

IC 28-1-3.1

Chapter 3.1. Liquidation of Financial Institutions

IC 28-1-3.1-1

Definitions

Sec. 1. (a) The definitions set forth in this section apply throughout this chapter.

(b) "Federal deposit insurance agency" means an agency or instrumentality of the United States that insures to any extent the deposits of a financial institution, including the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(c) "Insolvent" means a financial institution that:

- (1) is incapable of meeting the demands of creditors or depositors on a timely basis; or
- (2) has liabilities in excess of the total value of its assets as determined by the department.

(d) "Receiver" means a:

- (1) federal deposit insurance agency;
- (2) private deposit insurer of credit unions; or
- (3) designated agent of the department.

(e) "Receivership court" means the court that the department has filed the notice of possession with, under this chapter.

As added by P.L.141-1984, SEC.2. Amended by P.L.8-1991, SEC.10; P.L.262-1995, SEC.3.

IC 28-1-3.1-2

Authority of department to take possession of business and property; conditions; duties of department

Sec. 2. (a) The department may take possession of the business and property of any financial institution except a consumer finance institution licensed to make supervised or regulated loans under IC 24-4.5, whenever it appears to the department that the financial institution:

- (1) is insolvent or in imminent danger of insolvency;
- (2) is in an unsafe or unsound condition;
- (3) has refused to pay its deposits or obligations in accordance with the terms under which those deposits or obligations were incurred;
- (4) has refused to submit its records and affairs for inspection or examination by the department or federal authorities;
- (5) has violated any court order, statute, rule, or regulation of the department or its articles of incorporation and that continued control of its own affairs threatens injury to the public, the financial community, its depositors, or other creditors;
- (6) requests through its board of directors that the department take possession for the benefit of depositors, other creditors, shareholders, or other persons;
- (7) has an impairment of its capital (the capital of a bank or trust company shall, for the purpose of this subdivision, be

considered to be unimpaired so long as the sound value of its assets over and above its liabilities, exclusive of liabilities for capital notes, debentures, and capital stock, as determined by the department, equals or exceeds the minimum capital or capital stock required by the department for a bank or trust company);

(8) has neglected or refused, for a period of thirty (30) days, to comply with the terms of a duly issued order of the department, essential to preserve the solvency of the financial institution;

(9) has failed to pay the fees charged by the department under IC 28-11-3-5 after due notice of the amount of the fee has been given;

(10) has breached a fiduciary duty under IC 30-4-3-6; or

(11) has violated IC 30-4-3-7 in a way that has caused or may cause harm to fiduciary accounts.

(b) When the department makes a determination to take possession of the business and property of a financial institution under subsection (a), the department shall:

(1) make a finding to that effect and enter that finding on the records of the proceedings of the department; and

(2) cause a certified copy of the finding to be served on the president or other executive officer actively in charge of the financial institution and demand possession of the business, property, and records of the financial institution from the officer. The financial institution shall immediately surrender the possession to the department.

(c) The department or its receiver is not required to become the owner of any property to fulfill the liquidation requirements of this chapter.

As added by P.L.141-1984, SEC.2. Amended by P.L.33-1991, SEC.9; P.L.262-1995, SEC.4.

IC 28-1-3.1-3

Holding business and property until liquidation of affairs

Sec. 3. (a) When the department has taken possession of the business and property of a financial institution under the provisions of section 2 of this chapter, the department shall hold possession of the business and property until the affairs of the institution have been finally liquidated as provided in this chapter, unless the financial institution has undertaken the voluntary liquidation of its affairs under IC 28-1-9.

(b) If a corporate fiduciary is to be liquidated, the department may appoint an agent from within or outside the department to temporarily conduct the affairs of the corporate fiduciary until a receiver is appointed. The agent may be required to give bond and shall be paid reasonable compensation by the corporate fiduciary being liquidated.

As added by P.L.141-1984, SEC.2. Amended by P.L.262-1995, SEC.5.

IC 28-1-3.1-4

Notice; entry of cause; hearing; record; rights and liabilities of persons interested; Federal Deposit Insurance Corporation as receiver

Sec. 4. (a) Immediately upon the taking possession of the business and property of any financial institution under section 2 of this chapter, the department shall give notice by:

- (1) posting the notice at the main entrance of the principal office of the financial institution;
- (2) causing the notice to be served upon the president or other executive officer actively in charge of the business of the financial institution; and
- (3) filing the notice in the office of the circuit court in the county where the principal office of the financial institution is located.

