

**BANKING CODE OF 1999 (EXCERPT)**  
**Act 276 of 1999**

PART 4

RECEIVERSHIPS AND CONSERVATORSHIPS

**487.12401 Liquidation; receiver or other liquidating agent.**

Sec. 2401. (1) Except as provided in subsection (2), a bank subject to this act shall not be liquidated except as provided by this act. A receiver or other liquidating agent shall not be appointed for a bank or its assets and property except as provided in this act.

(2) If the federal deposit insurance corporation is appointed as receiver of a bank, the receivership procedures of the federal deposit insurance corporation shall govern the receivership.

**History:** 1999, Act 276, Eff. Mar. 1, 2000.

**487.12402 Appointment of receiver; conditions; procedures.**

Sec. 2402. (1) If a bank has refused to pay its deposits or obligations in accordance with the terms under which the deposits or obligations were incurred, becomes insolvent, refuses to submit its books, papers, and records for inspection by the commissioner, or if the bank appears to the commissioner that the bank is in an unsafe or unsound condition, the commissioner shall either appoint a conservator under section 2406 or apply to the circuit court for Ingham county or for the county in which the bank is located for the appointment of a receiver for the bank.

(2) In any proceeding for the appointment of a receiver, the commissioner shall request that the court appoint the federal deposit insurance corporation as the receiver if the deposits in the bank are insured to any extent by the corporation. The court may act upon the application immediately and without notice to any person. If at any time it appears to the court that the claimed reasons for receivership do not exist, the court shall dissolve the receivership and terminate the proceedings.

(3) The federal deposit insurance corporation may act as receiver without bond. All other receivers, with the exception of the bureau employee appointed as receiver in his or her official capacity, shall post a bond in an amount to be determined by the court.

(4) If the deposits of a bank described in subsection (1) are not insured by the federal deposit insurance corporation, the commissioner may elect not to seek appointment of a receiver for the bank. If a receiver is not sought, the business corporation act, 1972 PA 284, MCL 450.1101 to 450.2098, governing insolvent business corporations, title 11 of the United States Code, being section 11 U.S.C. 101, governing bankruptcy, and sections 5201 to 5265 of the revised judicature act of 1961, MCL 600.5201 to 600.5265, governing assignments for the benefit of creditors, shall apply to the insolvent bank.

(5) The receiver shall on a regular basis report to the commissioner regarding all matters involving the receivership.

(6) If any bank has been closed and placed in receivership, and the federal deposit insurance corporation pays or makes available for payment the insured deposit liabilities of the closed bank, the corporation, whether or not it has become receiver of the bank, is subrogated to all of the rights of the owners of the deposits against the closed bank in the same manner and to the same extent as subrogation of the corporation is provided for in the federal deposit insurance act.

**History:** 1999, Act 276, Eff. Mar. 1, 2000.

**487.12403 Receiver; duties; powers.**

Sec. 2403. (1) Subject to court approval, a receiver shall do all of the following:

(a) Take possession of the books, records, and assets of the bank and collect all debts, dues, and claims belonging to the bank.

(b) Sue and defend, compromise, and settle all claims involving the bank.

(c) Sell all real and personal property.

(d) Exercise all fiduciary functions of the bank as of the date of the commencement of the receivership.

(e) Pay all administrative expenses of the receivership which shall be a first charge upon the assets of the bank and shall be fully paid before any final distribution or payment of dividends to creditors or shareholders.

(f) Pay ratably any and all debts of the bank, except that debts not exceeding \$500.00 in amount may be paid in full but the holders of such debt shall not be entitled to interest on the debt.

(g) Repay ratably any amount which may have been paid in by any shareholder by reason of assessments made upon the stock of the bank by order of the commissioner in accordance with this act.

(h) Pay ratably to the shareholders of the bank in proportion to the number of shares held and owned by

each the balance of the net assets of the bank after payment or provision for payments as provided in subdivisions (e), (f), and (g).

