

## Article 9.

### Supervisory Liquidation; Voluntary Dissolution and Liquidation.

#### Part 1. General Provisions.

##### **§ 53C-9-101. Supervisory combinations.**

Notwithstanding any other provision of this Chapter, in order to protect the public, including depositors and creditors of a bank, the Commissioner, upon making a finding that a 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, may authorize or require a combination of the bank, a control transaction, or any other transaction, whether or not the Commissioner has taken supervisory control pursuant to G.S. 53C-8-14. In ordering any such combination, control transaction, or other transaction, the Commissioner may order that a vote of the bank's shareholders shall not be required to effect the combination, control transaction, or other transactions. (2012-56, s. 4.)

##### **§ 53C-9-102. Distributions; assignments restricted.**

A bank that is in the process of involuntary or voluntary dissolution pursuant to this Article may not make or pay distributions to its shareholders unless the bank has the prior written approval of the Commissioner. No bank shall make any general assignment for the benefit of its creditors except by surrendering possession of its assets to the Commissioner for dissolution and liquidation pursuant to G.S. 53-9-301, and any other purported assignment by the bank for the benefit of its creditors shall be void. (2012-56, s. 4.)

##### **§ 53C-9-103. Cancellation of charter.**

Whenever a combination, dissolution, or other transaction occurs by which a bank ceases to exist or ceases to be eligible for a charter, the Commissioner shall by order cancel the bank's charter and shall publish the order in accordance with G.S. 53-1-4(59). A copy of the order shall be filed by the Commissioner with the Secretary of State. The bank shall continue to exist under Chapter 55 of the General Statutes for the purpose of dissolving and liquidating its business and affairs. (2012-56, s. 4.)

#### Part 2. Voluntary Dissolution and Liquidation.

##### **§ 53C-9-201. Voluntary dissolution prior to receipt of charter.**

A bank in formation may, prior to issuance of its charter, give notice to the Commissioner and, with the Commissioner's consent, abandon its application to the Commissioner and dissolve and liquidate by a majority vote of its board of directors and as provided under Chapter 55 of the General Statutes. (2012-56, s. 4.)

##### **§ 53C-9-202. Voluntary dissolution.**

(a) With the approval of the Commissioner, a bank may engage in a voluntary dissolution and liquidation.

(b) If, by a majority vote, the board of directors of a bank should determine that in their judgment the bank should be dissolved and liquidated, then the board of directors shall submit immediately to the Commissioner the following documents, certified by an appropriate officer of the bank:

- (1) The board of directors' resolution.
- (2) The bank's proposed articles of dissolution.
- (3) The board of directors' plan for liquidation.

(4) Any notices or proxy solicitation materials proposed to be sent to shareholders.

(c) The Commissioner shall examine the documents submitted under subsection (b) of this section and such other matters as the Commissioner deems relevant and may issue an order authorizing the bank and its board of directors to proceed with dissolution and liquidation as provided in G.S. 53C-9-203. Examination by the Commissioner of the materials referred to in subsection (b)(4) of this section shall not be deemed to be approval of the documents for any purpose.

(d) At any annual or special meeting of shareholders called for the purpose of voting upon a proposal for voluntary dissolution of a bank, the shareholders of the bank may, by an affirmative vote, in person or by proxy, of the holders of shares representing at least two-thirds of the votes entitled to be cast on such matters, resolve to dissolve and liquidate the bank in accordance with the order of the Commissioner issued under subsection (c) of this section.

(e) If a majority of the board of directors of a bank should determine that in its best judgment the bank should be dissolved and liquidated but deems it impractical or otherwise inadvisable to proceed with a vote upon voluntary dissolution by the shareholders, then the board of directors shall immediately forward a certified copy of its resolution to the Commissioner and the Commissioner shall place the bank in receivership pursuant to G.S. 53C-9-301. (2012-56, s. 4.)

**§ 53C-9-203. Voluntary dissolution and liquidation procedure.**

(a) At the appropriate time, the Commissioner shall do the following:

- (1) Inform the FDIC and the bank's federal supervisory agency if other than the FDIC.
- (2) Select and appoint a receiver or receiver in liquidation, just as if the liquidation were involuntary under G.S. 53C-9-301.
- (3) Attach a certificate of approval to the articles of dissolution, and the bank shall then file the certified articles with the Secretary of State.

