

Chapter 711

1999 EDITION

Merger; Conversion; Share Exchange; Acquisition; Liquidation; Insolvency

MERGER; CONVERSION; SHARE EXCHANGE; ACQUISITION

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711.022 [1973 c.797 s.222; 1975 c.544 s.29a; 1981 c.192 s.16; repealed by 1997 c.631 s.567]

711.025 [Amended by 1973 c.797 s.223; 1981 c.192 s.17; 1987 c.197 s.6; 1989 c.324 s.53; repealed by 1997 c.631 s.567]

711.030 [Amended by 1973 c.797 s.224; 1983 c.37 s.21; repealed by 1997 c.631 s.567]

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711.040 [Amended by 1973 c.797 s.227; 1981 c.192 s.18; 1997 c.631 s.235; renumbered 711.190 in 1997]

711.042 [1973 c.797 s.228; 1983 c.296 s.6; repealed by 1997 c.631 s.567]

711.045 [Amended by 1973 c.797 s.229; 1975 c.544 s.30; 1977 c.135 s.25; 1981 c.192 s.19; 1983 c.296 s.7; 1997 c.631 s.236; renumbered 711.180 in 1997]

711.047 [1981 c.192 s.21; 1983 c.296 s.8; repealed by 1997 c.631 s.567]

711.050 [Amended by 1973 c.797 s.230; repealed by 1997 c.631 s.567]

711.055 [Amended by 1973 c.797 s.231; 1997 c.631 s.237; renumbered 711.197 in 1997]

711.060 [Amended by 1973 c.797 s.232; 1997 c.631 s.238; renumbered 711.199 in 1997]

MERGER; CONVERSION; SHARE EXCHANGE; ACQUISITION

(Conversion)

711.065 Conversion of Oregon stock bank into insured stock institution. (1) An Oregon stock bank may convert into an insured stock institution subject to the prior approval of the supervisory authority having jurisdiction over the proposed resulting insured stock institution.

(2) Upon completion of the conversion of an Oregon stock bank, its charter shall terminate, except for the purposes specified in ORS 711.190. [1997 c.631 s.265]

711.070 Conversion of financial institution into Oregon stock bank; application. (1) A financial institution with its head office or any branches located in this state that follows the procedures prescribed by the supervisory authority having jurisdiction over the converting financial institution shall be granted a charter of an Oregon stock bank by the Director of the Department of Consumer and Business Services if the director finds that the converting financial institution meets the standards of the Bank Act for the organization of such an Oregon stock bank.

(2) A financial institution may apply to convert to an Oregon stock bank and obtain a charter by filing with the

director:

(a) A certificate signed by the chief executive officer of the converting financial institution certifying that all necessary corporate actions in compliance with the provisions of the laws of the supervisory authority having jurisdiction over the converting financial institution have been taken; and

(b) The articles of incorporation for the operation of the financial institution as an Oregon stock bank, in accordance with the requirements of ORS 707.120. [1997 c.631 s.266]

711.075 Conversion of Oregon nonstock bank into financial institution. (1) An Oregon nonstock bank may convert into a financial institution subject to the prior approval of the supervisory authority having jurisdiction over the proposed resulting financial institution.

(2) Upon completion of the conversion of an Oregon nonstock bank, its charter shall terminate, except for the purposes specified in ORS 711.190. [1997 c.631 s.267]

711.080 Conversion of financial institution into Oregon nonstock bank; application. (1) A financial institution with its head office or any branches located in this state that follows the procedures prescribed by the supervisory authority having jurisdiction over the converting financial institution shall be granted a charter of an Oregon nonstock bank by the Director of the Department of Consumer and Business Services if the director finds that the converting financial institution meets the standards of the Bank Act for the organization of such an Oregon nonstock bank.

(2) An insured nonstock institution may apply to convert to an Oregon nonstock bank and obtain a charter by filing with the director:

(a) A certificate signed by the chief executive officer of the converting financial institution certifying that all necessary corporate actions in compliance with the provisions of the laws of the supervisory authority having jurisdiction over the converting financial institution have been taken; and

(b) The articles of incorporation for the operation of the insured nonstock institution as an Oregon nonstock bank, in accordance with the requirements of ORS 707.120. [1997 c.631 s.268]

711.085 Approval of conversion of Oregon bank by board or shareholders. If an Oregon bank converts pursuant to ORS 711.065 to 711.080, the conversion shall be approved by:

(1) A majority of the full board of directors of the converting Oregon bank, unless the articles or bylaws of the converting Oregon bank required a greater percentage; and

