

CHAPTER 49

BANKING DIVISION; LIQUIDATION, REORGANIZATION, AND CONSOLIDATION

Sec.		Sec.	
49.01	Insolvent banks; examiner to take charge	49.22	Former liquidation may comply
49.02	Stock unpaid or impaired	49.23	Title to assets
49.03	Bank	49.24	Liquidation and distribution of assets
49.04	Violation of charter or law; commissioner to take charge	49.25	Unclaimed dividends on liquidation
49.05	Powers of commissioner; certificates	49.26	Commissioner may borrow money in liquidating closed banks
49.06	Consolidation	49.27	Bank directors may suspend business
49.07	Reorganization plans; approval and effect	49.28	No business to be transacted during suspension
49.08	Deposits subject to law	49.29	Exceptions
49.09	Deposits not subject to law	49.30	District court may appoint receiver
49.10	Pending actions stayed; garnishments, attachments, and levies vacated	49.31	Committee to furnish bonds
49.11	Judgments vacated	49.32	Commissioner discharged as liquidator
49.12	Levies upon or seizures of assets unlawful	49.33	Consolidation, when authorized
49.13	Claims; filing, rejection; pending actions	49.34	Consolidation of state banks or trust companies, procedure
49.14	Sale or compromise of debts due bank	49.35	Consolidation agreement
49.15	Reorganization	49.36	Approval by commissioner
49.16	Assessment, how enforced	49.37	Stockholders to approve; certificate of consolidation
49.165	Deficiency of capital, how made up; procedure	49.38	Corporate existence merged; rights, powers, obligations
49.17	Assessments against stockholders; orders for	49.39	Consolidation of banks and trust companies
49.18	Review of orders of commissioner	49.40	Pending actions or proceedings not affected
49.19	Defenses by stockholders	49.41	Rights of dissenting stockholders
49.20	Remedy exclusive		
49.21	Voluntary liquidation		

**49.01 INSOLVENT BANKS; EXAMINER TO TAKE CHARGE.** No banking corporation shall make an assignment by reason of existing or probable insolvency. Its governing board or managing officers, if satisfied that it is, or is about to become, insolvent, shall immediately report that fact to the commissioner of banks, who, if satisfied from this report or any other source that the bank has refused to pay its deposits, as required by law, has become insolvent, that its books of account are falsely or fraudulently kept, or that it has violated any provision of law, may forthwith take possession of its books, records, and property. Its property shall not be subject to attachment or levy, nor shall a receiver be appointed during such reasonable time as he may require for examination and to apply for a receiver. When appointed, the receiver shall take possession, under the direction of the court, of such books, records, and other property, collect the debts, sell or compound bad or doubtful ones, and sell all corporate property on such terms as the court shall direct, and when necessary pay corporate debts and enforce the individual liability of stockholders. He shall pay over all moneys received by him and make report of his doings to the commissioner of banks at such times and in such manner as he may prescribe. When, after report by these officers and before the appointment of a receiver, the commissioner of banks shall find the bank in such condition that all creditors, aside from stockholders, can be paid in full from its assets, he may relinquish possession of its property to its proper officers; and when, at any stage of the proceedings, the stockholders show the court that it is able to pay all other creditors, and this showing is approved by the commissioner of banks, the court may order the property turned over to the stockholders for liquidation or other arrangement, and discharge the receiver.

[R. L. s. 2998] (7682)

**49.02 STOCK UNPAID OR IMPAIRED.** Every bank which shall have failed to pay up its capital stock as required by law, or whose capital shall have become impaired, within 90 days after receiving notice thereof from the commissioner of banks, shall make up the deficiency by a pro rata assessment on the capital stock or go into liquidation, and, in case of refusal to do so, a receiver may be appointed to close up its business, as provided in the case of insolvent banks; but, with the consent and approval of the commissioner of banks, the bank may reduce its paid-up capital stock, as hereinafter provided, pay in any remaining deficiency, and thereupon continue business upon the reduced capital.

[R. L. s. 3000] (7684)

**49.03 BANK.** The term "bank," when used in section 49.04, means and includes any and all financial corporations, as defined in section 47.01, and all persons and partnerships engaged in any business conducted by any of the corporations mentioned in section 47.01.

[1909 c. 179 s. 1] (7687)

**49.04 VIOLATION OF CHARTER OR LAW; COMMISSIONER TO TAKE CHARGE.** When it shall appear to the commissioner of banks that any bank has violated its charter, or any law of the state, or is conducting its business in an unsafe or unauthorized manner, or that the capital of any such bank is impaired, or if any such bank or controlling officer thereof shall refuse to submit its books, papers, and concerns to the inspection of the commissioner of banks, or any assistant by him thereunto duly authorized, or if any officer of the bank shall refuse to be examined upon oath touching the concerns of the corporation, or if any such bank shall suspend payment of its obligations, or furnish reason for the commissioner of banks concluding that the bank is in an unsound or unsafe condition to transact the business for which it was organized, or that it is unsafe and inexpedient for it to continue business, or if any such bank shall neglect or refuse to observe a proper order of the commissioner of banks, he may forthwith take possession of the property and business of the bank and retain this possession until the bank shall resume business or its affairs be finally liquidated, as herein provided. On taking possession of the property and business of any such bank, the commissioner of banks shall forthwith give notice of that fact to any and all banks, associations, and individuals holding, or in possession of, any assets of the bank. No bank, association, or person knowing of such taking possession by the commissioner of banks, or notified, as aforesaid, shall have a lien or charge for any payment, advance, or clearance thereafter made, or liability thereafter incurred against any of the assets of the bank of whose property and business the commissioner of banks shall have taken possession, as aforesaid. The bank may, with the consent of the commissioner of banks, resume business upon such conditions as may be approved by him. Upon taking possession of the property and business of the bank, the commissioner of banks is authorized to collect moneys due to the bank and to do such other acts as are necessary to conserve its assets and business, and shall proceed to liquidate the affairs thereof, if in his opinion the bank cannot safely resume business, as hereinafter provided.