(b) Upon the filing of the articles of dissolution with the Secretary of State, it shall be unlawful for the bank to accept any additional deposit accounts or additions to deposit accounts or make any additional extensions of credit, but all its income and receipts in excess of actual expenses of liquidation of the bank shall be applied to the discharge of its liabilities.

(c) The persons charged with liquidation of the bank in the approved plan of dissolution shall cause to be published a public notice stating the bank has closed and will dissolve and liquidate and notifying its depositors and creditors to present their claims for payment, specifying the method for doing so.

(d) The bank may pay reasonable compensation, subject to the approval of the Commissioner, to the persons charged with its liquidation.

(e) Any bank in the process of voluntary dissolution and liquidation shall be subject to examination by the Commissioner and shall furnish any reports required by the Commissioner.

(f) If the Commissioner determines at any time that the voluntary liquidation plan is not working, the Commissioner may place the bank in receivership pursuant to G.S. 53C-9-301. (2012-56, s. 4.)

Part 3. Receivership; Involuntary Dissolution.

**§ 53C-9-301. Receivership.**

(a) The Commissioner may take custody of the books, records, and assets of every kind and character of any bank in the instances established in Part 2 of this Article or if it reasonably appears from one or more examinations made by the Commissioner that any of the following conditions exist:

- (1) The directors or officers of the bank, or the liquidators of the bank subject to a voluntary plan of liquidation, have neglected, failed, or refused to take action that the Commissioner deems necessary for the protection of the bank.
- (2) The directors, officers, or liquidators of the bank have impeded or obstructed an examination.
- (3) The business of the bank is being conducted in a fraudulent, illegal, or unsafe manner.
- (4) The bank is in an unsafe or unsound condition to transact business and it is not reasonably probable that it will be able to return to a safe and sound condition.
- (5) The capital of the bank is impaired such that the likely realizable value of its assets is insufficient to pay and satisfy the claims of all depositors and all creditors.
- (6) The directors or officers of the bank, or the liquidators of a bank subject to a voluntary plan of liquidation, have assumed duties or performed acts in excess of those authorized by applicable statutes or regulations, by the bank's organizational documents or plan of liquidation, or without supplying the required bond.
- (7) The bank is insolvent or is in imminent danger of insolvency or has suspended its ordinary business transactions due to insufficient funds.
- (8) The bank is unable to continue operations.

(b) Unless the Commissioner reasonably finds that an emergency exists that requires that the Commissioner take custody immediately, the Commissioner shall first give written notice to the board of directors of the bank specifying which of those circumstances listed in subdivisions (1) through (8) of subsection (a) have been determined to exist and shall allow a reasonable time in which corrections may be made before a receiver of the bank will be appointed as outlined in subsections (c) and (d) of this section. For these purposes, "written notice" shall be deemed to include any report of examination or other confidential or nonconfidential written communication that is either directly from the Commissioner or is joined in by the Commissioner.

(c) The Commissioner shall appoint as receiver or coreceivers one or more qualified persons for the purpose of receivership and liquidation of the bank of which the Commissioner has taken custody under subsection (a) of this section, which receiver shall furnish a bond in such form and amount, and with such surety, as the Commissioner may require.

(d) The Commissioner may appoint the FDIC or its nominee as the receiver, and the receiver shall be permitted to serve without posting bond. In the event of such an appointment, the Commissioner shall thereafter be forever relieved of any and all responsibility and liability in respect to the receivership and the liquidation of the bank.

(e) In the event the Commissioner takes custody of a bank and then appoints a receiver for the bank, the Commissioner shall serve personally at the bank's principal office through the officer who is present and appears to be in charge, the Commissioner's order taking possession and, if applicable, the Commissioner's order appointing a receiver for the bank in liquidation. The Commissioner shall also mail a certified copy of the order taking possession and the appointing order by certified mail or by express delivery to any previous receiver or other legal custodian of

the bank and to the Clerk of Superior Court of Wake County. The Commissioner shall give notice to the public of the Commissioner's actions by posting a notice summarizing the Commissioner's actions near the entrance to each branch of the bank, and the Commissioner shall issue a similar public notice as defined in G.S. 53C-1-4(59).