(2) If the converting bank is an Oregon stock bank, a vote of a majority of the outstanding stock of each class of voting shares at a meeting called to consider the conversion, unless the articles or bylaws of the converting Oregon bank required a greater percentage. [1997 c.631 s.269]

711.105 [Repealed by 1973 c.797 s.428]

711.110 [Amended by 1973 c.797 s.233; repealed by 1997 c.631 s.567]

711.112 [1973 c.797 s.234; repealed by 1997 c.631 s.567]

711.115 [Amended by 1973 c.797 s.235; repealed by 1997 c.631 s.567]

711.120 [Repealed by 1973 c.797 s.428]

(Merger, Share Exchange and Acquisition)

711.125 Merger of Oregon stock bank with insured stock institution; company acquiring shares of Oregon stock bank through share exchange. (1) Subject to the provisions and requirements of ORS 711.130 to 711.145 and 713.270, any Oregon stock bank may merge with any insured stock institution if the merger is permitted by the supervisory authority having jurisdiction over the resulting insured stock institution.

(2) Subject to the provisions and requirements of ORS 711.130 to 711.145 and 713.270, ORS chapter 715 and applicable federal law, a company may acquire all of the outstanding shares of one or more classes or series of stock of an Oregon stock bank through a share exchange. [1997 c.631 s.270]

711.130 Approval of plan of merger or share exchange involving Oregon stock bank; contents of plan; fee.

(1) For each Oregon stock bank that is a party to a merger or that proposes to have its stock acquired through a share exchange, the plan of merger or plan of share exchange shall be approved by a majority of the entire board of directors of each such Oregon stock bank. If an insured stock institution, other than an Oregon stock bank, is a party to a merger with an Oregon stock bank, the plan of merger shall be approved by such merging insured stock institution's board of directors to the extent required under the laws applicable to such insured stock institution.

(2) A plan of merger shall contain at least:

(a) The name of each party to the merger and the name of the resulting insured stock institution;

(b) The terms and conditions of the proposed merger;

(c) The manner and basis of converting the shares of each merging insured stock institution into shares, obligations or other securities of the resulting insured stock institution or a holding company of the resulting insured stock institution or, in whole or part, into cash or other property;

(d) A statement of any changes in the articles of incorporation of the resulting insured stock institution to be put into effect by the plan of merger; and

(e) Any other provisions with respect to the proposed merger that the Director of the Department of Consumer and Business Services determines to be necessary.

(3) A plan of share exchange shall contain at least:

(a) The name of the Oregon stock bank whose shares will be acquired and the name of the acquiring company;

(b) The terms and conditions of the proposed share exchange;

(c) The manner and basis of the exchange of shares of the Oregon stock bank for shares, obligations or other securities of the acquiring company or of any other company or for cash or for other property in full or in part;

(d) A statement of any changes in the articles of incorporation of the acquired Oregon stock bank to be put into effect by the plan of share exchange; and

(e) Any other provision with respect to the proposed share exchange that the director determines to be necessary.

(4) After approval by the board of directors, the plan of merger or plan of share exchange shall be submitted to the director for approval, with a nonrefundable application fee of \$3,000. Certified copies of the authorizing resolutions of each board of directors, if any such resolutions are required under applicable law, showing approval of the plan of merger or plan of share exchange in accordance with subsection (1) of this section shall also be submitted. For each Oregon stock bank that is a party to a merger or is to be acquired through a share exchange, the certified copies of the board resolutions shall also show that the resolutions were approved by a majority of the entire board. [1997 c.631 s.271]

711.135 Action by director on plan of merger or share exchange involving Oregon stock bank; appeal. (1)

Within 90 days after receiving the materials and fee specified in ORS 711.130, unless the time is extended by the Director of the Department of Consumer and Business Services in concurrence with the applicants, the director shall approve or disapprove the plan of merger or plan of share exchange. The director shall approve the plan of merger or plan of share exchange if the director finds that:

(a) The transaction conforms with the provision of the Bank Act;

(b) The transaction will not be detrimental to the safety and soundness of the resulting Oregon stock bank or Oregon stock bank to be acquired through a share exchange;

(c) The transaction is not contrary to the public interest; and

(d) The director is satisfied that the transaction is permitted by the state or federal supervisory authority having jurisdiction over the resulting insured stock institution or acquiring company.

(2) If the director disapproves a plan of merger or plan of share exchange, the director shall state any objections in writing and give the boards of the parties to the transaction an opportunity to amend the plan of merger or plan of share exchange to obviate the objections. The amended plan of merger or plan of share exchange shall be submitted to the director for approval as if it were the original plan of merger or plan of share exchange.