[1909 c. 179 s. 2] (7688)

**49.05 POWERS OF COMMISSIONER; CERTIFICATES.** In all cases where the commissioner of banks has taken possession of the property and business of any bank, or any such bank is in the process of liquidation by him, pursuant to the laws of this state, the commissioner may, in the name of any such bank or in his own name as commissioner of banks, for the use of any such bank, bring and carry to an end all necessary actions in the proper courts to reduce the assets of any such bank to money and to protect the property and rights of any such bank, and to that end may, in the name of any such bank or in his own name as commissioner of banks, execute all bonds and other papers necessary to carry on any such actions, and may, in the name of any such bank, satisfy, discharge, and assign, by written instrument, any and all real estate and chattel mortgages and all other liens held by any such bank, and may, in the name of any such bank, foreclose by advertisement in the manner provided by the laws of this state, any real estate mortgage held by any such bank, and to execute, in the name of any such bank, to the attorney employed to foreclose any such mortgage by advertisement, the power of attorney required by the laws of this state in case of foreclosure or mortgages by advertisement. Prior to any sale under such foreclosure proceedings, the commissioner of banks shall file for record in the office of the register of deeds of the county where any land affected by any such foreclosure sale is situated, a certificate under his hand, as such commissioner of banks, stating therein the corporate name of the bank affected; its principal place of business; that, as commissioner of banks, he has taken possession of the property and business of the bank under the laws of the state, and the date of taking possession thereof; that the bank is in process of liquidation by him, pursuant to the laws of this state, if such be the fact. A like certificate shall be filed for record by the commissioner of banks in the office where any such mortgage or lien is recorded. This certificate, or a duly certified copy thereof, shall be prima facie evidence of the facts therein set forth. Only one such certificate need be filed, as hereinbefore provided in this section, for each bank

in liquidation. All foreclosure proceedings heretofore conducted, whether the certificate was filed for record as to each such foreclosure or not, are hereby validated if one such certificate has been so filed as to each bank in liquidation.

A like certificate shall be filed by the commissioner of banks in the office of the clerk of the district court in any county where any action or proceeding affecting any such bank or its property shall be brought in any court, in the name of any such bank, or in the name of the commissioner of banks, for its use prior to the entry of judgment therein or the entry of any final order in any such proceeding, and this certificate, or duly certified copy thereof, shall be prima facie evidence of the facts therein set forth.

Where the commissioner of banks has heretofore taken possession of the property and business of any such bank, or the same is in process of liquidation by the commissioner of banks, pursuant to the laws of this state, and actions have been heretofore brought in the name of any such bank, or in the name of the commissioner of banks, for the use of any such bank in any court of the state, all these actions and all orders and judgments that have heretofore been entered therein, or may hereafter be entered therein, are hereby in all things validated, on the filing of the certificate hereinbefore provided for, in the court wherein any such action or proceeding is or has been pending.

[1913 c. 447 s. 1; 1933 c. 10 s. 1] (7690)

**49.06 CONSOLIDATION.** Any such financial corporation in course of liquidation may, with the consent of the commissioner of banks, consolidate with any other like corporation, upon such terms as may be authorized by their respective boards of directors, with the consent of a majority of the stockholders, and may transfer to such corporation its entire assets, subject to its existing liabilities.

[R. L. s. 2971] (7643)

**49.07 REORGANIZATION PLANS; APPROVAL AND EFFECT.** When the commissioner of banks, with a view to restoring the solvency of any bank of which he has taken charge pursuant to law, shall approve a reorganization plan entered into between the depositors and unsecured creditors of such bank and the bank or reorganizers thereof which represent 90 per cent of the amount of deposits and unsecured claims of these banks, then and in such case all other depositors and unsecured creditors shall be held to be subject to this agreement to the same extent and with the same effect as if they had joined in the execution thereof, and their claims shall be treated in all respects as if they had joined in the execution of the articles or reorganization plan in the event of restoration of the bank to solvency, and the reopening of the same for business.

[1925 c. 38 s. 1] (7690-1)

**49.08 DEPOSITS SUBJECT TO LAW.** All deposits made in any state bank subsequent to the passage of section 49.07 shall be subject to the conditions thereof.

[1925 c. 38 s. 2] (7690-2)

**49.09 DEPOSITS NOT SUBJECT TO LAW.** Deposits of the state, counties, cities, villages, towns, and school districts are exempt from the operation of section 49.07.

[1925 c. 38 s. 3] (7690-3)

**49.10 PENDING ACTIONS STAYED; GARNISHMENTS, ATTACHMENTS, AND LEVIES VACATED.** When the commissioner of banks shall take possession of the business and property of any insolvent bank or trust company, all actions at law pending against the bank or trust company shall be stayed; upon motion to the court setting forth that fact, so long as this possession continues.

All garnishments, attachments, and levies in any action against the bank or trust company shall likewise be set aside and vacated upon motion.

[1927 c. 261 ss. 1, 2] (7699-25) (7699-26)

**49.11 JUDGMENTS VACATED.** All judgments for money only entered against such bank or trust company within 30 days preceding the date when the commissioner of banks takes possession shall be vacated and set aside upon motion, and the judgment creditor shall be entitled to file his claim with the commissioner of banks; all other judgments entered within that period of 30 days shall be vacated upon the application of the commissioner of banks to the court wherein the judgment is entered, when it appears to the court that the judgment is detrimental to the interest of the creditors of the bank.