(b) Upon the filing of the notice under subsection (a), the clerk shall:

- (1) note the filing of the notice upon the records of the receivership court; and
- (2) enter the cause as a civil action upon the dockets of the court under the name and style of "In the matter of the liquidation of _____" (inserting the name of the financial institution).

(c) The receivership court may hear and determine all issues and matters pertaining to or connected with the liquidation of the financial institution, including:

- (1) the amount of the compensation and necessary expenses of any special representative, assistant, accountant, agent, or attorney employed by the department, or the receiver appointed by the department, as set forth in this chapter; and
- (2) all papers and pleadings pertaining to the liquidation proceedings.

(d) All entries, orders, judgments, and decrees of the receivership court in connection with the liquidation proceedings shall be filed and entered of record in the cause of action.

(e) The rights and liabilities of a financial institution and of its creditors, depositors, shareholders, and all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date of the filing of the notice of possession with the receivership court. In the case of mutual debts or mutual credits of equal priority between the financial institution and another person, the credits and debts shall be set off and the balance only shall be allowed or paid. The right to set off shall be determined as of the date of the filing of the notice of possession of the financial institution under subsection (a).

(f) Notwithstanding this section, if the Federal Deposit Insurance Corporation is appointed receiver of a financial institution, subsections (a)(3), (b), (c), and (d) do not apply, and applicable federal law governs the receivership.

As added by P.L.141-1984, SEC.2. Amended by P.L.35-2010,

SEC.99.

IC 28-1-3.1-5

Receiver; appointment; vesting of title to all assets and right to terminate affairs of institution; liens or claims against property

Sec. 5. (a) The department may appoint the receiver of the closed financial institution. Unless the receiver is the Federal Deposit Insurance Corporation, the department, upon acceptance of the appointment of a receiver, shall make immediate application to the receivership court for confirmation of the receiver. The receivership court shall approve the department's application if it finds that to do so would be in the public interest. The application may be acted on by the receivership court without any notice except that provided in section 4 of this chapter. The receiver shall give a bond the director considers appropriate. However, a federal deposit insurance agency shall not be required to post any bond. If the receiver is not a federal deposit insurance agency, the director may agree to reasonable compensation for the receiver.

(b) Upon appointment as receiver, title to all assets of the financial institution vest in the receiver without the execution of any instruments of conveyance, assignment, transfer, or endorsement. If no other receiver is appointed as provided in this chapter, the department shall act as receiver and has all of the powers and duties of a receiver as provided in this chapter.

(c) Except as otherwise provided, the sole and exclusive right to liquidate and terminate the affairs of any financial institution is vested in the receiver appointed under this section, and except as otherwise provided by law, no other receiver, assignee, trustee, or liquidating agent shall be appointed by any court or any other person.

(d) After the department has taken possession of the business and property for any financial institution, no suit, action, or other proceeding at law or in equity shall be commenced or prosecuted against the financial institution upon any debt, obligation, claim, or demand.

(e) No person, firm, limited liability company, corporation, or other entity holding any of the property or credits of the financial institution shall have any lien or charge against the property or credits for any payment, advance, or clearance made after the department has taken possession. A lien shall not attach to any of the assets or property of the financial institution by reason of the entry of any judgment recovered against the institution after the department has taken possession of its business and property and while the possession continues.

(f) A receiver appointed to liquidate a corporate fiduciary must have sufficient experience in fiduciary matters.

As added by P.L.141-1984, SEC.2. Amended by P.L.8-1993, SEC.438; P.L.262-1995, SEC.6; P.L.35-2010, SEC.100.