(3) Any of the parties to the transaction may appeal the decision of the director as provided in ORS 183.415 to 183.500. [1997 c.631 s.272]

711.140 Approval of merger or share exchange involving Oregon stock bank by stockholders. (1) To be

effective, a merger or share exchange involving an Oregon stock bank shall be approved by the stockholders of each Oregon stock bank that is a party to a merger or Oregon stock bank to be acquired through a share exchange by a vote of two-thirds of the outstanding stock of each class of voting shares at a meeting called to consider the merger or share

exchange.

(2) Approval of the merger or share exchange by the stockholders constitutes the adoption of any amendments to the articles set forth in the plan of merger or plan of share exchange.

(3) If the plan of merger or plan of share exchange adopts any provision enumerated in ORS 707.248 affecting the rights of nonvoting stockholders of an Oregon stock bank, such nonvoting stockholders may vote as a class on the merger or share exchange.

(4) Each Oregon stock bank that is a party to a merger or is to be acquired through a share exchange shall give notice of the meeting to vote on the proposed merger or share exchange to each stockholder of record entitled to vote on the plan of merger or plan of share exchange at the address of the stockholder in the books of the Oregon stock bank at least 15 days before the date of the meeting unless the notice is waived in writing by all the holders of shares entitled to vote on the plan of merger or plan of share exchange. Unless, pursuant to ORS 711.170 (8) or other applicable law, the shareholders of the Oregon stock bank are not entitled to receive fair value of their shares, the notice shall be accompanied by a copy of ORS 711.175, 711.180 and 711.185, and shall explain that the sections establish the rights of dissenting stockholders. The notice shall also include any other information that the Director of the Department of Consumer and Business Services may require. [1997 c.631 s.273]

711.145 Effective date of merger or share exchange involving Oregon stock bank. (1) In a merger involving an Oregon stock bank:

(a) If the resulting insured stock institution is an Oregon stock bank, the merger shall, unless a later date is specified in the plan of merger, become effective upon the filing with the Director of the Department of Consumer and Business Services of the approved plan of merger, copies of the resolutions of the stockholders of each party to the merger (if shareholder approval is required under law applicable to such merging insured stock institution) and evidence satisfactory to the director that all federal regulatory requirements, if any, have been satisfied. The charters of each Oregon stock bank that is a party to a merger, unless it is the resulting insured stock institution, shall terminate when the merger becomes effective.

(b) If the insured stock institution from a merger is an insured stock institution other than an Oregon stock bank, the effective date and time of the merger shall be determined under the laws governing the resulting insured stock institution. The merger will be effective as to each Oregon stock bank that is a party to the merger if copies of the resolutions of the directors and shareholders of the Oregon stock bank approving the plan of merger and evidence of the effective date and time of the merger are filed with the director.

(c) If the resulting insured stock institution is an Oregon stock bank, the director shall promptly issue to the Oregon stock bank a certificate of merger specifying the names of the parties to the merger, the name of the resulting Oregon stock bank and the date on which the merger became effective as prescribed in this section. The certificate shall be prima facie evidence of the merger and of the correctness of all proceedings and may be recorded in any office for the recording of deeds to evidence the new name in which the property of the merging insured stock institutions is held.

(2) In a share exchange involving an Oregon stock bank:

(a) If the stock of an Oregon stock bank is to be acquired by a company organized under the laws of this state, the share exchange shall, unless a later date is specified in the plan of share exchange, become effective upon the filing with the director the approved plan of share exchange, copies of the resolutions of the stockholders of the acquired Oregon stock bank, and evidence satisfactory to the director that all federal regulatory requirements, if any, have been satisfied.

(b) If the stock of the Oregon stock bank is to be acquired by a company organized under the laws of a state other than Oregon, the effective date and time of the share exchange shall be determined under the laws governing such company. The share exchange will be effective as to the acquired Oregon stock bank if copies of the resolutions of the directors and shareholders of the Oregon stock bank approving the share exchange and evidence of the effective date and time of the share exchange are filed with the director. [1997 c.631 s.274]

711.150 Merger of Oregon nonstock bank with insured nonstock institution. Subject to the provisions and requirements of ORS 711.155 to 711.165 and 713.270, an Oregon nonstock bank may merge with any insured nonstock institution if the merger is permitted by the laws of the supervisory authority having jurisdiction over the resulting insured nonstock institution. [1997 c.631 s.275]

711.155 Approval of merger involving Oregon nonstock bank; contents of plan; fee. (1) For each Oregon nonstock bank that is a party to a merger, the plan of merger shall be approved by a majority of the entire board of

directors of each such Oregon nonstock bank. If an insured nonstock institution, other than an Oregon nonstock bank, is a party to a merger with an Oregon nonstock bank, the plan of merger shall be approved by such insured nonstock institution's board of directors to the extent required under the laws applicable to such insured nonstock institution.