[1927 c. 261 s. 3] (7699-27)

# MINNESOTA STATUTES 1941

391

## LIQUIDATION, REORGANIZATION, AND CONSOLIDATION 49.165

**49.12 LEVIES UPON OR SEIZURES OF ASSETS UNLAWFUL.** It shall be unlawful for any officer or other person to levy upon, seize, or attach any of the assets of the bank or trust company to the possession of which the commissioner of banks is entitled, after he has taken possession, and so long as this possession continues.

[1927 c. 261 s. 4] (7699-28)

**49.13 CLAIMS; FILING, REJECTION; PENDING ACTIONS.** No action shall be commenced against any insolvent bank or trust company on any claim until that claim has been filed with and rejected, in whole or in part, by the commissioner of banks, as provided in section 49.24. The commissioner of banks may waive this requirement in any pending action and permit the filing of the claim during the pendency thereof, and all proceedings shall thereupon be stayed until this filing has been made and, if the claim be allowed, the action shall terminate and be dismissed without costs and disbursements, but if rejected, in whole or in part, the action may continue.

[1927 c. 261 s. 5] (7699-29)

**49.14 SALE OR COMPROMISE OF DEBTS DUE BANK.** When, in the liquidation of any bank or other financial corporation by the commissioner of banks, he is of the opinion that a debt due the corporation is bad or doubtful, he may present a verified petition to a judge of the district court having jurisdiction setting forth the facts; and the judge, if satisfied that it is for the best interests of the creditors, may hear the petition, without notice, and make an order granting the petition and authorizing the commissioner of banks to sell, compound, or compromise the debt. Personal property or real estate may be sold on like petition, approval, and order; provided, that if a petition for the sale of real estate is presented, the judge may provide that notice of a hearing thereon to the creditors be given by publication in such manner as the judge may deem best.

[1927 c. 127] (7690-4)

**49.15 REORGANIZATION.** When it appears to the commissioner of banks, by the petition of the owners of a majority of the stock of any bank which is insolvent and under the control of the court, that bona fide efforts are being made to reorganize the bank, the commissioner of banks may levy an assessment upon the stockholders pro rata, according to the capital stock held by each, in such amount as he deems necessary, not exceeding their liability under the constitution, and order the board of directors to collect this assessment within 60 days thereafter.

[R. L. s. 3001] (7685)

**49.16 ASSESSMENT, HOW ENFORCED.** On failure of any stockholder to pay this assessment, the directors may sell his stock at public auction, after three weeks' published notice in a newspaper of the county. This stock shall not be sold for less than the amount due thereon and the expense of sale, and any excess shall be paid to the delinquent stockholder. If no bidder offers the amount due and expenses of sale, the amount previously paid on the stock shall be forfeited, and the stock sold by order of the directors within six months thereafter, or canceled and deducted from the capital of the corporation; and when, by reason of this cancelation and reduction, the capital is reduced below the minimum required by law, the deficiency shall be paid in within 30 days, or a receiver shall be appointed to close up its business.

[R. L. s. 3002] (7686)

**49.165 DEFICIENCY OF CAPITAL, HOW MADE UP; PROCEDURE.** The directors of any bank or trust company receiving notice from the commissioner of banks to make good an impairment of capital shall fix the time when the assessment made at the stockholders' meeting shall become due and payable, which time shall be not less than 15, nor more than 30, days after the assessment is levied. Notice of this assessment shall be mailed to each stockholder at his office address as shown by the stock books of the bank or trust company.

If any stockholder shall fail to pay in cash the amount of the assessment against his stock for a period of 30 days after the same shall become due and payable, the directors of the bank or trust company shall sell the same at public sale upon ten days' notice, to be given by posting copies of the notice of sale in three public places in the city, town, or community where the bank or trust company is located, or at a private sale, after giving the stockholder ten days' written notice by registered mail addressed to his post-office address as shown by the stock books of the bank or trust company.

Upon sale of any stock, as herein provided, the purchaser shall forthwith become liable for, and shall pay in cash, the amount of the assessment thereon.

[1939 c. 302] (7681-1)

**49.17 ASSESSMENTS AGAINST STOCKHOLDERS; ORDERS FOR.** In all cases where a state bank or trust company has been closed and the commissioner of banks has taken charge of its business, property, and assets, and the corporation is in process of liquidation by the commissioner and the commissioner shall find and determine that the corporation is insolvent, and it is necessary, in order that the creditors thereof may be paid, to levy an assessment on and against the stockholders of the corporation, in such case the commissioner is hereby authorized and empowered to make and file an order in his office, levying an assessment against and upon the stockholders of the corporation. This order shall set forth a summary statement of the assets of the corporation and the probable value thereof, and of the deposits and other liabilities of the corporation, and state the reason for the assessment and the rate thereof against each share of stock, and fix the time within which the assessment must be paid, which time shall not be less than 40 days from the date of filing the order.

A certified copy of the order shall be filed in the office of the clerk of court in the county where the corporation has its principal place of business.

A copy of the order shall be served by the commissioner of banks, by registered mail, on each of the stockholders of the corporation, directed to his last known address, within ten days after the filing of the order in the office of the commissioner.

[1927 c. 254 s. 1] (7699-20)

**49.18 REVIEW OF ORDERS OF COMMISSIONER.** This order shall be a conclusive determination that the necessity for the levying of the assessment exists; provided, that the corporation, or any stockholder or creditor thereof, may secure a review of the commissioner's order by serving a notice so requesting upon the commissioner within 20 days after the service of the order upon the aggrieved party. This notice, with proof of service thereof, shall be filed within ten days after service with the clerk of the district court in the county where the corporation has its principal place of business. The district court shall thereupon have jurisdiction to consider the necessity of levying the assessment, and shall hear and determine the matter de novo in or out of term at any place in the district. This hearing shall take precedence of all other matters and may be held upon ten days' written notice by either party. The judge shall make such order in the premises as is proper, and may affirm, vacate, or modify the commissioner's order, and an appeal may be taken therefrom to the supreme court. During the pendency of the appeal the commissioner of banks shall remain in charge of the business, property, and assets of the corporation involved.