(f) Whenever a receiver for a bank is duly appointed and qualified under subsection (c) or (d) of this section:

- (1) The receiver, by operation of law and without any conveyance or other instrument, act, or deed, shall succeed to all the rights, titles, powers, and privileges of the bank, its shareholders, officers, and directors, or any of them, and to the titles to the books, records, and assets of every description of any previous receiver or other legal custodian of the bank. Neither the shareholders, officers, or directors, nor any of them, shall thereafter, except as expressly provided in this section, have or exercise any rights, powers, or privileges or act in connection with any assets or property of any nature of the bank in receivership.
- (2) The Commissioner may, at any time, direct the receiver (unless it is the FDIC) to return the bank to its previous or a newly constituted management and its shareholders.
- (3) A receiver, other than the FDIC, may, at any time during the receivership and before final liquidation, be removed and a replacement appointed by the Commissioner.

(g) A receiver may perform any of the following acts:

- (1) Demand, sue for, collect, receive, and take into possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, instruments, notes, intangible interests, and property of every description of the bank.
- (2) Foreclose mortgages, deeds of trust, and other liens granted to the bank to the extent the bank would have the right to do so.
- (3) Seek injunctions and institute suits for the recovery of any property, damages, or demands existing in favor of the bank, and shall, upon the receiver's own application, be substituted as party plaintiff in the place of the bank in any suit or proceeding pending at the time of the receiver's appointment.
- (4) Sell, convey, and assign any or all of the property rights and interests owned by the bank.
- (5) Appoint agents and engage independent contractors.
- (6) Examine papers and investigate persons.
- (7) Make and carry out agreements with the FDIC for the payment or assumption of the bank's liabilities, in whole or in part, and to sell, convey, transfer, pledge, or assign assets as security or otherwise and to make guarantees in connection therewith.
- (8) Perform all other acts that might be done by the employees, officers, and directors of the bank.

These powers shall be continued in effect until liquidation of the bank or until return of the bank to its prior or newly constituted management.

(h) The Commissioner may, unless the FDIC has been appointed as receiver, determine that the receivership proceedings of a bank should be discontinued and the possession of the bank

returned to newly constituted management. The Commissioner shall then remove the receiver and restore all the rights, powers, and privileges of the bank's depositors, shareholders, customers, employees, officers, and directors. The return of a bank to a newly constituted management from the possession of a receiver shall, by operation of law and without any conveyance or other instrument, act, or deed, vest in the bank the title to all property held by the receiver in the capacity as receiver for the bank.

(i) Claims against a bank in receivership shall have the following order of priority for payment:

- (1) Costs, expenses, and debts of the bank incurred on or after the date of the appointment of the receiver, including compensation for the receiver and a reasonable sum for the time of employees and agents of the OCOB.
- (2) Claims of holders of deposit accounts.
- (3) Claims of secured creditors in such order of priority as is established by applicable law or regulation.
- (4) Claims of general creditors.
- (5) Claims of holders of the bank's shares in the order of preference established by the bank's organizational documents.

(j) All claims of each class described within subsection (i) of this section shall be paid in full so long as sufficient assets are available therefor. Members of a class for which the receiver cannot make payment in full shall be paid an amount proportionate to their total claims.

(k) The Commissioner may direct the receiver to make payment of claims for which no provision is made in this section and may direct the payment of less than all claims within a class.

(l) When all assets of the bank have been fully liquidated, all claims and expenses have been paid or settled, and the receiver has recommended a final distribution, the dissolution of the bank in receivership shall be accomplished in the following manner:

- (1) The receiver shall file with the Commissioner a detailed report, in a form to be prescribed by the Commissioner, of the receiver's acts and proposed final distribution of the bank's assets.
- (2) Upon the Commissioner's approval of the final report of the receiver, the receiver shall make the final distribution of the bank's assets in any manner as the Commissioner may direct.
- (3) When any unclaimed property, including funds due to a known but unlocated depositor, remains following the final distribution of the bank's assets, such property shall be promptly transferred to the State Treasurer to hold in accordance with the provisions of Chapter 115B of the General Statutes.
- (4) Upon completion of the actions described in this subsection, the process of dissolution and liquidation of the bank shall be deemed complete, and the Commissioner shall issue a certification of completed liquidation to the Secretary of State.
- (5) Upon completion of the process of dissolution and liquidation, the Commissioner shall cause an examination of the receiver's activities and records to be conducted, with which the receiver shall assist. The accounts of the receiver shall then be ruled upon by the Commissioner, and if approved, the receiver shall be given a final and complete discharge and release. (2012-56, s. 4.)

