

**PROPOSED CHANGES TO THE  
NORTH CAROLINA BANKING LAWS – CHAPTER 53 OF THE GENERAL STATUTES  
ARTICLE 9A ADDRESSES SUPERVISORY LIQUIDATION; VOLUNTARY DISSOLUTION AND LIQUIDATION**

Current Section(s)	Summary	New Section	Summary	Explanation of Change
<b>Article 9A Supervisory Liquidation; Voluntary Dissolution and Liquidation.</b>				
No corresponding section.	N/A	<b>53-9-101</b>	<b>53-9-101. Supervisory combinations.</b> This section provides the Commissioner with a powerful tool for dealing with a severely troubled bank. In order to protect the public, including depositors and creditors of the bank, upon a finding that the bank is unable to operate in a safe and sound manner and is not reasonably likely to be able to resume safe and sound operations, the Commissioner may authorize or require a combination or other control transaction. The Commissioner is not required to take supervisory control of the bank pursuant to 53-8-14. The Commissioner may order that the transaction take place without the vote of the equity owners of the bank which would otherwise be required.	This provision gives specific authority to the Commissioner to utilize important tools for resolving the problems presented by a struggling bank. Quite commonly the best resolution, if one can be arranged, is a supervisory consolidation with a healthy institution.
53-20(g). Liquidation of banks.	53-20(c) and (g) grant broad authority to the Commissioner to take possession of a bank and to collect all debts and claims due the bank of whatever nature. It bars the officers and directors of the bank from exercising any powers that are vested in the Commissioner under this section.	<b>53-9-102</b>	<b>53-9-102. Distributions, assignments restricted.</b> This section prohibits a bank in the process of either voluntary or involuntary dissolution from paying distributions to its shareholders without the prior written consent of the Commissioner. The bank may not make a general assignment of its assets for the benefit its creditors except by surrendering the assets to the Commissioner for dissolution and liquidation. Any other purported assignment is rendered void by this section.	The substance of the new provision falls within the limitations encompassed in the relevant subsection of existing law.

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No corresponding section.	N/A	<b>53-9-103</b>	<b>53-9-103. Cancellation of charter.</b> This section sets forth the procedural requirement that the Commissioner cancel the charter, publishing notice of the cancellation, of any bank that ceases to exist or ceases to be eligible for a charter. A copy of the order is to be filed with the Secretary of State. The former bank is permitted to operate under Chapter 55, the N.C. Business Corporations Act, for so long as necessary to dissolve and liquidate its business and affairs.	This section is completely procedural in nature and covers the final steps taken in the liquidation of a bank. Charter in this context refers to the document issued by the Commissioner that permits the corporation to do business as a bank.
No corresponding section.	N/A	<b>53-9-201</b>	<b>53-9-201. Voluntary dissolution prior to receipt of charter.</b> Prior to issuance of a charter, a bank in formation may give notice to the Commissioner and, with the Commissioner's consent, abandon its application. With a majority vote of its board of directors, it may dissolve and liquidate under Chapter 55, the N.C. Business Corporations Act.	The new provision allows a simpler process for voluntary dissolution of a bank in formation, prior to receipt of its charter.
53-18. Voluntary liquidation	53-18 authorizes voluntary dissolution upon affirmative vote of two-thirds of its stockholders at a duly called meeting upon resolution of the board of directors. 10 days notice to stockholders is required. Where the stockholders vote for dissolution, a certified copy of the proceedings must be sent to the Commissioner for his approval. If the Commissioner approves, he or she is directed to issue a permit to dissolve. The permit is not to be issued until the Commissioner is satisfied that the bank has made adequate provision to pay off all of its depositors and creditors. If not so satisfied, the Commissioner is	<b>53-9-202</b>	<b>53-9-202. Voluntary dissolution.</b> This provision authorizes a bank, with the Commissioner's approval, to undertake a voluntary dissolution and liquidation. Subsection (b) lists the items that must be provided to the Commissioner by the board of directors of a bank that has determined to voluntarily dissolve: (i) the resolution of the board; (ii) the proposed articles of dissolution; (iii) the plan for dissolution; and (iv) any notices or proxy solicitation materials proposed to be sent to the shareholders. Subsection (c) authorizes the Commissioner to review all relevant materials and to authorize the plan to proceed as provided in 53-9-203. Subsection (d) requires a two-thirds vote of the shareholders to approve a voluntary dissolution and liquidation. Subsection (e) authorizes the	The new provision is much clearer and better organized than existing law in laying out the process for seeking voluntary dissolution. The stockholder vote required, two-thirds, remains unchanged.