[1927 c. 254 s. 2] (7699-21)

**49.19 DEFENSES BY STOCKHOLDERS.** In all other respects the stockholders in the corporation shall have and retain all defenses that they may now have, in case an action is brought to enforce payment of the assessment.

[1927 c. 254 s. 3] (7699-22)

**49.20 REMEDY EXCLUSIVE.** The provisions of sections 49.17 to 49.19 shall not be cumulative but shall be the exclusive procedure for the levying of assessments upon and against stockholders of banks or trust companies in charge of the commissioner of banks and in process of liquidation by him.

[1927 c. 254 s. 4] (7699-23)

**49.21 VOLUNTARY LIQUIDATION.** By a resolution duly adopted by the holders of 75 per cent of its stock, a bank or a trust company, or one acting in the capacity of both a bank and trust company, may go into voluntary liquidation upon filing a certified copy of the resolution with the commissioner of banks and obtaining the written consent of the commissioner to voluntarily liquidate the bank or trust company.

After the filing of the certified copy of the resolution and obtaining the written consent of the commissioner, it shall give eight weeks' published notice, in a qualified newspaper in the county of the principal place of business of the bank or trust company, to creditors to present their claims, and shall file a copy thereof with the commissioner within one week after the first publication thereof, and shall file with the commissioner proof of the publication thereof within ten days after the completion of the published notice.

# MINNESOTA STATUTES 1941

393

## LIQUIDATION, REORGANIZATION, AND CONSOLIDATION 49.24

Upon compliance with the foregoing and upon filing with the commissioner an affidavit that all depositors and all other creditors have been paid in full, the commissioner, if he finds the facts alleged therein to be true, shall issue his certificate of liquidation, and upon the filing for record of the certificate of liquidation, both in the office of the secretary of state and in the office of the register of deeds of the county of the principal place of business of the bank or trust company, immediately prior to the corporation's voluntary liquidation, the liquidation of the corporation shall be complete and its corporate existence shall thereupon terminate.

[1939 c. 74 s. 2] (7699-32)

**49.22 FORMER LIQUIDATION MAY COMPLY.** Any bank or trust company which has heretofore gone into voluntary liquidation under the laws of this state and which has heretofore complied, or may hereafter comply, with all the other requirements of section 49.21, may, upon application to the commissioner of banks, secure a certificate of liquidation, and upon the filing of same pursuant to that section, the liquidation of the bank or trust company shall be complete and its corporate existence shall thereupon terminate.

[1939 c. 74 s. 3] (7699-33)

**49.23 TITLE TO ASSETS.** Before the commissioner of banks shall file his certificate of liquidation, the bank or trust company shall petition the district court in the county of its location and have the court appoint a trustee, and the bank or trust company shall transfer the title to all assets omitted from the liquidation of the bank or trust company to the trustee for the benefit of the persons entitled thereto, and the assets shall be administered and distributed by the trustee subject to the approval of the district court.

[1939 c. 74 s. 4; 1941 c. 42] (7699-34)

**49.24 LIQUIDATION AND DISTRIBUTION OF ASSETS.** The commissioner of banks shall collect all debts due and all claims belonging to such bank, and upon the order of the district court may sell or compound all bad or doubtful debts, and on like order may sell all the real and personal property of such bank on such terms as the court shall direct, and may, if necessary to pay the debts of such bank, enforce the individual liability of the stockholders. The commissioner of banks may under his hand appoint one or more special deputy examiners as agents to assist him in the duty of liquidation and distribution, the certificate of appointment to be filed in the office of the commissioner of banks and a certified copy in the office of the secretary of state and also the clerk of the district court of the county in which the principal office of such bank was located. The commissioner of banks may, from time to time, authorize any such special deputy examiner to perform such duties connected with such liquidation and distribution as the commissioner of banks may deem proper. The commissioner of banks may procure such expert assistance as may be necessary in the liquidation and distribution of the assets of such bank and may retain such of its officers or employees as he may deem necessary and upon his request in writing the attorney general shall employ a special attorney to act as counsel in all matters relating to the liquidation of each bank, which appointment shall be made according to the provisions of the statutes regulating the employment by the attorney general of special attorneys for state boards and officers, and the payment of such attorney shall be from the proceeds of the assets of the bank with whose liquidation he becomes thereby connected. The commissioner of banks shall require from each special deputy examiner such security for the faithful discharge of his duties as he may deem proper. The commissioner of banks shall cause notice to be given by advertisement in a legal newspaper in the city or village where such bank is located, or, if none in such city or village, then in the county, weekly for five consecutive weeks, calling on all persons who may have claims against such bank to present the same to the commissioner of banks, and make legal proof thereof at a place and within a time not earlier than one week after the last day of publication, which time and place shall be specified in the notice. The commissioner of banks shall mail a similar notice to all persons whose names appear as creditors upon the books of the bank. If the commissioner of banks doubts the justice and validity of any claim he may reject the same and serve notice of such rejection upon the claimant either by mail or personally. An affidavit of the service of such notice made according to law shall be filed with the commissioner of banks. An action upon a claim so rejected must be brought within 60 days after such service and the filing of proof thereof. The venue of such action shall be in the county in which the bank is located, and the

