

CHAPTER 49

LIQUIDATION, REORGANIZATION,
CONSOLIDATION

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49.01 DEFINITIONS.

[For text of subs 1 and 2, see M.S.1986]

Subd. 3. "Investment company" means any person, copartnership, association, or corporation referred to in sections 54.26 to 54.29.

[For text of subs 4 to 6, see M.S.1986]

History: 1987 c 384 art 2 s 12

49.04 INVOLUNTARY LIQUIDATION OF FINANCIAL INSTITUTIONS.

Subdivision 1. Commissioner taking possession; grounds for; rights of third parties. When it shall appear to the commissioner that any financial institution has violated its charter, or any law of the state, or is conducting its business in an unsafe or unauthorized manner, or that its capital is impaired, or if it or any of its controlling officers shall refuse to submit its books, papers, and concerns to the inspection of the commissioner, or any duly authorized assistant, or if any of its officers shall refuse to be examined upon oath touching its concerns, or if it shall suspend payment of its obligations, or furnish reason for the commissioner concluding that it 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 it shall neglect or refuse to observe a proper order of the commissioner, the commissioner may forthwith take possession of its property and business including forfeiture of its certificate of authorization and retain this possession until it shall resume business or its affairs be finally liquidated, as herein provided. On taking possession of the property and business of any such financial institution, the commissioner shall forthwith give notice of that fact to any and all financial institutions or other corporations, associations, partnerships, and individuals holding, or in possession of, any of its assets. No financial institution or other corporation, association, partnership, or individual knowing of such taking possession by the commissioner, 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 financial institution of whose property and business the commissioner shall have taken possession, as aforesaid. The financial institution may, with the consent of the commissioner, resume business upon such conditions as may be approved by the commissioner. Upon taking possession of the property and business of the financial institution, the commissioner is authorized to collect money due to it 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 the commissioner's opinion it cannot safely resume business, as hereinafter provided.

[For text of subs 2 to 6, see M.S.1986]

History: 1987 c 349 art 1 s 23

49.05 POWERS AND DUTIES OF COMMISSIONER ON LIQUIDATION.

[For text of subs 1 to 6, see M.S.1986]

Subd. 7. **Commissioner may borrow money.** With respect to a banking institution which is or may be closed on account of inability to meet the demands of its depositors or by action of the commissioner or of a court or by action of its directors, or, in the event of its insolvency or suspension, the commissioner may borrow from the Federal Deposit Insurance Corporation and furnish any part or all of the assets of the institution to the corporation as security for a loan from same. The order of a court of record of competent jurisdiction shall be first obtained approving this loan. The commissioner or receiver or liquidator appointed by the commissioner upon the order of a court of record of competent jurisdiction may sell to the corporation any part or all of the assets of the institution.

The provisions of this subdivision shall not be construed to limit the power of any banking institution, or the commissioner, to pledge or sell assets in accordance with any other law of this state.

History: 1987 c 349 art 1 s 24

49.24 PROCEDURE IN LIQUIDATION.

[For text of subs 1 to 4, see M.S.1986]

Subd. 5. **Rejection of claims; actions; limitations.** If the commissioner doubts the justice or validity of any claim, the commissioner may reject the same in whole or in part 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. 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 such financial institution had its principal place of business prior to liquidation, and such action shall be brought jointly against the financial institution and the commissioner or receiver or liquidator appointed by the commissioner as statutory liquidator thereof. Any person having a claim against such financial institution which is not presented and filed within the time fixed in the notice to creditors may thereafter present the same and the commissioner shall allow or reject the same in whole or in part and give notice of any rejection, as hereinbefore provided. Suit on any such claim not filed within the time fixed by the notice which is rejected must 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 later 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, and any claim not filed prior to the declaration of a final dividend shall be barred. No action shall be commenced against any such financial institution after possession of the business and property thereof has been taken by the commissioner on any claim until such claim has been filed with and rejected, in whole or in part, by the commissioner. As to any action pending at the time the commissioner takes possession of the business and property of such financial institution which has been stayed by order of the court, a claim may be filed for the subject matter of said action. 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 stay order shall be vacated, and the action may continue. No interest shall be allowed or paid on any deposit or other claim from and after the closing of the financial institution and the taking over of the same by the commissioner for purposes of liquidation.