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	authorized to deny the permit and take possession of the bank and liquidate the bank as provided in Chapter 53. When the Commissioner does issue the permit, the directors of the bank must publish notice in the newspaper that it is liquidating and advising depositors and creditors to present their claims for payment. The notice must be published once a week for four weeks. A bank in liquidation is subject to examination by the Commissioner and required to provide any report he or she may request. All unpaid claims are subject to the escheats law. When approved by the Commissioner, the bank may transfer all of its assets to another institution. Such action requires a two-thirds vote of the board of directors. A certified copy of the minutes and the contract for the sale and transfer must be provided to the Commissioner. A certified copy of the Commissioner's order permitting liquidation or sale and transfer of assets, filed in the office of the Secretary of State, shall authorize the cancellation of the charter of the bank, but it may continue to exist under corporate law.		Commissioner to place a bank in receivership if a majority of its board of directors believes it should be dissolved and liquidated but finds it inadvisable or otherwise impractical to proceed with a vote of the equity owners.	
53-18. Voluntary liquidation 53-20(b). Liquidation of banks.	53-18 authorizes voluntary dissolution upon affirmative vote of two-thirds of its stockholders at a duly called meeting upon resolution of the board of directors. 10 days notice to stockholders is required. Where the stockholders vote for dissolution, a	<b>53-9-203</b>	<b>53-9-203. Voluntary dissolution and liquidation procedure.</b> This section sets forth the process for accomplishing a voluntary dissolution and liquidation. Subsection (a) directs the Commissioner, at the appropriate time to: (i) notify the bank's federal supervisory agency and the FDIC, if different; (ii) select and appoint a	The new provision sets forth the final procedural steps in accomplishing the dissolution and liquidation.

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	<p>certified copy of the proceedings must be sent to the Commissioner for his approval. If the Commissioner approves, he or she is directed to issue a permit to dissolve. The permit is not to be issued until the Commissioner is satisfied that the bank has made adequate provision to pay off all of its depositors and creditors. If not so satisfied, the Commissioner is authorized to deny the permit and take possession of the bank and liquidate the bank as provided in Chapter 53. When the Commissioner does issue the permit, the directors of the bank must publish notice in the newspaper that it is liquidating and advising depositors and creditors to present their claims for payment. The notice must be published once a week for four weeks. A bank in liquidation is subject to examination by the Commissioner and required to provide any report he or she may request. All unpaid claims are subject to the escheats law. When approved by the Commissioner, the bank may transfer all of its assets to another institution. Such action requires a two-thirds vote of the board of directors. A certified copy of the minutes and the contract for the sale and transfer must be provided to the Commissioner. A certified copy of the Commissioner's order permitting liquidation or sale and transfer of assets, filed in the office of the Secretary of State, shall authorize</p>		<p>receiver, just as in an involuntary dissolution; and (iii) attach a certificate of approval to the articles of dissolution, which may then be filed with the Secretary of State.</p>	