(2) The plan of merger shall contain:

(a) The name of each party to the merger and the name of the resulting insured nonstock institution;

(b) The terms and conditions of the proposed merger;

(c) The manner and basis of converting the obligations or securities of each merging insured nonstock institution into obligations or other securities of the resulting insured nonstock institution or, in whole or part, into cash or other property;

(d) A statement of any changes in the articles of incorporation of the resulting insured nonstock institution to be put into effect by the plan of merger; and

(e) Any other provisions with respect to the proposed merger that the Director of the Department of Consumer and Business Services determines to be necessary.

(3) After approval by the board of directors, the plan of merger shall be submitted to the director for approval with a nonrefundable application fee of \$3,000. Certified copies of the authorizing resolutions of each board of directors, if any such resolutions are required under applicable law, showing approval of the plan of merger in accordance with subsection (1) of this section shall also be submitted. For each Oregon nonstock bank that is a party to a merger, the certified copies of the board resolutions shall also show that the resolutions were approved by a majority of the entire board.

(4) After approval by each board of directors of the plan of merger, notice of the merger shall be delivered to the household of each depositor of each Oregon nonstock bank unless the Oregon nonstock bank is the resulting insured nonstock institution. Such notice shall include at least the name of the resulting insured nonstock institution and the location of its head office and may be included in any account statement regularly delivered to such depositors. [1997 c.631 s.276]

711.160 Action by director on plan of merger involving Oregon nonstock bank; appeal. (1) Within 90 days after receiving the materials and fee specified in ORS 711.155, unless the time is extended by the Director of the Department of Consumer and Business Services in concurrence with the applicants, the director shall approve or disapprove the plan of merger. The director shall approve the plan of merger if the director finds that:

(a) The resulting insured nonstock institution meets the requirements of the Bank Act;

(b) The merger will not be detrimental to the safety and soundness of the resulting insured nonstock institution;

(c) The merger is not contrary to the public interest; and

(d) The director is satisfied that the merger is permitted by the state or federal supervisory authority having jurisdiction over the resulting insured nonstock institution.

(2) If the director disapproves a plan of merger, the director shall state any objections in writing and give the boards of the parties to the merger an opportunity to amend the plan of merger to obviate the objections. The amended plan of merger shall be submitted to the director for approval as if it were the original plan of merger.

(3) Any of the parties to the merger may appeal the decision of the director as provided in ORS 183.415 to 183.500. [1997 c.631 s.277]

711.165 Effective date of merger involving Oregon nonstock bank. (1) If the resulting insured nonstock institution is an Oregon nonstock bank, the merger shall, unless a later date is specified in the plan of merger, become effective upon the filing with the Director of the Department of Consumer and Business Services the approved plan of merger and evidence satisfactory to the director that all federal regulatory requirements, if any, have been satisfied. The charters of each Oregon nonstock bank that is a party to the merger, other than the resulting insured nonstock institution, shall terminate when the merger becomes effective.

(2) If the resulting insured nonstock institution is an insured nonstock institution, the effective date and time of the merger shall be determined under the laws governing the resulting insured nonstock institution. The merger will be effective as to each Oregon nonstock bank that is a party to the merger when copies of the resolutions of the directors of the Oregon nonstock bank approving the plan of merger and evidence of the effective date and time of the merger are filed with the director.

(3) If the resulting insured nonstock institution is an Oregon nonstock bank, the director shall promptly issue to the resulting insured nonstock institution a certificate of merger specifying the names of the parties to the merger, the name of the resulting insured nonstock institution, and the date on which the merger became effective as prescribed in

subsection (1) of this section. The certificate shall be prima facie evidence of the merger and of the correctness of all proceedings and may be recorded in any office for the recording of deeds to evidence the new name in which the property of the merging insured nonstock institutions is held. [1997 c.631 s.278]

711.170 Sale of assets and transfer of liabilities by Oregon bank; approval of director and board of directors. (1) Subject to the provisions set forth in this section and ORS 713.270, an Oregon bank may sell all or any portion of its assets or transfer all or any portion of its liabilities, other than deposit liabilities, to any person and may transfer all or any portion of its deposit liabilities to any insured institution.

