only in cases in which the Association has in its possession, before the loan is made, and thereafter maintains, written records providing reasonably convincing evidence that the borrower has the financial ability and willingness to repay the proposed indebtedness;
  - (iii) require that each Loan Transaction be conducted only in cases in which the Association has in its possession, at the time of such Loan Transaction, and thereafter maintains, a Current Credit Report which reflects no unresolved or unsatisfactorily explained credit problem, a completed loan application, a financial statement, and any other documentation needed in order reasonably to evidence adequate sources of cash flow to support payment of the debt and other general creditworthiness under the circumstances;
  - (iv) require that Loan Transactions in excess of \$10,000 be conducted by the Association only if the Association has in its possession at the time of such Loan Transaction, and thereafter maintains: (a) written evidence of direct verification of income; (b) written evidence of direct verification of deposits and debt outstanding at other financial institutions; (c) in the cases of borrowers who are salaried individuals, written evidence from the employers of such individuals of employment and the levels of their salaries; and (d) in the cases of all borrowers other than salaried individuals, except in the case of any Exempted Loan, written evidence of income and cash flow supported by, at a minimum, copies of the two most recent federal tax returns or other appropriate written documentation for each such borrower; and
  - (v) require that each Loan Transaction be conducted by the Association only after the loan officer has certified in writing to the Association that all financial information on the applicant in the possession of the Association has been reviewed for accuracy and consistency and appropriately considered.
- C. Upon written direction by the Regional Director, the Board shall amend any or all of its policies and procedures addressed in subparagraph 5A as so directed.
- D. Following December 31, 1996, the Association shall not amend its policies and procedures addressed in subparagraph 5A without the written direction, written approval, or written notice of no supervisory objection, of the Regional Director.

- E. The Association shall implement and comply with the policies and procedures set forth by the Board pursuant to this Paragraph 5.

6. ASSET GROWTH.

Without the prior written approval of the Regional Director, the Association shall not increase its consolidated total assets in any one calendar quarter in an amount in excess of net interest credited on deposit liabilities during that calendar quarter, provided, however, that this growth limitation shall not apply in any calendar quarter in which the Association's consolidated total assets does not exceed \$14,052,000 at any time during that calendar quarter.

BOARD OF DIRECTORS

7. DIRECTOR RESPONSIBILITY.

Notwithstanding the requirements of this Order that the Board submit various matters to the Regional Director for the purpose of receiving approval, non-objection or notice of acceptability, such regulatory oversight does not derogate or supplant each individual director's continuing fiduciary duty. The Board shall have the ultimate responsibility for overseeing the safe and sound operation of the Association at all times, including compliance with the determinations of the Regional Director as required by this Order.

8. COMPLIANCE WITH ORDER.

- A. The Board and officers of the Association shall take immediate action to cause the Association to comply with the terms of this Order and shall take all actions necessary or appropriate thereafter to cause the Association to continue to carry out the provisions of this Order.
- B. The Board, on a monthly basis, shall adopt a board resolution (the "Compliance Resolution") formally resolving that, following a diligent inquiry of relevant information (including reports of management), to the best of its knowledge and belief, during the immediately preceding calendar month, the Association has complied with each provision of this Order currently in effect except as otherwise stated. The Compliance Resolution shall: (i) specify in detail how, if at all, full compliance was found not to exist, and (ii) identify all notices of exemption issued by the Regional Director that were outstanding as of the date of its adoption.
- C. The minutes of the meeting of the Board shall set forth the following information with respect to the adoption of each Compliance Resolution: (i) the identity of each director voting in favor of its adoption; and (ii) the identity of each director voting in opposition to its adoption or abstaining from voting thereon, setting forth each such director's reasoning for opposing or abstaining.
- D. No later than the 25<sup>th</sup> Calendar Day of the month following the end of a calendar quarter, beginning with the Effective Date, the Association shall provide to the Regional Director a certified true copy of the Compliance Resolutions

adopted at the Board meeting of each month in such calendar quarter. The Board and its members, by virtue of the Association's submission of a certified true copy of each such Compliance Resolution to the Regional Director, shall be deemed to have certified to the accuracy of the statements set forth in each Compliance Resolution, except as provided below. In the event that one or more directors do not agree with the representations set forth in a Compliance Resolution, such disagreement shall be noted in the minutes of the Association.