IC 28-1-3.1-6

Receiver; authority

Sec. 6. The receiver of a closed financial institution may do the following:

- (1) Take possession of all books, records, and assets of the financial institution.
- (2) Collect all debts, claims, and judgments belonging to the financial institution and do such other acts as are necessary to preserve and liquidate its assets.
- (3) Execute in the name of the financial institution any instrument necessary or proper to effectuate its powers or perform its duties as receiver.
- (4) Initiate, pursue, and defend litigation involving any right, claim, interest, or liability of the financial institution.
- (5) Exercise any and all fiduciary functions of the financial institution as of the date of appointment as receiver.
- (6) Borrow money as necessary in the liquidation of the financial institution and secure the borrowings by the pledge or mortgage of assets.
- (7) Abandon or convey title to any holder of a mortgage, security deed, security interest, or lien against property in which the financial institution has an interest whenever the receiver determines that to continue to claim that interest is burdensome and of no advantage to the financial institution, its depositors, creditors, or shareholders.
- (8) Subject to the approval of the receivership court:
 - (A) sell any and all real and personal property to compromise any debt, claim, or judgment due to the financial institution and discontinue any action or other proceeding pending; or
 - (B) pay off all mortgages, securities deeds, security agreements, and liens upon any real or personal property belonging to the financial institution and purchase at a judicial sale or at a sale authorized by court order, any real or personal property in order to protect the financial institution's equity in that property.
- (9) If, at the time of liquidation, a closed financial institution holds property in trust for an individual or a corporation under or by virtue of a trust instrument, the administration of the property must be handled in the manner set forth in IC 28-1-9-7.

Notwithstanding this section, when the Federal Deposit Insurance Corporation is appointed receiver of a financial institution, subdivision (8) does not apply.

As added by P.L.141-1984, SEC.2. Amended by P.L.42-1993, SEC.23; P.L.262-1995, SEC.7; P.L.35-2010, SEC.101.

IC 28-1-3.1-7

Receiver's authority to sell assets; borrowing of money for deposit liabilities

Sec. 7. The receiver may, with ex parte approval of the receivership court, sell all or any part of the financial institution's assets to another state or federally chartered financial institution or

to a federal deposit insurance agency acting in its corporate capacity. The Federal Deposit Insurance Corporation is not required to seek ex parte approval of the receivership court. The receiver may also borrow from a federal deposit insurance agency any amount necessary to facilitate the assumption of deposit liabilities by a newly chartered or existing state or federally chartered financial institution, assigning any part or all of the assets of the financial institution as security for the loan.

As added by P.L.141-1984, SEC.2. Amended by P.L.35-2010, SEC.102.

IC 28-1-3.1-8

Claims; presentation; notice; rejection

Sec. 8. (a) All parties having claims against the closed financial institution shall present their claims supported by proof to the receiver within one hundred eighty (180) days after the department has taken possession.

(b) The receiver shall cause notice of the claims procedure prescribed by this section to be:

(1) published once a week for twelve (12) consecutive weeks in a newspaper of general circulation published in the county in which the receivership court is located; and

(2) mailed to each person whose name appears as a creditor upon books of the financial institution at the person's last address of record.

(c) Within one hundred eighty (180) days following receipt of claim, the receiver shall notify in writing any claimant whose claim has been rejected. Notice is effective when mailed. Any claimant whose claim has been rejected by the receiver may petition the receivership court for a hearing on the claim within sixty (60) days from the date the claim is rejected.

(d) If the Federal Deposit Insurance Corporation is the receiver, compliance with this section is not required.

As added by P.L.141-1984, SEC.2. Amended by P.L.35-2010, SEC.103.

IC 28-1-3.1-9

Late claims

Sec. 9. Any claims filed after the one hundred eighty (180) day claim period prescribed by section 8 of this chapter and subsequently accepted by the receiver or allowed by the receivership court shall be entitled to share in the distribution of assets only to the extent of the undistributed assets in the hands of the receiver on the date the claims are accepted or allowed. If the Federal Deposit Insurance Corporation is the receiver, compliance with this section is not required.

As added by P.L.141-1984, SEC.2. Amended by P.L.35-2010, SEC.104.

IC 28-1-3.1-10

Repealed

(Repealed by P.L.42-1993, SEC.103.)

IC 28-1-3.1-10.1

Payment of claims; order

Sec. 10.1. (a) All claims against the financial institution that are proved to the satisfaction of the receiver or approved by the receivership court shall be paid in the following order:

- (1) Claims of persons referred to in IC 28-1-12-6 as having preference and priority.
- (2) Administration expenses of the liquidation, including the following:
 - (A) Court costs.
 - (B) Compensation and actual expenses incurred by the department or the receiver in order to facilitate the liquidation.
 - (C) Compensation of each regular officer or employee of the receiver for the time actually devoted by the officer or employee to the liquidation of the financial institution at an amount not to exceed the compensation paid to the officer or employee for the performance of the regular duties of the officer or employee.
 - (D) Actual expenses of each regular officer or employee of the receiver that are necessarily incurred in the performance of the duties of the officer or employee in the liquidation.
 - (E) Compensation and expenses of any special representative, assistant, accountant, agent, or attorney employed by the receiver.
 - (F) The reasonable general overhead expenses that are incurred by the department or the receiver in the liquidation of the affairs of the financial institution.
- (3) Claims given priority under other provisions of state or federal law.
- (4) Deposit obligations.
- (5) Other general liabilities.
- (6) Debt subordinated to the claims of general creditors.
- (7) Equity capital securities.