(2) An Oregon bank may sell all or substantially all of its assets outside the ordinary course of business, transfer all or substantially all the deposit liabilities of any of its branches or principal place of business, or both, only with the prior written approval of the Director of the Department of Consumer and Business Services.

(3) An acquisition transaction agreement shall be approved by a majority of the entire board of directors of each Oregon bank that:

(a) Is selling assets or transferring deposit liabilities, or both, requiring approval of the director under subsection (2) of this section; or

(b) Is acquiring all or substantially all of the assets outside the ordinary course of business, all or substantially all of the deposit liabilities, or both, of another insured institution.

(4) After approval of the acquisition transaction agreement by the board of directors of each Oregon bank that is subject to subsection (3) of this section, the following shall be submitted to the director, if required under subsection (2) of this section, for approval:

(a) A copy of the acquisition transaction agreement, which shall contain the terms of conditions of the acquisition transaction;

(b) A nonrefundable application fee of \$3,000;

(c) Certified copies of the authorizing resolutions of the board of directors of each such Oregon bank showing approval of the acquisition transaction agreement in accordance with subsection (3) of this section; and

(d) Such other information as the director may require.

(5) If an Oregon stock bank proposes to transfer all or substantially all of its assets outside the ordinary course of business, all or substantially all of its deposit liabilities, or both, such Oregon stock bank shall send to each of its stockholders, within 30 days after approval by its board of directors, notice of the acquisition transaction and a copy of ORS 711.175, 711.180 and 711.185. To be effective, each Oregon stock bank that proposes to transfer all or substantially all of its assets outside the ordinary course of business, all or substantially all of its deposit liabilities, or both, shall have such acquisition transaction approved by a vote of two-thirds of the outstanding stock of each class of voting shares at a meeting called to consider the acquisition transaction.

(6) Within 90 days after approval of the board of directors of each Oregon nonstock bank that proposes to transfer all or substantially all of its assets outside the ordinary course of business, all or substantially all of its deposit liabilities, or both, each such Oregon nonstock bank shall send notice of the acquisition transaction to the household of each depositor of each such Oregon nonstock bank. Such notice shall include at least the name of the acquiring person or insured institution, the address of the head office of such person or insured institution, and a statement that all or substantially all of the assets, deposit liabilities, or both, will be acquired. Such notice may be included in any account statement sent to such depositors.

(7) The director shall approve an acquisition transaction that is subject to subsection (2) of this section if the director finds that the acquisition transaction:

(a) Conforms with the provisions of the Bank Act;

(b) Will not be detrimental to the safety and soundness of an Oregon bank that is a party to such an acquisition transaction;

(c) Is not contrary to the public interest; and

(d) If the acquiring person or insured institution is not an Oregon bank, the director is satisfied that the acquisition transaction is permitted by the supervisory authority, if any, having jurisdiction over the acquiring person or insured institution.

(8) If the director disapproves an acquisition transaction that is subject to subsection (2) of this section, the director shall state any objections in writing and give the parties to the acquisition transaction an opportunity to take actions to obviate the objections.

(9) Any party to an acquisition transaction agreement may appeal the decision of the director as provided in ORS 183.415 to 183.500. [1997 c.631 s.279]

711.175 Stockholder's right to dissent to merger, share exchange or transfer of assets or liabilities. (1) A stockholder of an Oregon stock bank may dissent from the following:

- (a) A plan of merger pursuant to which the Oregon stock bank is not the resulting insured institution;
- (b) A plan of merger pursuant to which the Oregon stock bank is the resulting insured stock institution and the number of its voting shares outstanding immediately after the merger, plus the number of shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will exceed by more than 20 percent the total number of voting shares of the resulting insured stock institution outstanding immediately before the merger;
- (c) A plan of share exchange pursuant to which the Oregon stock bank in which the stockholder owns shares is acquired; and
- (d) An acquisition transaction requiring such stockholder's approval pursuant to ORS 711.170 (5).

(2) To perfect a stockholder's right to dissent to a transaction described in subsection (1) of this section, the stockholder must send or deliver a notice of dissent to the Oregon stock bank prior to or at the meeting of the stockholders at which the transaction is submitted to a vote, or the stockholder must vote against such transaction.

