

## CHAPTER 49

## LIQUIDATION, REORGANIZATION, AND CONSOLIDATION

**49.01 DEFINITIONS.**

HISTORY. 1945 c. 128 s. 1 subds. 1, 2, 6.

**49.013 INSOLVENT FINANCIAL INSTITUTIONS; NO ASSIGNMENT BY.**

HISTORY. 1895 c. 145 s. 20; 1897 c. 228 s. 2; R.L. 1905 s. 2998; G.S. 1913 s. 6363; G.S. 1923 s. 7682; M.S. 1927 s. 7682; 1945 c. 128 s. 1 subd. 7.

ASSIGNMENT, WHAT IS. A contract by which an insolvent bank transferred all its assets to another bank which assumed all its obligations is not an assignment for the benefit of creditors under our statute regulating common law assignments. *O'Malley v Drovers State Bank*, 181 M 1, 231 NW 407.

POWER OF COMMISSIONER. He has exclusive power to take over insolvent banks and the district court has no jurisdiction to appoint a receiver to enforce a creditor's judgment. *Northwestern Fuel Co. v Live Stock St. Bank*, 182 M. 276, 234 NW 304.

He has jurisdiction to order an assessment even though a bank has no assets and therefore nothing to take over and conserve. As long as debts remain to be paid and corporate life continues, there is subject matter for liquidation. *Bank of Litchfield v McClure*, 191 M 308, 253 NW 764.

This section endows him with a wide discretion when an advantageous alternative is offered for liquidation under the statute. He is not required to liquidate in the manner provided by statute. *First State B. & T. Co. v First Nat Bank*, 193 M 414, 258 NW 593.

**49.02 STOCK UNPAID OR IMPAIRED.**

HISTORY. 1895 c. 145 s. 22; 1897 c. 156 s. 1; R.L. 1905 s. 3000; G.S. 1913 s. 6365; G.S. 1923 s. 7684; M.S. 1927 s. 7684; 1945 c. 128 ss. 2 to 4.

NATURE OF ASSESSMENT. It is not a proceeding in the interest of creditors but to place the bank in a position for the future transaction of business. Payment does not operate to discharge a stockholder's constitutional liability. *Northwestern T. Co. v Bradbury*, 117 M 83, 134 NW 513, Ann. Cas. 1913D 69.

POWER TO LEVY an assessment rests with the stockholders, not the directors. *Devney v Harriet St. Bank*, 145 M 339, 177 NW 460, discussed in 4 MLR 531.

Direction of the commissioner is essential. *Slette v Larson*, 125 M 263, 146 NW 1093.

PAYMENT OF ASSESSMENT. Stockholders are not required to pay an assessment levied under this section if they prefer to submit to its other provisions. *Minn. St. Bank v Tabbott*, 184 M 179, 238 NW 53.

The statute of limitations against the constitutional double liability of stockholders in a state bank begins to run where such bank closes its doors and ceases to function as a bank, either because of being taken over by the commissioner of banks or because of absorption by another bank with the approval of the commissioner. *Liquidation of Peoples State Bank*, 197 M 479, 267 NW 482.

**49.04 INVOLUNTARY LIQUIDATION OF FINANCIAL INSTITUTIONS.**

HISTORY. 1909 c. 179 s. 2; G.S. 1913 s. 6369; G.S. 1923 s. 7688; M.S. 1927 s. 7688; 1945 c. 128 s. 5.

# MINNESOTA STATUTES 1945 ANNOTATIONS

371

## LIQUIDATION, REORGANIZATION AND CONSOLIDATION 49.17

**CONSTITUTIONALITY.** This section is not unconstitutional as an attempt to delegate and confer judicial power on the commissioner, nor does it authorize the taking of private property without due process of law. *Am. St. Bank v Jones*, 184 M 498, 239 NW 144, 78 ALR 770.

**DISCRETION.** The legislature has conferred on the commissioner the general power of control, leaving it to him to determine in what manner it may best be exercised. *Harriet St. Bank v Samels*, 164 M 265, 204 NW 938.