Part 4. Provisions Relating to Any Dissolution or Receivership.

**§ 53C-9-401. Article relating to receivers applicable to insolvent banks.**

Article 38A of Chapter 1 of the General Statutes, relating to receivers, when not inconsistent with the provisions of this Article, applies to the liquidation of banks under this Article. (2012-56, s. 4; 2021-93, s. 9.)

**§ 53C-9-402. Storage and destruction of records.**

(a) Any record of a bank that is in or has completed the process of dissolution and liquidation may be kept in compliance with the provisions of G.S. 53C-6-14.

(b) All records of a bank that has completed the process of dissolution and liquidation shall be held in such place as in the Commissioner's judgment will provide for their proper safekeeping and protection.

(c) After the expiration of five years from the date of filing of the certificate of completed liquidation under G.S. 53C-9-301, the records of the liquidated bank may be destroyed by the Commissioner using commercially reasonable record destruction procedures.

(d) Nothing in this section shall be construed to authorize the destruction by the Commissioner of any of the records of the OCOB made by it with reference to the dissolution, receivership, or liquidation of any bank. (2012-56, s. 4.)

**§ 53C-9-403. Authority to serve as trustee terminated.**

Whenever any bank that has been, or shall be, appointed trustee in any indenture, deed of trust, or other instrument of like character, executed to secure the payment of any bonds, notes, or other evidences of indebtedness, has been or shall be placed in receivership, a new trustee shall be appointed in the manner provided in G.S. 36C-7-704 or other applicable law, and the powers and duties of the bank as trustee in any such instrument shall immediately cease. (2012-56, s. 4; 2013-29, s. 19.)

**§ 53C-9-404. Petition for new trustee; upon parties interested.**

In all cases of dissolution receivership and liquidation under this Article, the clerk of superior court of any county in which an indenture, deed of trust, or other instrument of like character is recorded shall, upon the verified petition of any person interested in any such trust, either as trustee, beneficiary, or otherwise, which interest shall be set out in the petition, enter an order directing service, in the manner required by law for service of summons, on all interested parties of a notice requiring all persons having any interest in the trust to appear at the clerk's office on a day designated in the order and notice, not less than 30 days from the date of the first publication of the notice, and show cause why a new trustee shall not be appointed. The notice shall set forth the names of the parties to the indenture, deed of trust, or other such instrument, and the date the documents were executed and the place of recording. (2012-56, s. 4.)

**§ 53C-9-405. Appointment of substitute trustee where no objection made.**

If, upon the day fixed in the notice, no person appears and objects to the appointment of a substitute trustee, the clerk of superior court shall, upon such terms as he or she deems advisable to the best interest of all parties, appoint a competent person authorized to act as substitute trustee, who shall be vested with and shall exercise all the powers conferred upon the trustee named in the instrument. (2012-56, s. 4.)

**§ 53C-9-406. Hearing where objection made; appeal from order.**

If objection is made to the appointment of a new trustee under this Part, the clerk shall hear and determine the matter, and from his or her decision an appeal may be prosecuted as in cases of special proceedings generally. (2012-56, s. 4.)

**§ 53C-9-407. Registration of final order.**

The final order of appointment of a new trustee or trustees under this Part shall be certified by the clerk of superior court issuing the order and shall be 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. (2012-56, s. 4.)

**§ 53C-9-408. Petition and order applicable to all instruments involved.**

The petition and the order appointing a new trustee or trustees under this Part may apply to any number of indentures, deeds of trust, or other instruments, wherein the same trustee or trustees are named. (2012-56, s. 4.)

**§ 53C-9-409. Additional remedy.**

The appointment of a substitute trustee as described in this Part shall be in addition to and not substitution for any other remedy provided by law. (2012-56, s. 4.)