action shall be brought jointly against the bank and the commissioner of banks as statutory liquidator of the bank. Any person having a claim against such bank and not presented and filed within the time fixed in the notice to creditors may present the same and the commissioner of banks shall allow or reject the same in whole or in part, as hereinbefore provided, and suit on such rejected claim not filed within the time fixed by the notice shall be brought within 30 days after the service and filing of proof of such rejection. Any claim not filed within the time fixed in the notice to creditors but received and filed as by this section provided and duly allowed, shall participate and share in such dividends only as shall be paid from the proceeds of those assets remaining undistributed at the time of filing of such claim. No interest shall be allowed or paid on any deposit or other claim from and after the closing of the bank and the taking over of the same by the commissioner of banks for purposes of liquidation. Upon taking possession of the property and assets of such bank the commissioner of banks shall make an inventory of the assets of such bank in duplicate, one to be filed in the office of the commissioner of banks and one in the office of the clerk of the district court of the county in which the principal office of the bank was located. Upon the expiration of the time fixed for the presentation of claims, the commissioner of banks shall make, in duplicate, a complete list of the claims presented, including and specifying such claims as have been rejected by him, one such list to be filed in his office and one in the office of the clerk of the district court. This inventory and list of claims shall be open at all reasonable times to inspection. The compensation of the special deputy examiners and the other employees and assistants of the commissioner of banks, except legal counsel, and all expenses of supervision and liquidation shall be fixed by the commissioner of banks, subject to the approval of the district court of the county in which the bank is located, after notice fixing the time and place when the commissioner of banks will hear and fix the amount of all such expenses, and the amount so fixed and the compensation of legal counsel as fixed by the attorney general, shall be paid upon the certificates of the commissioner of banks and the attorney general respectively, out of the funds of such bank in the hands of the commissioner of banks. The money collected by the commissioner of banks shall be, from time to time, deposited in one or more state banks or trust companies, and, in case of a suspension or insolvency of the depository, such deposits shall be preferred before all of the deposits. At any time after the expiration of a date fixed for the presentation of claims the commissioner of banks may, out of the funds remaining in hand after the payments of expenses, declare one or more dividends, and after the expiration of one year from the first publication of notice to creditors he may declare a final dividend, such dividends to be paid to such persons and in such amounts and upon such notice as may be directed by the district court. Objections to any claim not rejected by the commissioner of banks may be made by any party interested by filing a copy of such objections with the commissioner of banks, who shall present the same to the district court at the time of the next application to declare a dividend. Whenever any such bank of whose property and business the commissioner of banks has taken possession, as aforesaid, deems itself aggrieved thereby it may, at any time within ten days after such taking possession, apply to the district court of the county in which the bank is located to enjoin further proceedings, and the court, after citing the commissioner of banks to show cause why further proceedings should not be enjoined, and hearing the allegations and proofs of the parties in determining the facts, may, upon the merits, dismiss such application or enjoin the commissioner of banks from further proceedings and direct him to surrender such business and property to such bank. Whenever the commissioner of banks shall have paid each and every depositor and creditor of such bank, not including stockholders, whose claim or claims as such creditor or depositor shall have been duly approved and allowed, the full amount of such claims, and made proper provisions for unclaimed and unpaid deposits or dividends and paid all the expenses of the liquidation, the commissioner of banks shall call a meeting of the stockholders of such corporation by giving notice thereof for ten days by publishing such notice in one or more newspapers of the county where the bank is located. At such meeting the stockholders shall determine whether the commissioner of banks shall be continued as liquidator and wind up the affairs of such bank, or whether an agent or agents shall be elected for that purpose, and in so determining these stockholders shall vote by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the majority of the stock

# MINNESOTA STATUTES 1941

395

## LIQUIDATION, REORGANIZATION, AND CONSOLIDATION 49.24

shall be necessary to a determination. In case it is determined to continue the liquidation under the commissioner of banks he shall complete the liquidation of the affairs of such corporation, and after paying the expenses thereof, if there are proceeds of liquidation as yet undistributed he shall reimburse those stockholders who paid their stock assessments pursuant to the order for assessment to the extent that each has paid, and if the proceeds are insufficient to reimburse such paying stockholders in full, then in just proportion. Any proceeds remaining undistributed after such paying stockholders have been reimbursed, as by this section provided, shall be distributed among all the stockholders in proportion to their several holdings of stock in such manner and upon such notice as may be directed by the district court. In case it is determined to appoint an agent or agents to liquidate, the stockholders shall thereupon select such agent or agents by ballot, a majority of the stock present and voting, in person or by proxy, being necessary to a choice. Such agent or agents shall execute and file with the commissioner of banks a bond to the State of Minnesota, in such amount with such sureties and in such form as shall be approved by the commissioner of banks, conditioned for the faithful performance of all the duties of his or their trust, and thereupon the commissioner of banks shall transfer and deliver to such agent or agents all the undivided or uncollected or other assets of such corporation then remaining in his hands, and upon such transfer and delivery, the commissioner of banks shall be discharged from any and all further liability to such bank and its creditors. Such agent or agents shall convert the assets coming into his or their possession into cash and shall account for and make distribution of the property of such bank as is herein provided in the case of distribution by the commissioner of banks, except that the expenses thereof shall be subject to the direction and control of the district court. In case of the death, removal, or refusal to act of any such agent or agents, the stockholders, on the same notice as that after which they were elected, and in the same way may elect a successor who shall have the same powers and be subject to the same liabilities and duties as the agent originally elected.