(3) A stockholder shall not dissent as to less than all the shares registered in the name of the stockholder, except a stockholder holding, as a fiduciary or nominee, shares registered in the stockholder's name for the benefit of more than one beneficiary, may dissent as to less than all of the shares registered in the fiduciary or nominee's name if any dissent as to the shares held for a beneficiary is made as to all the shares held by the fiduciary for that beneficiary or nominee. The fiduciary's rights shall be determined as if the shares to which the fiduciary has dissented and the other shares are registered in the names of different stockholders. [1997 c.631 s.280]

711.180 Rights of stockholder dissenting to merger, share exchange or transfer of assets or liabilities; demand required; notice and offer to pay for shares; costs of appraisal of shares; when rights not applicable. (1)

Any stockholder of an Oregon stock bank who dissented to a transaction listed under ORS 711.175 (1) and who desires to receive the value in cash of those shares, shall make written demand upon the Oregon stock bank or its successor and accompany the demand with the surrender of the share certificates, properly indorsed within 30 days after the stockholders' meeting at which a vote to approve such transaction involving an Oregon stock bank was taken. Any stockholder failing to make written demand within the 30-day period shall be bound by the terms of the proposed plan of merger, plan of share exchange or acquisition transaction agreement.

(2) Within 30 days after a transaction listed under ORS 711.175 (1) is effected, the Oregon stock bank or its successor shall give written notice thereof to each dissenting stockholder who has made demand under this section at the address of the stockholder on the stock record books of the Oregon stock bank, and shall make a written offer to each such stockholder to pay for the shares at a specified price in cash determined by the Oregon stock bank or its successor to be the fair value of the shares as of the effective date of the transaction. The notice and offer shall be accompanied by a statement of condition of the Oregon stock bank, the shares of which the dissenting stockholder held, as of the latest available date and not more than four months prior to the consummation of the transaction, and a statement of income of the Oregon stock bank for the period ending on the date of the statement of condition.

(3) Any stockholder who accepts the offer of the Oregon stock bank or its successor within 30 days following the date on which notice of the offer was mailed or delivered to dissenting stockholders shall be paid the price per share offered, in cash, within 30 days following the date on which the stockholder communicates acceptance in writing to the Oregon stock bank or its successor. Upon payment, the dissenting stockholder shall cease to have any interest in the shares previously held by the stockholder.

(4) If, within 30 days after notice of the offer, one or more dissenting stockholders do not accept the offer of the Oregon stock bank or its successor or if no offer is made, then the value of the shares of the dissenting stockholders who have not accepted the offer shall be ascertained, as of the effective date of the transaction, by an independent, qualified appraiser chosen by the Director of the Department of Consumer and Business Services. The valuation determined by the appraiser shall govern and the appraiser's valuation of such shares shall not be appealable except for one or more of the reasons set forth in ORS 36.355 (1). Any such appeal must be made within 30 days after the date of the appraiser's valuation and is subject to ORS 183.415 to 183.500. The Oregon stock bank or its successor shall pay the dissenting shareholders the appraised value of the shares within 30 days after the date the appraiser sends the Oregon stock bank or its successor written notice of the appraiser's valuation.

(5) The director shall assess the reasonable costs and expenses of the appraisal proceeding equally to the Oregon stock bank or its successor and to the dissenting shareholders, as a group, if the amount offered by the Oregon stock

bank or its successor is between 85 percent and 115 percent of the appraised value of the shares. The director shall assess the reasonable costs and expenses of the appraisal proceeding and the reasonable costs and expenses, including attorney fees and costs, of the Oregon stock bank or its successor to the dissenting stockholders, as a group, if the amount offered by the Oregon stock bank or its successor is 115 percent or more of the appraised value of the shares. The director shall assess the reasonable costs and expenses of the appraisal proceeding and the reasonable costs and expenses, including attorney fees and costs, of the dissenting shareholders, as a group, to the Oregon stock bank or its successor if the amount offered by the Oregon stock bank or its successor is 85 percent or less of the appraised value of the shares. The director's decision regarding assessment of fees and costs may be appealed as provided in ORS 183.415 to 183.500.

(6) Amounts required to be paid by the Oregon stock bank or its successors, or the dissenting shareholders under this section shall be paid within 30 days after the director's assessment of any fees or costs becomes final or, if the director's decision is appealed, within 30 days after a final determination of such fees and costs is made.

(7) The director may require, as a condition of approving a transaction listed in ORS 711.175 (1), the replacement of all or a portion of the stockholders' equity of an Oregon stock bank expended in payment to dissenting stockholders under this section.