**DUTIES OF COMMISSIONER** under this section are quasi judicial in character and therefore the rule of nonliability of officers so acting is applicable. *Aichele Bros. Inc. v. Skoglund*, 194 M 291, 260 NW 290.

**BANK'S PROPERTY** taken over by the commissioner is not in custodia legis so that he has not power to sell it except by judicial sale under order of the court. *St. Bank of Good Thunder v Bryson*, 195 M 243, 262 NW 561.

**SET-OFF.** This section does not affect the creditor's right of legal set-off. *Chippewa County St. Bank v Moyer*, 170 M 502, 212 NW 895.

A bank, closed after transferring all of its assets to another which assumed all its liabilities for deposits and bills payable, but having other debts, may be liquidated by the commissioner of banks and its stockholders assessed for the amount necessary to pay its creditors. *Bank of Litchfield v McClure*, 191 M 308, 253 NW 764.

A contract between banks by which one, in consideration of its promise to pay all liabilities of the other, takes a note of the embarrassed bank for the total amount of its liabilities and to secure which receives in pledge all the assets of the other bank, is valid and binding and not contrary to law. *First State Bank v First Nat'l*, 193 M 414, 258 NW 593; *Equitable v Equitable*, 202 M 529, 279 NW 736.

**INVESTMENT COMPANIES** under the supervision of the commissioner should be liquidated by him, when the facts warrant it, in the same manner as an insolvent state bank. 1924 OAG 8.

### 49.05 POWERS AND DUTIES OF COMMISSIONER ON LIQUIDATION.

**HISTORY.** 1913 c. 447, s. 1; G.S. 1913 s. 6371; G.S. 1923 s. 7690; M.S. 1927 s. 7690; 1933 c. 10 s. 1; 1945 c. 128 s. 6.

A representation made after the general creditors and depositors gave their approval of the reorganization of a bank under Laws 1933, Chapter 55, cannot be a basis for fraud in inducing the giving of the approval. *Rien v Cooper*, 211 M 517, 1 NW(2d) 847.

If the commissioner of banks represents the stockholders, creditors and depositors, he must be empowered to lease the vacant bank building to the federal government for a post office. 1934 OAG 31, June 6, 1933 (29b-13).

### 49.06 CONSOLIDATION.

**HISTORY.** 1895 c. 145 s. 26; 1901 c. 233 s. 20; R.L. 1905 s. 2971; G.S. 1913 s. 6333; G.S. 1923 s. 7643; M.S. 1927 s. 7643; 1945 c. 128 s. 7.

### 49.07 REORGANIZATION PLANS; APPROVAL AND EFFECT.

**HISTORY.** 1925 c. 38 s. 1; M.S. 1927 s. 7690-1; 1945 c. 128 s. 8.

A creditor has no constitutional right to insist upon a particular form or method of liquidation, nor has he a vested right to demand liquidation at the hands of any particular official. *Timmer v Hardwick Bank*, 194 M 589, 261 NW 456.

This section is discussed in 18 MLR 54, 14 MLR 677. 14 MLR 553 discusses the constitutionality of a similar South Dakota Statute.

### 49.17 ASSESSMENTS AGAINST STOCKHOLDERS; ORDERS FOR.

**HISTORY.** 1927 c. 254 s. 1; M.S. 1927 s. 7699-20.

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 49.18 LIQUIDATION, REORGANIZATION AND CONSOLIDATION

372

STATUTE OF LIMITATIONS begins to run against the constitutional liability of a bank's stockholders when the bank closes its doors and ceases to operate as a bank. In re Liquidation of Peoples St. Bank, 197 M 479, 267 NW 482.

ASSESSMENT AGAINST HEIRS. See *Hunt v Burns*, 90 M 172, 95 NW 1110, under section 49.15.

### 49.18 REVIEW OF ORDERS OF COMMISSIONER.

HISTORY. 1927 c. 254 s. 2; M.S. 1927 s. 7699-21.