(i) Have all the powers of the directors, officers, and shareholders of the bank as necessary to support an action taken on behalf of the bank.

(j) Hold title to all the bank's property, contracts, and rights of action beginning on the date the bank is ordered in receivership.

(2) Subject to court approval, a receiver may do any of the following:

(a) Borrow money as necessary or expedient in aiding the liquidation of the bank and secure these borrowings by the pledge, hypothecation, or mortgage of the assets of the bank.

(b) Employ agents, legal counsel, accountants, appraisers, consultants, and other personnel the receiver considers necessary to assist in the performance of the receiver's duties. With the prior written approval of the commissioner, the receiver may employ personnel of the bureau if the receiver considers the employment to be advantageous or desirable. The expense of employing bureau personnel is an administrative expense of the liquidation that is payable to the bureau.

(c) Exercise other powers and duties as may be provided by the court under the laws of this state applicable to the appointment of receivers by the circuit court.

**History:** 1999, Act 276, Eff. Mar. 1, 2000.

#### **487.12404 Lien on property or assets; voidable transfer.**

Sec. 2404. (1) A transfer of or lien on the property or assets of the bank is voidable by the receiver if the transfer or lien was 1 or more of the following:

(a) Made or created within 1 year before the date the bank is ordered in receivership if the receiving transferee or lien holder was at the time an affiliate, officer, director, employee, or principal shareholder of the bank or an affiliate of the bank.

(b) Made or created on or within 90 days before the date the bank is ordered in receivership with the intent of giving to a creditor or depositor, or enabling a creditor or depositor to obtain, a greater percentage of the claimant's debt than is given or obtained by another claimant of the same class.

(c) Accepted after the bank is ordered in receivership by a creditor or depositor having reasonable cause to believe that a preference will occur.

(d) Voidable by the bank and the bank may recover the property transferred or its value from the person to whom it was transferred or from a person who has received it, unless the transferee or recipient was a bona fide holder for value before the date the bank was ordered in receivership.

(2) For purposes of this section, "preference" means a transfer or grant of an interest in the property or assets of the bank that is either of the following:

(a) Made or incurred with the intent to hinder, delay, or defraud an entity to which, on or after the date that the transfer or grant of interest was made, the bank was or became indebted.

(b) Made or incurred for less than a reasonably equivalent value in exchange for the transfer or grant of interest if the bank was insolvent on the date that the transfer or grant of interest was made or became insolvent as a result of the transfer or grant of interest.

(3) A person acting on behalf of the bank, who knowingly has participated in implementing a voidable transfer or lien, and each person receiving property or the benefit of property of the bank as a result of the voidable transfer or lien, is personally liable for the property or benefit received and shall account to the receiver for the benefit of the bank.

(4) Notwithstanding any other provisions of this act, an otherwise voidable transfer under this section will not be voided by the receiver, if any of the following apply:

(a) The transfer or lien does not exceed the value of \$1,000.00.

(b) The transfer or lien was received in good faith by a person, who is not a person described in subsection (1)(a), who gave value.

(c) The transfer of lien was intended by the bank and the transferee or lien holder to be, and in fact substantially was, a contemporaneous exchange for new value given to the bank.

**History:** 1999, Act 276, Eff. Mar. 1, 2000.

#### **487.12405 Records.**

Sec. 2405. (1) On approval by the court, the receiver may dispose of records of the bank in receivership that are obsolete and unnecessary to the continued administration of the receivership proceeding and retain the remaining records of the bank and the receivership for a period of time as ordered by the court.

(2) The receiver may devise a method for the effective, efficient, and economical maintenance of the records of the bank and of the receiver's office, including maintaining those records on any medium approved

by the court.

(3) The receiver may reserve assets of an estate, deposit them in an account, and use them to maintain the records of a liquidated bank after the closing of the receivership proceeding.