[For text of subs 6 to 17, see M.S.1986]

History: 1987 c 349 art 1 s 25

49.34 CONSOLIDATION OF STATE BANKS OR TRUST COMPANIES, PROCEDURE.

[For text of subd 1, see M.S.1986]

Subd. 2. **Acquisition of bank for operation as detached facility.** (a) Notwithstanding the geographic limitations of subdivision 1, and the distance limitations and consent requirements of section 47.52, a state bank may apply to the commissioner, pursuant to the procedures contained in sections 47.51 to 47.56 and 49.35 to 49.41, to acquire another state bank or national banking association and its detached facilities through merger, consolidation or purchase of assets and assumption of liabilities and operate them as detached facilities of the successor bank if the operation of them otherwise conforms to the limitations of section 47.52.

(b) In addition to the authority granted in paragraphs (a) and (c), and notwithstanding the geographic limitations of subdivision 1 and the limitations on number of facilities and consent requirements contained in section 47.52, a state bank whose main banking office is located within the county of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington may apply to the commissioner, pursuant to the procedures contained in sections 47.51 to 47.56 and 49.35 to 49.41, to acquire another state bank or national banking association and its detached facilities through merger, consolidation, or purchase of assets and assumption of liabilities and operate them as detached facilities of the successor bank if each resulting detached facility is located within the county of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, or Washington.

(c) Where the commissioner has determined that a merger, consolidation or purchase of assets and assumption of liabilities is necessary and in the public interest to prevent the probable failure of a state bank or national banking association, the limitations on location and number of detached facilities in section 47.52 shall not apply to the establishment of a detached facility directly resulting from such acquisition. The establishment of a detached facility in order to prevent the probable failure of a bank as provided in this subdivision shall not require the written consent of banks having a principal office in the municipality in which the resulting detached facility will be located, notwithstanding the provisions of section 47.52.

History: 1987 c 161 s 3

49.44 NATIONAL BANKING ASSOCIATION; CONVERSION, MERGER, CONSOLIDATION; STATE BANK.

A national banking association which is located in this state and which has taken the corporate action required therefor by the laws of the United States may convert into a state bank upon complying with the provisions applicable to the organization of a state bank except as herein otherwise provided. In such case the certificate of incorporation and the application for a certificate authorizing the proposed bank to transact business shall be executed by a majority of the directors of the national banking association and in addition thereto there shall be filed with the application a copy of the plan of conversion and a certificate signed by the president and the cashier of the national banking association setting forth the corporate action taken by the national banking association authorizing the conversion. The department of commerce may, at its discretion, dispense with the notice and hearing provided in section 46.041, if the granting of the certificate of authority will not increase the number of banks in the community affected. No certificate of deposit of an amount equal to the capital stock of the proposed bank shall be required but the president and the cashier of the national banking association shall certify to the commissioner of commerce that the association has a paid in and unimpaired capital not less than that specified in the certificate of incorporation of the proposed bank. Upon the conversion of a national banking association into a state bank as herein provided, the corporate existence of the national banking association shall be merged into that of the state bank 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 inure to it under an unconverted existence shall be deemed fully and finally transferred to and vested in the state bank without further act or deed and the state bank shall have and hold the same in its own right as fully as the same was possessed and held by the national banking association from which it was by operation hereof transferred. Its rights, obligations, and relations to any person, creditor, depositor, trustee, or beneficiary of any trust shall remain unimpaired and the state bank into which it shall have been converted 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 conversion, nor shall any obligation or liability of any stockholder of the national banking association be affected by such conversion, but these obligations and liabilities shall continue as fully and to the same effect as existed before the conversion. The state bank shall become without further act or deed the successor of the national banking association in any and all fiduciary capacities in which the national banking association may be acting at the time of the conversion and shall be liable to all beneficiaries as fully as if the national banking association had continued its existence as such. If the national banking association shall be nominated or appointed or shall have been nominated or appointed as executor, guardian, administrator, agent or trustee, or in any other trust relation or fiduciary capacity in any will, trust agreement, trust conveyance or any other conveyance, order or judgment of any court or any other instrument prior to the conversion, even though the will or other instrument shall not become operative or effective until after the conversion 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 national banking association so nominated or appointed shall fully and in every respect devolve upon, vest in, and inure to and be exercised by the state bank into which the national banking association shall have been converted.

History: 1987 c 384 art 2 s 13