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	the cancellation of the charter of the bank, but it may continue to exist under corporate law. 52-20(b) provides for action by a bank's board of directors, by resolution of a majority, to place the bank within the control of the Commissioner.			
53-19. When Commissioner of Banks may take charge. 53-20. Liquidation of banks. 53-37. Conditions under which banks may reopen.	53-19 provides that the Commissioner may take charge of a bank when any one of 10 listed factors exists, ranging from improper actions by responsible parties to impaired capital stock, unsafe or unsound operation or making a voluntary assignment of assets to creditors. 53-20 addresses all aspects of liquidation of a bank. Subsection (a) directs the Commissioner to take control of a bank that exhibits any one of a number of listed weaknesses including failure to follow the banking laws, regulations or requirements of the Commission, failure to make required reports to the Commissioner, becomes insolvent or is operating in an unsafe or unsound manner. Subsection (c) requires the Commissioner, within 48 hours of taking possession of a bank, to file a notice with the Clerk of Superior Court in the county where the bank is located stating that the action has been taken and the reason therefore. Filing that notice acts as a bar to any attachment or other legal proceeding against the bank or its assets. Subsection (d)	<b>53-9-301</b>	<b>53-9-301. Receivership.</b> This lengthy section addresses all aspects of receivership. Subsection (a) authorizes the Commissioner to take custody of the books, records and assets of a bank in a voluntary dissolution as set forth in Part 2 of this Article or if it reasonably appears from one or more examinations that any one of 9 listed factors are present ranging from inappropriate acts by officers, directors or liquidators of the bank to the bank's insolvency; or inability to continue operations. Subsection (b) sets forth the process for notifying the bank of the pending receivership and holding a hearing in those cases where an emergency requiring immediate action does not exist. Subsection (c) authorizes the Commissioner to appoint one or more receivers. Subsection (d) authorizes the Commissioner to appoint the FDIC as receiver and, upon so doing, relieves the Commissioner of any further responsibility. Subsection (e) addresses serving notice of the receivership on the bank and requires posting of public notice at each branch and by publication as defined in the definition section. Subsection (f) sets forth the general incidents of the appointment of a receiver, generally specifying that the receiver takes control and is not subject to the oversight of the officers, directors or shareholders of the bank. Subsection (g) sets forth the powers of the	The new provision and current law cover the same subject matter in largely equivalent ways. The new provision sets forth the procedure in clearer and more contemporary language. It eliminates reference to pending liquidations in the 1920s and 1930s.

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	<p>requires notice be given by the Commissioner of the action of taking possession of the bank to all banks or other entities in possession of any assets of the bank. No liens attach to any such assets after possession is taken by the Commissioner except as set forth in this section. Subsection (e) allows the bank to resume business only as provided in § 53-37 after the Commissioner has taken possession. Subsection (f) provides a process by which a bank may oppose the Commissioner's order to take possession of the bank and to seek an injunction from the Superior Court to halt the Commissioner. If the bank prevails at the hearing under this subsection and the Court allows it to reopen, the Court may require appropriate bond. Subsection (g) grants broad authority to the Commissioner in possession of a bank to collect all debts and claims due the bank of whatever nature. It bars the officers and directors of the bank from exercising any powers that are vested in the Commissioner under this section. Subsection (h) requires a bond of the Commissioner or the Commissioner's agent in the minimum amount of \$5000. In the event that the FDIC is appointed as the Commissioner's agent, no such bond is required. Subsection (i) requires the Commissioner to file within 30 days an inventory of the assets and liabilities of</p>		<p>receiver, which are expansive and include all aspects of running the bank. Those powers continue until the bank is liquidated or returned to the prior or newly constituted management. Subsection (h) authorizes the Commissioner to determine that the receivership proceedings should be discontinued (except where the FDIC is the receiver) and to order the return of the operation of the bank to newly constituted management. Subsection (i) lists the priority of claims against a bank in receivership. Subsection (j) addresses allocation of available funds to the various classes of claims. Subsection (k) grants the Commissioner discretion in the payment of claims. Subsection (l) sets forth the procedure for accomplishing the dissolution of the bank when all assets have been liquidated. It provides for the transfer of unclaimed property to the Escheats Fund. The Commissioner conducts a review of the actions of the receiver and, upon approval, the receiver is given a final discharge and release.</p>	