**History:** 1999, Act 276, Eff. Mar. 1, 2000.

#### **487.12406 Conservator; appointment; bond and security; qualifications; expenses.**

Sec. 2406. (1) If any of the grounds under section 2402 authorizing the appointment of a receiver exist or if the commissioner considers it necessary in order to conserve the assets of a bank for the benefit of the depositors and other creditors of the bank, the commissioner may appoint a conservator for the bank and require of the conservator a bond and security as determined by the commissioner.

(2) The commissioner may appoint as conservator an employee of the bureau or any other competent and disinterested person. The bureau shall be reimbursed out of the assets of the conservatorship for all sums expended by it in connection with the conservatorship as expenses. All expenses of any conservatorship shall be paid out of the assets of the bank, upon the approval of the commissioner, and shall be a first charge upon the assets and paid in full before any final distribution or payment of dividends to creditors or shareholders.

**History:** 1999, Act 276, Eff. Mar. 1, 2000.

#### **487.12407 Conservator; rights, powers, and privileges.**

Sec. 2407. (1) The conservator, under the direction of the commissioner, shall take possession of the books, records, and assets of the bank, and take any action necessary to conserve the assets of the bank pending further disposition of its business as provided by law. The conservator shall have all the rights, powers, and privileges of receivers of banks appointed under this act and shall be subject to the obligations and penalties to which receivers are subject which are not inconsistent with this act with respect to conservators.

(2) During the time that the conservator remains in possession of the bank, the rights of all parties with respect to the bank, subject to the other provisions of this act with respect to conservators, shall be the same as if a receiver had been appointed. The conservator may execute the discharge of any real estate mortgage held as part of the assets of the bank.

**History:** 1999, Act 276, Eff. Mar. 1, 2000.

#### **487.12408 Deposits received while bank in conservatorship.**

Sec. 2408. (1) While a bank is in conservatorship, the commissioner may require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors, on a ratable basis, amounts that in the opinion of the commissioner may be used safely for this purpose.

(2) The commissioner may permit the conservator to receive deposits.

(3) Deposits received while the bank is in conservatorship shall not be subject to any limitation as to payment or withdrawal. The deposits and any new assets acquired on account of the deposits shall be segregated and held especially for the new deposits and shall not be used to liquidate any indebtedness of the bank existing at the time that a conservator was appointed for it or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of the bank existing at the time the conservator was appointed.

(4) The requirements of subsection (3) shall remain in effect not more than 15 days following the date that the conservator returns control of the bank to its board of directors.

(5) Deposits received while the bank is in conservatorship shall be kept in cash, invested in the direct obligations of the United States, or deposited in depository institutions designated by the commissioner.

(6) Before returning control of the bank to its board of directors, the conservator shall publish a notice in form approved by the commissioner, stating the date on which the affairs of the bank will be returned to its board of directors and that the provisions of subsection (3) will not be in effect after 15 days from that date. The conservator shall send a copy of the notice to every person who deposited money in the bank after the appointment of the conservator and before the time when control of the bank is returned to its directors.

**History:** 1999, Act 276, Eff. Mar. 1, 2000.

#### **487.12409 Authority of conservator to borrow money; purpose.**

Sec. 2409. With the prior approval of the commissioner, the conservator of a bank may borrow money as necessary or expedient in aiding the operation, reorganization, or liquidation of the bank, including the payment of liquidating dividends, and may secure the loans by the pledge, hypothecation, or mortgage of the assets of the bank.

**History:** 1999, Act 276, Eff. Mar. 1, 2000.

#### **487.12410 Termination of conservatorship.**

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Sec. 2410. (1) If satisfied that it may be done safely and that it would be in the public interest, the commissioner may terminate a conservatorship and permit the bank to resume the transaction of its business subject to terms, conditions, restrictions, and limitations as he or she may prescribe.

(2) If the commissioner determines that it would be in the public interest, the commissioner may terminate a conservatorship and apply for the appointment of a receiver for the bank as provided in section 2402.

**History:** 1999, Act 276, Eff. Mar. 1, 2000.