(b) Interest may not be paid on any claim until the full principal amount of every claim within the same class has been paid.

(c) If the Federal Deposit Insurance Corporation is the receiver, compliance with this section is not required.

As added by P.L.262-1995, SEC.8. Amended by P.L.35-2010, SEC.105.

IC 28-1-3.1-11

Rejection of executory contracts and leases

Sec. 11. (a) Within one hundred eighty (180) days of the date that the department has taken possession, the receiver may, at his election, reject:

- (1) any executory contract to which the closed financial

institution is a party without any further liability to the closed financial institution or the receiver; or

(2) any obligation of the financial institution as a lessee of real or personal property.

The receiver's election to reject a lease shall create no claim for rent other than rent accrued to the date of termination or for actual damages, if any, for the termination not to exceed the equivalent of payment of rent for six (6) months.

(b) If the Federal Deposit Insurance Corporation is the receiver, compliance with this section is not required.

As added by P.L.141-1984, SEC.2. Amended by P.L.35-2010, SEC.106.

IC 28-1-3.1-12

Federal deposit insurance; payments of deposit liabilities; subrogation

Sec. 12. Whenever a federal deposit insurance agency pays or makes available for payment the insured deposit liabilities of a closed financial institution, the federal deposit insurance agency, whether or not it acts as receiver, shall be subrogated by operation of law to all rights against the closed financial institutions of each owner of a claim for deposit so paid by the federal deposit insurance agency to the extent necessary to enable the federal deposit insurance agency, under federal law, to make insurance payments available to depositors of closed financial institutions.

As added by P.L.141-1984, SEC.2.

IC 28-1-3.1-13

Successor to closed financial institution's fiduciary duties; appointment; powers and duties; notice of appointment to interested parties

Sec. 13. (a) The receiver, with the approval of the receivership court, may appoint a successor to all rights, obligations, assets, deposits, agreements, and trusts held by the closed financial institution as trustee, administrator, executor, guardian, agent, and all other fiduciary or representative capacities. The successor's duties and obligations begin upon appointment to the same extent binding upon the closed financial institution and as though the successor had originally assumed the duties and obligations. Specifically, the successor shall succeed to and be entitled to administer all trusteeships, administrations, executorships, guardianships, agencies, and all other fiduciary or representative proceedings to which the closed financial institution is named or appointed in wills, whenever probated, or to which it is appointed by any other instrument, court order, or by operation of law.

(b) This section shall not impair any right of the grantor or beneficiaries of trust assets to secure the appointment of a substituted trustee or manager.

(c) Within thirty (30) days after appointment, the successor shall give written notice, insofar as practical, to all interested parties

named in:

- (1) the books and records of the closed financial institution; or
- (2) trust documents held by it;

that the successor has been appointed in accordance with applicable law.

(d) If the Federal Deposit Insurance Corporation is the receiver, compliance with this section is not required.

As added by P.L.141-1984, SEC.2. Amended by P.L.35-2010, SEC.107.

IC 28-1-3.1-14

Personal property left in possession of closed financial institution; appearances, claims, and disposition

Sec. 14. (a) The receiver shall cause notice to be mailed to:

- (1) the owners of any personal property left in the possession of a closed financial institution for safekeeping or as bailee or depository for hire;
- (2) all lessees; and
- (3) other persons in possession of any safe deposit box, vault, or locker;

requiring those persons to appear and assert their claims to the property within sixty (60) days from the date of the notice. Within that time, the owner or owners of the property may appear and assert their claims to the property. Subject to approval of the receivership court, the receiver shall make the agreements or arrangements as may be necessary for the disposition of the property and the contents of the safe deposit boxes, vaults, or lockers and the termination of any leases or other contracts relating to the property.