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	<p>the bank in his possession with the Clerk of the superior court in the action and to maintain a copy at the bank. Subsection (j) requires newspaper publication of a notice once a week for 4 weeks calling on persons with claims against the bank to present the claims to the Commissioner at the bank within the time specified in the notice which must allow at least 90 days from the first publication. Subsection (k) addresses the process for rejecting claims, appealing rejections, or filing by interested parties of objections to claims not rejected by the Commissioner. Subsection (l) requires that the Commissioner file a list of claims presented and deposits, including and specifying claims rejected by him and file it with the Clerk, maintaining a copy in the bank's records with the inventory for examination. It addresses payment of claims filed late with assets remaining after valid claims have been paid. After 3 months, any remaining funds are to be paid to the Escheats Fund. Subsection (m) addresses when payments of dividends to stockholders and depositors may be made by the Commissioner in possession and sets forth the priority for distribution of assets of the bank under this subsection. Subsection (n) deals with deposits of collected funds in other banks and payment of interest on those deposits. Subsection (o)</p>			

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	<p>authorizes the Commissioner to retain the services of attorneys, accountants and Clerks and to pay them from the funds of the bank upon approval of the resident or presiding judge. Subsection (p) provides that the Commissioner is to hold unpaid dividends in trust for 10 years at which time he is to pay them over to the Treasurer and at that point the Commissioner is completely discharged. Subsection (q) provides that when the sums available to the Commissioner are insufficient to pay all valid claimants, the Commissioner is to file a report with the Clerk and is thereafter discharged. Subsection (r) directs the Commissioner, after he has paid all expenses of liquidation and every depositor and creditor of the bank, to call a meeting of the bank's stockholders by mail and also by newspaper publication once a week for four weeks. At the meeting, the stockholders will elect an agent to receive from the Commissioner any assets of the bank still remaining in the Commissioner's hands. The Commissioner is to transfer those assets to the agent and file a complete report of all the transactions taken with the Clerk. The filing of the report will service as a complete and final discharge of the Commissioner from all liability for the liquidation of the bank. The agent is directed to convert all assets to cash and to distribute the cash</p>			

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	<p>to the stockholders as directed by them. As long as assets remain in the agents hands, the agent must file semiannual reports with the Commissioner. Subsection (s) directs the Commissioner to include in his annual report to the Governor a list of all banks liquidated pursuant to this section and to prepare periodically reports available for inspection by the public of all such banks. Subsection (t) authorizes the Commissioner to reimbursement by the bank of actual expenses incurred under this section. Subsection (u) makes the provisions of this section the exclusive procedure for liquidation of a bank. Subsection (v) deals with the applicability of the section to banks in the process of liquidation when the law was passed in 1927. Subsection (w) is another applicability provision, this one dealing with banks in existence on or after January 1, 1936. Subsection (x) directs that any funds due to a known but unlocated depositor are to be paid to the escheats fund as provided in Chapter 116B except as otherwise specifically provided in Chapter 53. 53-37 permits bank that has been under control of the Commissioner to reopen under specified conditions, essentially requiring that the circumstances warranting the Commissioner's taking control of the bank have been successfully addressed.</p>			

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53-22. Statute relating to receivers applicable to insolvent banks.	53-22 makes §§ 1-507.1 through 507.11, dealing with receivers or corporations, applicable to the liquidation and dissolution of a bank if not inconsistent with the provisions of 53-20.	<b>53-9-401</b>	<b>53-9-401. Statute relating to receivers applicable to insolvent banks.</b> This provision makes §§ 1-507.1 through 507.11, dealing with receivers or corporations, applicable to the liquidation and dissolution of a bank if not inconsistent with the provisions of Article 9A.	There is no substantive change.
53-23. Disposition of books, records, etc. 53-24. Destruction of records of liquidated insolvent banks.	53-23 requires the books and records of a liquidated bank to be deposited by the receiver in the office of the Clerk of Superior Court of the county in which the bank is located or such other place as the receiver believes will provide for proper safekeeping. The documents are to be held subject to the order of the Commissioner or the Clerk. 53-24 provides that after 10 years, the Clerk may destroy the records by burning them in the presence of the register of deeds and the sheriff of the county. After 10 years, the Commissioner may burn any records of the liquidated bank in his or her possession. The authority does not extend to any records held by the Clerk or Commissioner relating to the liquidation of the bank.	<b>53-9-402</b>	<b>53-9-402. Storage and destruction of records.</b> This section deals with the records of the dissolved bank, requiring the Commissioner to maintain them as required for bank records under § 53-6-14. After five years, the Commissioner is authorized to destroy the bank's records, but not OCOB's records regarding the bank, its receivership or dissolution.	The new provision does not involve the Clerk of Superior Court in the maintenance of the liquidated banks records and requires that the records only be maintained for 5 years before they may be destroyed by the Commissioner. The new provision does not prescribe a particular means of destruction beyond one that is "commercially reasonable."
53-25. Trust terminated on insolvency of trustee bank.	53-25 provides for the appointment by the Clerk of Superior Court of a successor trustee, upon petition, for any bank that is a trustee in any instrument upon the placement of that bank in receivership.	<b>53-9-403</b>	<b>53-9-403. Trust terminated on insolvency of trustee bank.</b> This section provides for the appointment by the Clerk of Superior Court of a successor trustee, upon petition, for any bank that is a trustee in any instrument upon the placement of that bank in receivership.	No substantive difference.
53-26. Petition for new trustee; service upon parties	53-26 section sets forth the process for petitioning for a substitute trustee and the notice that must be given to all	<b>53-9-404</b>	<b>53-9-404. Petition for new trustee; service upon parties interested.</b> This section sets forth the process for petitioning for a substitute trustee	The new provision incorporates all of the substance of the existing law except the requirement of publication in a newspaper.