(8) A stockholder may not receive the fair value of the stockholder's shares under this section:

(a) If the plan of merger provides that all stockholders of the resulting insured stock institution receive common stock of a holding company pursuant to a merger with an interim Oregon stock bank chartered under ORS 707.025, and the stockholder's Oregon stock bank and the interim Oregon stock bank are the only parties to the merger; or

(b) If the shares held by the dissenting stockholder immediately before the effective date of a transaction listed in ORS 711.175 (1) are listed on any national securities exchange or are included on the list of over-the-counter margin stocks issued by the Board of Governors of the Federal Reserve System. [Formerly 711.045]

711.185 Stockholder withdrawal of demand for payment for shares made under ORS 711.180. (1) A dissenting stockholder making a demand under ORS 711.180 may withdraw the demand if:

(a) The Oregon stock bank or its successor consents to the withdrawal; or

(b) The dissenting stockholder pays such stockholder's pro rata share of the appraisal costs and the Oregon stock bank's reasonable costs and expenses, including attorney fees and costs.

(2) When a dissenting stockholder withdraws the demand under subsection (1) of this section, the stockholder's status as a stockholder shall be restored, without prejudice to any corporate proceedings taking place in the interim. [1997 c.631 s.281]

(General Provisions)

711.190 Effect of merger or conversion of Oregon bank; rights, powers, duties and liabilities of resulting financial institution. (1) When a merger or conversion of an Oregon bank becomes effective:

(a) The separate existence of each Oregon bank participating in the plan of merger or conversion, except the existence of the resulting financial institution, ends; and

(b) The resulting financial institution is an entity with all the property, rights, powers and duties of all parties to the merger or the converting financial institution, except as affected by the laws applicable to the resulting financial institution and by the charter, articles of incorporation and bylaws of the resulting financial institution.

(2) All property, debts, choses in action and every other interest of each merging or converting financial institution are transferred to and vested in the resulting financial institution without any further act or deed of any party to the merger or conversion. The title to or any interest in any real estate vested in any merging or converting financial institution may not revert or be impaired because of the merger or conversion.

(3) When a merger or conversion becomes effective, the resulting financial institution shall be liable for all liabilities and obligations of each of the merging or converting financial institutions. Any existing or pending claim, action or proceeding by or against any merging or converting financial institution may be prosecuted as if the merger or conversion had not taken place, or the resulting financial institution may be substituted in its place. A merger or conversion may not impair the rights of creditors or depositors of a merging or converting financial institution or any liens upon the property of a merging or converting financial institution.

(4) Unless prohibited under applicable law, a resulting financial institution may use the name of the merging financial institution or the converting financial institution whenever it can do any act under the name more conveniently.

(5) Any reference to a merging or converting financial institution in any writing, whether executed or taking effect before or after the merger or conversion, is a reference to the resulting financial institution if consistent with the other provisions of the writing, and if the resulting financial institution is authorized to exercise the powers conferred or required by the writing. [Formerly 711.040]

711.195 Merger, conversion or acquisition of Oregon bank involving trust company. If a merger, conversion or acquisition of an Oregon bank involves a trust company, the Director of the Department of Consumer and Business Services shall not approve the merger, conversion, or acquisition until satisfied that adequate provision has been made for successor fiduciaries. [1997 c.631 s.282]

711.197 Conditions for resulting Oregon bank to conform with state law. If, pursuant to a merger or conversion of a financial institution, the resulting or converting financial institution is an Oregon bank and has assets or liabilities in this state that do not conform to the requirements of applicable law or carries on business activities that are not permitted for the resulting or converting financial institution, the Director of the Department of Consumer and Business Services may:

(1) Permit the resulting or converting financial institution to retain the nonconforming assets or liabilities or to continue the otherwise unpermitted activities for such periods and subject to such conditions and limitations as the director determines, by rule or order, will not be injurious to the safety and soundness of the resulting or converting financial institution; or

(2) Grant the resulting or converting financial institution a reasonable time to conform with applicable law. [Formerly 711.055]

711.199 Valuation of assets on books of resulting Oregon bank. Without approval by the Director of the Department of Consumer and Business Services, an asset shall not be carried on the books of a resulting or converting financial institution that is an Oregon bank at a valuation higher than that on the books of the resulting or converting financial institution at the time of its last examination prior to the effective date of the merger or conversion. [Formerly 711.060]

711.205 [Amended by 1973 c.797 s.236; 1993 c.229 s.10; repealed by 1997 c.631 s.567]

711.207 [1973 c.797 s.237; repealed by 1997 c.631 s.567]

711.210 [Repealed by 1973 c.797 s.428]

711.211 [1993 c.229 s.12; repealed by 1997 c.631 s.567]