### 49.19 DEFENSES BY STOCKHOLDERS.

HISTORY. 1927 c. 254 s. 3; M.S. 1927 s. 7699-22.

### 49.20 REMEDY EXCLUSIVE.

HISTORY. 1927 c. 254 s. 4; M.S. 1927 s. 7699-23.

### 49.215 VOLUNTARY LIQUIDATIONS.

HISTORY. 1945 c. 128 s. 12.

### 49.24 LIQUIDATION AND DISTRIBUTION OF ASSETS.

HISTORY. 1909 c. 179 s. 3; G.S. 1913 s. 6370; G.S. 1923 s. 7689; M.S. 1927 s. 7689; 1933 c. 168; 1941 c. 92; 1941 c. 183; 1943 c. 442 s. 2; 1945 c. 128 ss. 9, 13.

CONSTITUTIONALITY. This section is not unconstitutional as an attempt to delegate and confer judicial power on the commissioner nor does it authorize the taking of private property without due process. *Am St. Bank v Jones*, 184 M 498, 239 NW 144, 78 ALR 770.

LEASING OF PROPERTY. The commissioner, as statutory liquidator of a bank, may lease the bank's property for a term of years. 1934 OAG 31.

SET-OFF. This section does not affect the creditor's right of legal set-off. *Chippewa County St. Bank v Moyer*, 170 M 502, 212 NW 895.

ALLOWANCE OF CLAIMS. Since it is the commissioner and not the court who allows the claim, there is nothing in the way of a judgment or an order amounting to judgment of such a nature as to put an end to liability on the contract and substitute an obligation by judgment. *Am. Surety Co. v Peyton*, 186 M 588, 244 NW 74.

Trustees need not have an order from the court in order to negotiate for sale of asset property, but must have court approval of any sale. Trustees who contract subject to approval of district court do not make themselves personally liable upon contract failure to secure such approval. *Propp v Johnson*, 211 M 162, 300 NW 616.

The effect of provision in statute authorizing reorganization of state banks that deposits of state, counties, cities, etc., are exempt from operation of act, is to maintain unimpaired reorganized bank's liability to depositors of public funds, so that such deposits shall be paid in full, and to reduce its liability to general creditors and other depositors according to reorganization plan, thereby preferring depositors of public funds over such general creditors and other depositors. *Rien v Cooper*, 211 M 517, 1 NW(2d) 847.

*Linton v Peyton*, McLeod County, decided June 30, 1933, held that where a clerk of the district court had deposited in a certain bank funds obtained from the highway department and which were by said clerk to be by him disbursed to various individuals, had a preferred claim, and that the said account was a special one. 1934 OAG 18, June 29, 1933 (29b-4).

The commissioner of banks may lease estate real property. 1934 OAG 31, June 6, 1933 (26b-13).

# MINNESOTA STATUTES 1945 ANNOTATIONS

373

## LIQUIDATION, REORGANIZATION AND CONSOLIDATION 49.38

Late claimants do not share in early dividends. 1934 OAG 32, June 14, 1933 (29b-7).

### 49.30 DISTRICT COURT MAY APPOINT RECEIVER.

HISTORY. 1895 c. 145 ss. 20, 21; 1897 c. 228 s. 2; R.L. 1905 s. 2999; G.S. 1913 s. 6364; G.S. 1923 s. 7683; M.S. 1927 s. 7683; 1933 c. 310 s. 1; 1945 c. 128 s. 10.

### 49.31 COMMITTEE TO FURNISH BONDS.

HISTORY. 1933 c. 310 s. 2; M. Supp. s. 7683-1.

### 49.32 DISCHARGE OF COMMISSIONER AS STATUTORY.

HISTORY. 1933 c. 310 s. 3; M. Supp. s. 7683-2; 1945 c. 128 s. 11.

### 49.33 CONSOLIDATION, WHEN AUTHORIZED.

HISTORY. 1895 c. 145 s. 26; R.L. 1905 s. 3004; G.S. 1913 s. 6373; G.S. 1923 s. 7692; M.S. 1927 s. 7692.