(b) If the Federal Deposit Insurance Corporation is the receiver, compliance with this section is not required.

As added by P.L.141-1984, SEC.2. Amended by P.L.35-2010, SEC.108.

IC 28-1-3.1-15

Actions to enforce rights, demands, or claims vested in financial institution, shareholders, or creditors

Sec. 15. The receiver may, within ten (10) years after any cause of action has accrued against any of the directors, trustees, officers, owners, or employees of any closed financial institution, institute and maintain, in the name of the receiver, any action or proceeding for the enforcement of any right, demand, or claim that is vested in the financial institution or in the shareholders or creditors of the financial institution.

As added by P.L.141-1984, SEC.2.

IC 28-1-3.1-16

Articles of dissolution; contents; Federal Deposit Insurance Corporation as receiver; authority of department to act

Sec. 16. (a) When the proceedings described in this chapter have been completed, the receiver shall execute and file, in the manner

provided in this section, articles of dissolution, setting forth the following information:

- (1) The name of the financial institution.
- (2) The place where its principal office is located.
- (3) The names and addresses of the directors and officers of the financial institution at the time when the liquidation proceedings were begun.
- (4) A brief summary of the aggregate amount of general claims finally allowed against the financial institution, the aggregate amount of claims allowed as preferred, and the aggregate amount of all other claims against the financial institution, together with a statement of the aggregate payments made on each of the groups of claims and with a reference to:

(A) the orders of the receiver or the receivership court authorizing those payments; and

(B) the current reports wherein a report of the payments so ordered is made;

as of the date of the taking possession of the financial institution by the department.

- (5) A brief summary of the aggregate amount of payments made to the shareholders of the financial institution, whether of money or other property, and a reference to the orders of the receiver or the receivership court authorizing the payments and to the current reports wherein the report of the payment is made.

(b) If the Federal Deposit Insurance Corporation is the receiver, the following apply:

- (1) Compliance with this section is not required.

(2) The department:

(A) may file the articles of dissolution; and

(B) may take all actions necessary to complete the dissolution of the financial institution.

As added by P.L.141-1984, SEC.2. Amended by P.L.35-2010, SEC.109.

IC 28-1-3.1-17

Articles of dissolution; execution; presentation; fee

Sec. 17. The articles of dissolution shall be executed in triplicate and shall be presented in triplicate to the secretary of state at his office (as provided in section 18 of this chapter) accompanied by the fees prescribed by law.

As added by P.L.141-1984, SEC.2.

IC 28-1-3.1-18

Articles of dissolution; duties of secretary of state

Sec. 18. Upon presentation of the articles of dissolution as provided in section 17 of this chapter, the secretary of state shall:

- (1) endorse his approval upon each of the triplicate copies of the articles if he finds that they conform to law;
- (2) when all fees have been paid as required by law:

- (A) file one (1) copy of the articles in his office;
- (B) issue a certificate of dissolution to the department; and
- (C) return the certificate of dissolution to the department, together with two (2) copies of the articles of dissolution bearing the endorsement of his approval.

As added by P.L.141-1984, SEC.2.

IC 28-1-3.1-19

Articles of dissolution; filing with county recorder

Sec. 19. The department shall file for record with the county recorder of the county where the principal office of the financial institution is located one (1) of the triplicate copies of the articles of dissolution bearing the endorsement of the approval of the secretary of state as provided in section 18 of this chapter.

As added by P.L.141-1984, SEC.2.

IC 28-1-3.1-20

Dissolution and cessation of existence

Sec. 20. Upon the issuance of the certificate of dissolution and the recording of the articles of dissolution, as provided in section 19 of this chapter, the financial institution shall be dissolved and its existence shall cease.

As added by P.L.141-1984, SEC.2.

IC 28-1-3.1-21

Troubled or insolvent financial institutions; federal supervisory agencies; department's authority to approve transactions

Sec. 21. Whenever a federal supervisory agency is bidding, consolidating, merging, selling, or otherwise resolving or disposing of a troubled, an insolvent, or an imminently insolvent financial institution, the director of the department may approve any transaction, including the purchase of assets, the assumption of liabilities, a merger, or the formation of a new financial institution, if the transaction requires the approval of the department.

As added by P.L.42-1993, SEC.24. Amended by P.L.11-1998, SEC.1; P.L.35-2010, SEC.110.