

BANKING CODE OF 1999 (EXCERPT)
Act 276 of 1999

PART 3
DISSOLUTION

487.13301 Proposed resolution of dissolution; certificate of termination; designation of liquidating agent or committee; reports; examination by commissioner; filing of certificate; termination.

Sec. 3301. (1) A solvent bank may go into dissolution and be closed upon expiration of its corporate term or by the vote of its shareholders.

(2) The proposed dissolution shall be submitted for approval at any meeting of shareholders. Notice shall be given to each shareholder of record within the time and in the manner as provided in this act for the giving of notice of meetings of shareholders, and shall state that a purpose of the meeting is to vote on dissolution of the bank.

(3) At the meeting, a vote of shareholders shall be taken on the proposed resolution of dissolution. The dissolution shall be approved upon receiving the affirmative vote of the holders of at least 2/3 of the outstanding shares of the bank entitled to vote on dissolution.

(4) The board of directors immediately at expiration of its corporate term or adoption of a resolution of dissolution by the shareholders shall submit to the commissioner in duplicate a certificate of termination. The certificate shall be signed by a majority of the remaining members of the board of directors on a form approved by the commissioner.

(5) Within 3 months after the date the certificate of termination is submitted under subsection (4), the shareholders shall designate 1 or more persons to act as a liquidating agent or committee. The liquidating agent or committee shall conduct the dissolution in accordance with this act and other applicable law under the supervision of the commissioner and the board of directors. The agent or committee shall furnish to the bank in dissolution a bond satisfactory to the commissioner.

(6) The liquidating agent or committee shall submit to the commissioner reports in the form and at the times the commissioner may require. The liquidating agent or committee shall make periodic reports not less frequently than semiannually to the shareholders. A copy of each periodic shareholder report shall be filed with the commissioner.

(7) The shareholders may remove the liquidating agent or committee and appoint a new agent or a new committee at a special meeting of shareholders by vote of a majority of the shares entitled to vote. Notice shall be given to each shareholder of record within the time and in the manner as provided in this act for the giving of notice of meetings of shareholders and shall state that the purpose of the meeting is to vote on removing the liquidating agent or committee.

(8) The commissioner may examine the bank in dissolution at any time for the purpose of determining that the rights of the depositors and creditors are being properly served.

(9) If the commissioner finds that a dissolution has been completed in conformity to law and that all fees and charges have been paid as required by law, the commissioner shall file 1 copy of the certificate of termination in the office of the bureau and shall certify and deliver 1 copy to the liquidating agent or committee. Upon the filing of the certificate the existence of the bank is terminated.

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

487.13302 Bank in dissolution as body corporate.

Sec. 3302. (1) A bank that begins dissolution under section 3301 shall continue to be a body corporate until the commissioner certifies and files the certificate of termination under section 3301(9) for all of the following:

- (a) Prosecuting and defending actions for or against the bank.
- (b) Disposing of and conveying the bank's property.
- (c) Dividing the bank's assets.
- (d) Gradually settling and closing its affairs.

(2) Subject to section 3401, a bank in dissolution shall not continue to be a body corporate for the purpose of continuing the business for which it was organized.

(3) An action, suit, or proceeding commenced by or against the bank in dissolution must be commenced before the filing of the certificate of termination under section 3301(9).

(4) If the number of directors of a bank in dissolution is less than the full number of directors required or authorized by statute or by the bylaws of the bank, a majority of the remaining directors or the sole remaining

director shall possess the same powers in acting for the bank in dissolution under this act as the duly authorized board of directors of the bank possessed before the commencement of dissolution.

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

487.13303 Bank in dissolution; function of officers, directors, and shareholders.

Sec. 3303. (1) Subject to section 3302 or as otherwise provided by the commissioner, a bank in dissolution, its officers, directors, and shareholders shall continue to function in the same manner as if dissolution had not occurred.

(2) The directors of the bank in dissolution are not considered to be trustees of its assets and shall be held to no greater standard of conduct than that prescribed by section 3504.

(3) Title to the assets of a bank in dissolution remains in the bank until transferred.

(4) The dissolution of the bank does not change quorum or voting requirements for the board or shareholders, and does not alter provisions regarding election, appointment, resignation, or removal of, or filling vacancies among, directors or officers, or provisions regarding amendment or repeal of bylaws or adoption of new bylaws.

(5) Shares of the stock of a bank in dissolution may be transferred.

(6) The bank in dissolution may sue and be sued in its corporate name and process may issue by and against the bank in dissolution in the same manner as if dissolution had not occurred.

(7) An action brought against the bank before the commencement of its dissolution is not limited or affected because of the dissolution.

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

487.13304 "Existing claim" and "existing claimant" defined; notice to depositors and creditors; existing claims; effective date of written notice.

Sec. 3304. (1) As used in this section:

(a) "Existing claim" means a claim or right against the bank in dissolution, liquidated, or unliquidated. It does not include a contingent liability or a claim based on an event occurring after the commencement of dissolution.

(b) "Existing claimant" means a person holding an existing claim.