Upon the liquidation of any bank, trust company, or financial institution liquidated by the commissioner of banks as statutory liquidator, if any dividends or any moneys set apart for the payment of claims remain unpaid, and the places of residence of the owners thereof are unknown to the commissioner of banks, he may pay same into the state treasury as hereinafter provided. Whenever the commissioner of banks shall be satisfied that the process of liquidation should not be further continued he may make and certify triplicate lists of any such unclaimed dividends or other moneys, specifying the name of each owner, the amount due him, and his last known address. Upon one of such lists, to be retained by the commissioner of banks, he shall indorse his order that such unclaimed moneys be forthwith deposited in the state treasury. When so deposited, one of the lists shall be delivered to the state treasurer and another to the state auditor and the commissioner of banks shall retain in his office such records and proofs concerning these claims as he may have, which shall thereafter remain on file in his office. The treasurer shall execute upon the list retained by the commissioner of banks a receipt for such money, which shall operate as a full discharge of the commissioner of banks on account of such claims. At any time within six years after such receipt, but not afterward, the claimant may apply to the commissioner of banks for the amount so deposited for his benefit, and upon proof satisfactory to the governor, the attorney general, and the commissioner of banks, or to a majority of them, they shall give an order to the auditor to issue his warrant upon the treasurer for such amount, and such warrant shall thereupon be issued. If no such claim be presented within six years the commissioner of banks shall so note upon his copy of the list and certify the fact to the auditor and treasurer who shall make like entries upon the corresponding lists in their hands; and all further claims to the money shall be barred. The state treasurer shall pay to the commissioner of banks not to exceed 50 per cent of the amount so turned over to the state treasurer by the commissioner of banks to be used to partially defray expenses in connection with the liquidation of closed banks, in such amounts and at such times as the commissioner of banks shall request.

Funds in the possession of the commissioner of banks set aside for the purpose of meeting unforeseen and contingent expenses incident to the liquidation of closed state banks, which funds have been established by withholding a portion of final liquidating dividends in such cases, may be used by the commissioner of banks for



any expense incident to the administration of the affairs of the closed bank department of his division.

[1909 c. 179 s. 3; 1933 c. 168; 1941 c. 92; 1941 c. 183] (7689)

**49.25 UNCLAIMED DIVIDENDS ON LIQUIDATION.** Upon the liquidation of any such corporation, whether voluntary or by order of court, if any dividends or any moneys set apart for the payment of claims remain unpaid, and the places of residence of the owners thereof are unknown to the liquidating officer, he may pay the same into the state treasury, as hereinafter provided. When the commissioner of banks shall be satisfied that the process of liquidation should not be further continued, he may require the receiver, or other liquidating officer, to make and certify quadruplicate lists of any such unclaimed dividends or other moneys, specifying the name of each owner, the amount due him, and his last known address. Upon one of these lists, to be retained by the liquidating officer, the commissioner of banks shall endorse his order that the unclaimed moneys be forthwith deposited in the state treasury. When so deposited, one of these lists shall be delivered to the state treasurer and another to the state auditor, and the liquidating officer shall file with the commissioner of banks such records and proofs concerning these claims as he may have, which shall thereafter remain on file in the office of the commissioner of banks. The state treasurer shall execute upon the list retained by the liquidating officer a receipt for such moneys, which shall operate as a full discharge of this officer on account of these claims. At any time within ten years after such receipt, but not afterward, the claimant may apply to the commissioner of banks for the amount so deposited for his benefit, and upon proof satisfactory to the governor, the attorney general, and the commissioner of banks, or to a majority of them, they shall give an order to the state auditor to issue his warrant upon the treasurer for such amount, and such warrant shall thereupon be issued. If no such claim be presented within ten years, the examiner shall so note upon his copy of the list and certify the fact to the auditor and treasurer, who shall make like entries upon the corresponding lists in their hands; and all further claims to these moneys shall be barred.

[R. L. s. 2970] (7642)

**49.26 COMMISSIONER MAY BORROW MONEY IN LIQUIDATING CLOSED BANKS.** The commissioner of banks, for the benefit of any bank, savings bank, trust company, or building and loan association which is in process of liquidation by the commissioner, is authorized to borrow money and to issue evidences of indebtedness therefor and to secure the repayment of the same by the mortgage, pledge, transfer in trust, or hypothecation of any or all of the property of the bank, savings bank, trust company, or building and loan association, whether real, personal, or mixed, and whether or not the property is subject to a prior mortgage, pledge, or hypothecation. These loans may be obtained for the purposes of facilitating liquidation, protecting or preserving the assets in his charge, expediting the making of distributions and payment of dividends to depositors and other creditors, providing for the expenses of administration and liquidation and aiding in the reopening or reorganization of the bank, savings bank, trust company, or building and loan association, or its merger or consolidation with another bank, savings bank, trust company, or building and loan association, or the sale of all of its assets.

The commissioner of banks shall be under no personal obligation to repay any loans so made and shall have power to take any and all action necessary or proper to consummate the loan and to provide for the repayment thereof.

[1933 c. 3 s. 1] (7690-21)

**49.27 BANK DIRECTORS MAY SUSPEND BUSINESS.** When the board of directors of a bank organized and existing by virtue of the laws of the state by resolution determine that it is unsafe and inexpedient for the bank to continue in business, it shall be lawful for the board to suspend temporarily the business of the bank for a period of not more than 15 days. The board of directors shall thereupon immediately present to the commissioner of banks a plan of reorganization calculated to put the bank in a safe condition and for continuing the bank as a going institution. The commissioner of banks shall forthwith make an investigation of the assets and liabilities of the bank and determine its financial condition and whether the plan is for the best interests of the depositors. Upon approval, in writing, by the commissioner of banks of the plan, the same shall become effective when assented to, in writing, by the owners of not less than 90 per cent of the total amount of deposits and unsecured claims of the bank, provided that by the total