- E. The Board shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

## MISCELLANEOUS

### 9. DEFINITIONS.

- A. All technical words or terms used in this Order and the Stipulation for which meanings are not specified or otherwise provided by the provisions of this Order or the Stipulation shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, the Home Owners' Loan Act ("HOLA"), FDIA, or OTS Publications. Any such technical words or terms used in this Order and the Stipulation and undefined in said Code of Federal Regulations, HOLA, FDIA, or OTS Publications shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.
- B. The "Effective Date" means the date that this Order is executed and issued by the OTS, through its authorized representative, whose signature appears below, which date appears above.
- C. "Real Estate Loan" means any loan, including but not limited to any advance or any modification or refinancing of an outstanding loan, which is secured by real estate, regardless of whether the lien on such real estate is a first lien or a junior lien.
- D. "Loan Transactions" shall include all new loans, additional advances on loans, modifications of existing loans, refinancings of existing loans, and commitments to make any of the foregoing.
- E. "Current Credit Report" means a credit report on the borrower, dated within 90 days of the loan application on which action is being taken.
- F. For purposes of subparagraph 5.B.(iv), "Exempted Loan" means any loan which either (i) is fully secured by, and used for the purchase of, an automobile, or (ii) is fully secured by funds on deposit in the Association which are not accessible to the depositor until full payment of the loan has been made.

### 10. SUCCESSOR STATUTES, REGULATIONS, GUIDANCE, AMENDMENTS.

Reference in this Order and the Stipulation to provisions of statutes, regulations and OTS Publications shall be deemed to include references to all amendments to such

provisions as have been made as of the Effective Date and references to successor provisions as they become applicable.

11. DURATION, TERMINATION OR SUSPENSION OF ORDER.

- A. This Order shall: (i) become effective upon its execution by the OTS, through its authorized representative whose signature appears below; and (ii) remain in effect until terminated, modified or suspended in writing by the OTS, acting through its Director or the Regional Director (including any authorized designee thereof).
- B. The Regional Director, in his or her sole discretion, may, by written notice, suspend, modify or terminate any or all provisions of this Order.

12. TIME LIMITS.

Time limitations for compliance with the terms of this Order run from the Effective Date, unless otherwise noted.

13. EFFECT OF HEADINGS.

The Section headings herein are for convenience only and shall not affect the construction hereof.

14. SEPARABILITY CLAUSE.

In case any provision in this Order is ruled to be invalid, illegal or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his/her sole discretion determines otherwise.

15. NO VIOLATIONS OF LAW, RULE, REGULATION OR POLICY STATEMENT AUTHORIZED; OTS NOT RESTRICTED; RELATION TO STATE LAW.

- A. Nothing in this Order shall be construed as: (i) allowing the Association to violate any law, rule, regulation, or policy statement to which it is subject or (ii) restricting or estopping the OTS from taking any action(s) that it believes are appropriate in fulfilling the responsibilities placed upon it by law.
- B. As an Association chartered under State law and subject to regulation and supervision by a State regulatory authority, the Association may be subject to various restrictions imposed by the appropriate State regulatory authority. The Association must continue to comply with any such restrictions, notwithstanding the receipt by the Association of authorizations or notices of non-objection of the Regional Director, except to the extent that such restrictions are pre-empted by Federal law.

16. SUCCESSORS IN INTEREST/BENEFIT.

The terms and provisions of this Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest. Nothing in this Order, express or implied, shall give to any person or entity, other than the parties hereto and the Federal Deposit Insurance Corporation, and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Order.

THE OFFICE OF THRIFT SUPERVISION

BY: *FR*  
FREDERICK R. CASTEEL  
REGIONAL DIRECTOR  
MIDWEST REGION