(2) The board of directors of a bank in dissolution shall notify the bank's depositors and creditors in writing of the dissolution within 30 days after submitting the certificate of termination under section 3301(4). The written notice shall include all of the following:

(a) A mailing address where an existing claim can be sent.

(b) A statement that the bank in dissolution may demand sufficient information to permit it to make a reasonable judgment whether the existing claim should be accepted or rejected.

(c) The deadline, not less than 3 months from the effective date of the written notice, by which the existing claim shall be received.

(d) A statement that the existing claim will be barred if not received by the deadline.

(3) The notice under subsection (2) does not constitute an acceptance that a person to whom the notice is directed has a valid existing claim against the bank in dissolution.

(4) An existing claim against the bank in dissolution is barred if either of the following applies:

(a) The existing claimant who was given written notice under subsection (2) does not file the claim with the bank by the deadline.

(b) The existing claimant who was given written notice under subsection (2) and whose existing claim was rejected in writing by the bank in dissolution does not commence a proceeding to enforce the existing claim within 90 days from the effective date of the written notice of rejection.

(5) The effective date of the written notice under this section is the earliest of the following:

(a) The date it is received.

(b) Five days after its deposit in the United States mail as evidenced by the postmark, if it is mailed postpaid and correctly addressed.

(c) The date shown on the return receipt, if the notice is sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

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

487.13305 "Claim" and "claimant" defined; notice of dissolution; publication; requirements.

Sec. 3305. (1) As used in this section:

(a) "Claim" means a claim or right against the bank in dissolution, liquidated or unliquidated, of a claimant that did not receive the written notice required by section 3304.

(b) "Claimant" means a person holding a claim.

(2) The board of directors of a bank in dissolution shall publish notice of dissolution. The first notice shall be published within 30 days after submitting the certificate of termination under section 3301(4) and request that persons with claims against the bank in dissolution present them as required by the notice.

(3) The notice shall comply with all of the following:

(a) Be published once each week for 8 consecutive weeks.

(b) Describe the information to be included in a claim and provide a mailing address where the claim is to be sent.

(c) Contain a statement that the bank in dissolution may demand sufficient information to permit it to make a reasonable judgment whether the claim should be accepted or rejected.

(d) State the deadline, not less than 6 months from the last publication date, by which the claim shall be received.

(e) State that a claim against the bank in dissolution will be barred unless a proceeding to enforce the claim is commenced within 6 months after the last publication date of the notice published under this section.

(4) A claim against the bank in dissolution is barred if any of the following apply:

(a) The claimant does not deliver a claim or commence a proceeding in an appropriate court to enforce the claim against the bank in dissolution within 6 months after the last publication date of the notice published under this section.

(b) The claimant whose claim was rejected in writing by the bank in dissolution does not commence a proceeding to enforce the claim within 90 days from the effective date of the written notice of rejection.

(c) The claimant, whose claim is contingent or based on an event occurring after the commencement of dissolution, that does not deliver a claim within 6 months after the last publication date of the notice published under this section or file an action in an appropriate court to enforce the claim against the bank in dissolution before the commissioner certifying and filing the certificate of termination under section 3301(9).

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

487.13306 Court supervision of bank in dissolution.

Sec. 3306. (1) After a bank has commenced dissolution, the commissioner, the bank in dissolution, a creditor, or a shareholder may apply to an appropriate court for an order that the affairs of the bank in dissolution and the liquidation of its assets continue under supervision of the court. The court shall make orders and judgments as may be required, including, but not limited to, continuance of the liquidation of the assets of the bank in dissolution by its liquidating agent or committee under supervision of the court, or the appointment of a receiver of the bank in dissolution to be vested with powers as the court designates to liquidate the affairs of the bank.

(2) For good cause shown, and so long as a bank in dissolution has not made complete distribution of its assets, the court may permit a creditor who has not delivered his or her claim or commenced a proceeding to enforce his or her claim within the time limits provided in sections 3304 and 3305 to file the claim or to commence a proceeding within the time as the court directs.

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

487.13307 Debts, obligations, and liabilities.

Sec. 3307. (1) A bank in dissolution or its liquidating agent or committee shall act on all claims filed and notify all claimants of the action taken or to be taken on their respective claims within 6 months of the last date for filing the claims.

(2) Before making a distribution of assets to shareholders, a bank in dissolution shall pay or make provision to satisfy its debts, obligations, and liabilities. Compliance with this section requires, to the extent a reasonable estimate is possible, that provision be made to satisfy those debts, obligations, and liabilities anticipated to arise after the date the certificate of termination is filed under section 3301(9).

(3) Provision need not be made to satisfy any debt, obligation, or liability that is or is reasonably anticipated to be barred under section 3304 or 3305.

(4) The fact that the assets provided by the bank in dissolution for the satisfaction of its debts, obligations, and liabilities are insufficient to satisfy claims arising after a certificate of termination is filed under section 3301(9) shall not create a presumption that the bank in dissolution has failed to comply with this section.

(5) After payment of or adequate provision to satisfy the debts, obligations, or liabilities of the bank in dissolution has been made, the remaining assets shall be distributed to shareholders according to their respective rights and interests. The distribution may be made in cash, in kind, or both.

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