amount of deposits and unsecured claims is meant the total thereof after excluding therefrom all deposits mentioned in section 49.29 and deposits that may not be legally reduced without an order of the court, or otherwise; and, provided, that the commissioner of banks is satisfied that the stockholders have made such contribution to the assets of the bank as the commissioner of banks may deem just and equitable. Thereafter, all other depositors and unsecured creditors shall be subject to this agreement and plan to the same extent and with the same effect as if they had joined in the execution thereof and had consented thereto; and the claims of those persons shall be thereafter treated in all respects the same as if they had joined in the execution of the agreement and consented thereto. When under such an agreement and plan there has been a reduction of the amount or value of deposits and unsecured claims, if during the two years following the date of the agreement there shall be an increase in the total value of the assets and securities owned by the bank at the time of the agreement or in the assets and securities substituted therefor, which increase is more than five per cent of the value at the time of the agreement, this surplus increase shall be redistributed to the holders of these deposits and unsecured claims, or their assigns which were reduced; provided, that nothing contained in any such agreement shall be construed to release any stockholder of any such bank from liability upon his stock, nor as releasing any person or corporation as surety or otherwise to any depositor, and any such agreement purporting to release any such stockholder or person or corporation liable as surety shall be void. All remedies provided by law for enforcing stockholders' liability or the liability of any surety are hereby preserved.

[1933 c. 39 s. 1] (7690-5)

**49.28 NO BUSINESS TO BE TRANSACTED DURING SUSPENSION.** During the period of suspension, no banking business shall be transacted by the suspended bank, and no other banking institution having knowledge of the suspension shall honor drafts, checks, or other items of exchange drawn by or on the suspended bank.

[1933 c. 39 s. 2] (7690-6)

**49.29 EXCEPTIONS.** Deposits of the United States, of the State of Minnesota, and of the counties, cities, villages, boroughs, townships, and school districts of the state are exempt from the operation of sections 49.27 and 49.28.

[1933 c. 39 s. 3] (7690-7)

**49.30 DISTRICT COURT MAY APPOINT RECEIVER.** At any time after a period of three years shall have elapsed, after the commissioner of banks shall have taken possession of the business and property of an insolvent bank or trust company, a majority of the creditors in number and amount may petition the court for the appointment of a committee of three competent persons, residents of the county, named by them, the court may make such appointment, and any officer or member of the board of directors of the insolvent bank or trust company may be appointed as members of the committee, if residents of the county. All rights and duties of the commissioner of banks shall then devolve upon the committee.

[R. L. s. 2999; 1933 c. 310 s. 1] (7683)

**49.31 COMMITTEE TO FURNISH BONDS.** The committee provided for by section 49.30 shall furnish adequate bond, to be approved by the district court, for the faithful performance of its duties.

[1933 c. 310 s. 2] (7683-1)

**49.32 COMMISSIONER DISCHARGED AS LIQUIDATOR.** Upon this order of the court, the commissioner of banks shall be discharged as statutory liquidator of these banks and released from any further liability thereunder.

[1933 c. 310 s. 3] (7683-2)

**49.33 CONSOLIDATION, WHEN AUTHORIZED.** With the written consent of the commissioner of banks, any bank of discount and deposit may effect a transfer of its assets and liabilities to another bank for the purpose of consolidating therewith, but the same shall be without prejudice to the creditors of either.

[R. L. s. 3004] (7692)

**49.34 CONSOLIDATION OF STATE BANKS OR TRUST COMPANIES, PROCEDURE.** Any two or more state banks, operating in the same city or village, may be consolidated into a consolidated state bank, and any two or more trust companies, operating in the same city or village, may be consolidated into a consolidated trust company, and any state bank or state banks and any trust company or trust companies, operating in the same city or village, may be consolidated into a consolidated state bank or consolidated trust company, as the respective boards of

directors thereof may determine. All such consolidation shall be effected in the manner provided in sections 49.35 to 49.41 and when so organized, the consolidated corporation shall be governed and conducted in all other respects as provided by the statutes relating to the respective classes of financial corporations.

[1925 c. 156 s. 1] (7699-5)

**49.35 CONSOLIDATION AGREEMENT.** The respective boards of directors of the consolidating corporations may, by the majority vote of all of the members of each board, make or authorize to be made between the corporations a written consolidation agreement, in duplicate, for the consolidation of the corporations. This agreement shall specify each corporation to be a party to the consolidation, and shall prescribe the terms and conditions thereof; the mode of carrying it into effect; the authorized capital stock of the consolidated corporation, which shall not exceed the aggregate authorized capital stock of all of the corporations that are a party thereto; the name of the consolidated corporation, which may be the name, in whole or in part, of any corporation which is a party to the agreement, and shall specify the city or village in which it shall have its principal place of business. It shall name the persons who shall constitute the board of directors of the consolidated corporation, but the number and qualifications of these persons shall be in accordance with the statutes relating to the number and qualifications of directors of that class of corporation.

[1925 c. 156 s. 2] (7699-6)

**49.36 APPROVAL BY COMMISSIONER.** This consolidation agreement and certified copy of the proceedings of the meetings of the respective boards of directors, at which the making of the agreement was authorized, shall be submitted to the commissioner of banks for his approval, and it shall not be effective until so approved by him. He shall take action thereon within 20 days after the documents are submitted to him, and he shall be entitled to such further information from the consolidated corporation as he may request, or as he may obtain upon a hearing directed by him.