### 49.34 CONSOLIDATION OF STATE BANKS OR TRUST COMPANIES, PROCEDURE.

HISTORY. 1925 c. 156 s. 1; M.S. 1927 s. 7699-5.

NO NOVATION. The state's consent to a consolidation is not consent to a novation which will relieve of liability the bondsmen of one of the constituent banks which was a state depository. *State v Wood*, 173 M 306, 217 NW 360.

### 49.35 CONSOLIDATION AGREEMENT.

HISTORY. 1925 c. 156 s. 2; M.S. 1927 s. 7699-6.

A combination of two corporations may result in coalescence or union thereof, without extinguishing either, extinction of one corporation and its absorption by the other, which constitutes a "merger", or vital succession or extinction of both corporations, and creation of new one, which constitutes, strictly speaking, a consolidation. The effect of merger or consolidation of corporations depends on statute authorizing it. *United States v Northwestern Bank*, 46 F. Supp. 390, 137 F(2d) 761.

### 49.36 APPROVAL BY COMMISSIONER.

HISTORY. 1925 c. 156 s. 3; M.S. 1927 s. 7699-7.

### 49.37 STOCKHOLDERS TO APPROVE; CERTIFICATE OF CONSOLIDATION.

HISTORY. 1925 c. 156 s. 4; M.S. 1927 s. 7699-8.

### 49.38 CORPORATE EXISTENCE MERGED; RIGHTS, POWERS, OBLIGATIONS.

HISTORY. 1925 c. 156 s. 5; M.S. 1927 s. 7699-9.

CONSTITUTIONALITY. This section does not impair the obligation of contracts nor is it a legislative invasion of a judicial function, the appointment of a trustee. It does not substitute any new successor fiduciary but merely permits the old one to continue under a new name and within another corporate form. *First Minneapolis T. Co. v Lancaster Corp.* 185 M 121, 240 NW 459.

FEDERAL TAX. The issuance of stock by a consolidated corporation in exchange for the stock of constituent corporations is an original issue for purposes of a federal taxing act. The decision in *First Minneapolis T. Co. v Lancaster Corp.*

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 49.39 LIQUIDATION, REORGANIZATION AND CONSOLIDATION

374

185 M 121, 240 NW 459, is not binding in determining the applicability of a federal tax act. *First T. Co. of St. Paul v U. S.* 15 F. Supp. 634.

Contract made for its benefit becomes a contract of the corporation where corporation, after coming into existence, expressly or impliedly ratifies it; but promoter who contracted with manufacturing company for organizing distributing corporation and making himself president could not recover from manufacturing corporation for loss of salary resulting from its failure to deliver radio sets to distributing corporation. *Boatright v Steinite*, 46 F(2d) 385.

### 49.39 CONSOLIDATION OF BANKS AND TRUST COMPANIES.

HISTORY. 1931 c. 348; M Supp. s. 7699-9½.

The consolidating institutions continue their corporate existence in merged form in the consolidated corporation. The constituents of the new corporation have not lost their original identity which continues as one of the characteristics of the new corporation. *First Mpls. Trust v Lancaster Corp.* 185 M 121, 240 NW 459.

The combining of corporations may result in three possible situations: (1) a coalescence or union of two corporations, neither being extinguished; (2) an extinction of one corporation and its absorption by the other; and (3) a vital succession or the extinction of both original corporations and creation of a new one. The last is, strictly speaking a consolidation, the second merger. The first results where one corporation purchases or leases the property of another, or obtains control of its stock without intent to merge, and is consequently neither a merger nor a consolidation. *United States v Northwestern National*, 46 F. Supp. 390, 137 F(2d) 763.

### 49.40 PENDING ACTIONS OR PROCEEDINGS NOT AFFECTED.

HISTORY. 1925 c. 156 s. 6; M.S. 1927 s. 7699-10.

### 49.41 RIGHTS OF DISSENTING STOCKHOLDERS.

HISTORY. 1925 c. 156 s. 7; M.S. 1927's. 7699-11.