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interested. 53-27. Publication and contents of notice.	interested parties, and published in the newspaper, to show cause why a substitute trustee should not be appointed. 53-27 requires that the notice set forth the names of the parties to the instrument, the date of the instrument and the place where it is recorded.		and the notice that must be given to all interested parties to show cause why a substitute trustee should not be appointed. The notice must set forth the names of the parties to the instrument, the date of the instrument and the place where it is recorded.	
53-28. Appointment where no objection is made.	53-28 provides that if no interested party appears at the hearing to object to the appointment of a substitute trustee, this section authorizes the Clerk of Superior Court to proceed with the appointment.	<b>53-9-405</b>	<b>53-9-405. Appointment of substitute trustee where no objection made.</b> If no interested party appears at the hearing to object to the appointment of a substitute trustee, this section authorizes the Clerk of Superior Court to proceed with the appointment.	No substantive difference.
53-29. Hearing where objection made; appeal from order.	53-29 directs the Clerk of Superior Court to hold a hearing where there is objection to the appointment and to decide the matter. The Clerk's decision may be appealed as in the case of special proceeding generally.	<b>53-9-406</b>	<b>53-9-406. Hearing where objection made, appeal from order.</b> This section directs the Clerk of Superior Court to hold a hearing where there is objection to the appointment and to decide the matter. The Clerk's decision may be appealed as in the case of special proceedings generally.	No substantive difference.
53-30. Registration of final order.	53-30 directs that the final appointment of a substitute trustee is to be certified by the Clerk of Superior Court and recorded in the office of the Register of Deeds in the county or counties in which the instrument under which the appointment has been made is recorded. It requires the register of deeds to enter "a minute" of the substitution in the margin of the record where the original instrument is recorded.	<b>53-9-407</b>	<b>53-9-407. Registration of final order.</b> This section provides that the final appointment of a substitute trustee is to be certified by the Clerk of Superior Court and recorded in the office of the Register of Deeds in the county or counties in which the instrument under which the appointment has been made.	The new provision does not require annotation of the original record to reflect the substitution of the trustee.
53-31. Petition and order applicable to all instruments	53-31 permits the order appointing a substitute trustee to apply to more than one instrument so long as each names	<b>53-9-408</b>	<b>53-9-408. Petition and order applicable to all instruments involved.</b> This section permits the order appointing a substitute trustee to apply to	No substantive difference.

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involved.	the same trustee.		more than one instrument so long as each names the same trustee.	
53-32. Additional remedy.	53-32 states that the appointment of a substitute trustee is in addition to and not in place of any other remedy provided by law.	<b>53-9-409</b>	<b>53-9-409. Additional remedy.</b> This section states that the appointment of a substitute trustee is in addition to and not in place of any other remedy provided by law.	No substantive difference.