[1925 c. 156 s. 3] (7699-7)

**49.37 STOCKHOLDERS TO APPROVE; CERTIFICATE OF CONSOLIDATION.** Either before or after the consolidation agreement has been approved by the commissioner of banks, it shall be submitted to the stockholders of each corporation at a meeting thereof called for that purpose, and it shall not become binding upon the corporation until it shall have been approved at each of the meetings by the vote or ballot of the stockholders, holding at least a majority of the amount of stock of the respective corporations. Proof of the holding of these meetings and the results thereof shall be submitted to the commissioner of banks. After the consolidation agreement shall have been so approved by the stockholders of the respective corporations and by the commissioner of banks, the latter shall issue a certificate reciting that these corporations have complied with the provisions of sections 49.34 to 49.41, and declaring the consolidation of these corporations; the name of the consolidated corporation, the amount of capital stock thereof, and the names of the first board of directors, and the place of business of the consolidated corporation, which shall be within the city or village where any one of the constituent corporations shall have been previously authorized to have its place of business. Upon the issuing of this certificate and the filing thereof for record in the office of the secretary of state, and also in the office of the register of deeds within and for the county in which the consolidated corporation is authorized to have its principal place of business, this incorporation shall be deemed to be complete, and the consolidated corporation shall, from the date of this certificate, have such term of corporate existence as may be therein specified, not exceeding the longest unexpired term of any constituent corporation. The certificate of the commissioner of banks shall be prima facie evidence that all of the provisions of sections 49.34 to 49.41 have been complied with, and shall be conclusive evidence of the existence of the consolidated corporation.

[1925 c. 156 s. 4] (7699-8)

**49.38 CORPORATE EXISTENCE MERGED; RIGHTS, POWERS, OBLIGATIONS.** Upon the consolidation of any such corporation with any one or more corporations, into a consolidated corporation, as herein provided, the corporate existence of each former corporation shall be merged into that of the consolidated corporation, and all and singular its rights, privileges, and franchises, and its right, title, and interest in and to all property of whatsoever kind, whether real, personal, or

mixed, and all things in action, and every right, privilege, interest, or asset of conceivable value or benefit then existing which would inure to it under an unmerged or unconsolidated existence, shall be deemed fully and finally transferred to and vested in the consolidated corporation without further act or deed, and the last mentioned corporation shall have and hold the same in its own right as fully as the same was possessed and held by the former corporation from which it was, by operation of sections 49.34 to 49.41, transferred. Its rights, obligations, and relations to any person, creditor, depositor, trustee, or beneficiary of any trust shall remain unimpaired and the corporation into which it shall have been consolidated shall succeed to these relations, obligations, trusts, and liabilities and shall execute and perform all such trusts in the same manner as though it had itself assumed the relation or trust, or incurred the obligation or liability; and its liabilities and obligations to creditors existing for any cause shall not be impaired by the consolidation, nor shall any obligation or liability of any stockholder, in any corporation which is party to the consolidation, be affected by any such consolidation, but these obligations and liabilities shall continue as fully and to the same extent as existed before the consolidation. The consolidated corporation shall become, without further act or deed, the successor of the consolidating corporations in any and all fiduciary capacities, in which each consolidated corporation may be acting at the time of the consolidation, and shall be liable to all beneficiaries as fully as if the consolidating corporations had continued its separate corporate existence. If any consolidating corporation shall be nominated and appointed, or shall have been nominated or appointed, as executor, guardian, administrator, agent, or trustee, or in any other trust relation of fiduciary capacities in any will, trust agreement, trust conveyance, or any other conveyance, order, or judgment of any court, or any other instrument prior to the consolidation, even though the will or other instrument shall not become operative or effective until after the consolidation shall have become effective, every such office, trust relationship, fiduciary capacity, and all of the rights, powers, privileges, duties, discretions, and responsibilities so provided to devolve upon, vest in, or inure to the corporation so nominated or appointed, shall fully and in every respect devolve upon, vest in, and inure to, and be exercised by, the consolidated corporation, whether there be one or more successive mergers or consolidations.

[1925 c. 156 s. 5] (7699-9)

**49.39 CONSOLIDATION OF BANKS AND TRUST COMPANIES.** Upon the consolidation of a trust company with a national banking corporation into a consolidated banking corporation, as provided by any existing act of congress of the United States, the corporate existence of that trust company shall be merged into that of the consolidated banking corporation to the same extent and with the same effect provided in section 49.38, relating to the consolidation of two or more state banks or trust companies.

[1931 c. 348] (7699-9½)

**49.40 PENDING ACTIONS OR PROCEEDINGS NOT AFFECTED.** Any pending action or other judicial proceeding in which any consolidating corporation is a party shall not be deemed to have abated or to have discontinued by reason of the consolidation but may be prosecuted to final judgment, order, or decree in the same manner as if the consolidation had not been made, or the consolidated corporation may be substituted as a party to the action or proceeding, and any judgment, order, or decree may be rendered for or against it that might have been rendered for or against that corporation if the consolidation had not occurred.

[1925 c. 156 s. 6] (7699-10)

**49.41 RIGHTS OF DISSENTING STOCKHOLDERS.** Any stockholder not voting in favor of the agreement of consolidation at the meeting prescribed in section 49.37 may, at that meeting, or within 20 days thereafter, object to the consolidation and demand payment for his stock. If the consolidation takes effect at any time after this demand, the stockholder may, at any time within 60 days thereafter, apply to the district court in the county wherein is situated the principal place of business of the corporation with which the other or others are consolidated, for the appointment of three persons to appraise the value of his stock. The court shall thereupon appoint these appraisers and designate the time and place of their first meeting, with such directions in regard to their proceedings as shall be deemed proper, and also direct the time and manner in which payment shall be made of the value of his stock to the stockholder. The appraisers shall meet at the time and place designated, after being duly sworn to discharge their duties honestly and

# MINNESOTA STATUTES 1941

## 49.41 LIQUIDATION, REORGANIZATION, AND CONSOLIDATION

400

faithfully, make and certify a written estimate of the value of the stock at the time of the appraisal, and deliver one copy to the corporation and another to the stockholder, if demanded. The charges and expenses of the appraisers shall be paid one-half by the stockholder and one-half by the corporation. When the corporation shall have paid the appraised value of this stock, the stock shall be canceled and this stockholder shall cease to be a member of the corporation or to have any interest in this stock or in the corporation or in the corporate property, and this stock may be held and disposed of by the corporation for its own benefit.

[1925 c. 156 s. 7] (7699-11)