VOLUNTARY LIQUIDATION; DISSOLUTION

711.215 Voluntary liquidation on approval of stockholders and director; costs of special examination. An institution may go into voluntary liquidation by vote of its stockholders owning at least two-thirds of its capital stock. The institution shall first obtain the written consent of the Director of the Department of Consumer and Business Services. Before consenting to the liquidation, the director may require a special examination of the condition and affairs of the institution. The institution shall pay the actual costs of the examination as provided in ORS 706.544. [Amended by 1973 c.797 s.238; 1985 c.762 s.43; 1985 c.786 s.40; 1999 c.59 s.220]

711.217 Transactions exempt from ORS 711.220 to 711.235. In a transaction where a purchasing insured institution assumes or agrees to pay all the liabilities of a liquidating institution, ORS 711.220 to 711.235 do not apply. [1973 c.797 s.239; 1997 c.631 s.239]

711.220 Notice of voluntary liquidation; presentation of claims. (1) If a vote is taken authorizing the voluntary liquidation of an institution, the board of directors shall cause to be published in a newspaper of general circulation in the city, town or county in which the principal office of the institution is located, at least once a week for four consecutive weeks, notice of the liquidation notifying depositors, other creditors or claimants to present their claims for payment.

(2) Claims of depositors shall be paid upon the presentation of a check, passbook, certificate of deposit or other instrument required for payment before the institution went into voluntary liquidation. Disputed claims shall be presented in writing for allowance or rejection in the manner provided in ORS 711.230 for claims of other creditors.

(3) Within 60 days after the last publication of the notice provided for in this section, an institution in voluntary liquidation shall mail a written notice of its intention to liquidate to the last-known address of all depositors and other creditors who have not yet claimed the full amount shown to be due them according to the records of the institution. [Amended by 1973 c.797 s.240]

711.225 Report and transfer of unclaimed deposits. (1) All deposits that remain unclaimed after six months from the date of the written notice mentioned in ORS 711.220 (3), shall be reported and transferred by the Oregon stock bank to the Division of State Lands as unclaimed property under ORS 98.302 to 98.436 and 98.992.

(2) A copy of the report of unclaimed deposits filed with the Division of State Lands shall be filed with the Director of the Department of Consumer and Business Services. [Amended by 1957 c.670 s.33; 1959 c.138 s.1; 1973 c.797 s.241; 1993 c.694 s.36; 1997 c.631 s.240]

711.230 Claims; time within which presented; extension of time. (1) Claims of all persons, other than depositors, against the institution shall be presented in writing to the institution within one year after the date of first publication provided for in ORS 711.220, unless barred by an earlier period of limitation. Claims arising out of the expense of liquidation may be filed at any time prior to the closing of the liquidation.

(2) The board of directors shall, within 30 days after the presentment of a claim, allow or reject the claim, in whole or in part, noting the same in their minutes. The board shall notify the claimants in writing of its action, either by personal service or by mail. Any claim rejected or disallowed is barred unless action to adjudicate the claim is commenced within 60 days after the date of service or mailing of notice of disallowance or rejection.

(3) The board of directors may extend the time within which to receive claims and continue the liquidation after the expiration of the time allowed in this section for the filing of claims. Any new claims filed after the time shall be allowed and paid or rejected in the same manner as provided for other claims. If the liquidation is continued, the transfer of unclaimed deposits to the Division of State Lands may be delayed to such time as designated by the Director of the Department of Consumer and Business Services. [Amended by 1959 c.138 s.2; 1973 c.797 s.242]

711.235 Report of liquidation to director; disposition of remaining assets. (1) After the expiration of the time provided in ORS 711.230 for the filing of claims or if the board of directors has extended the time of liquidation then after the time set by them and after payment of unclaimed deposits to the Division of State Lands, the board of directors shall make a complete report of the liquidation to the Director of the Department of Consumer and Business Services and shall certify to the director that all claims have been paid or finally determined.

(2) Any claims received and approved after the report has been filed with the director shall be paid if the remaining assets are sufficient.

(3) When the report has been approved by the director the board of directors may proceed to liquidate the remaining assets and distribute them to the stockholders or other persons entitled to receive them according to their respective rights and interests without further report to the director. [Amended by 1959 c.138 s.3; 1973 c.797 s.243]

711.240 Supervision and control by director. The Director of the Department of Consumer and Business Services shall supervise and control an institution in voluntary liquidation until the final report is filed to the same extent the director supervises and controls any other institution. [Amended by 1973 c.797 s.244]

711.245 [Repealed by 1973 c.797 s.428]

711.250 Engaging in banking or trust business prohibited after liquidation, transfer of deposit liabilities or ceasing to do business for one year; dissolution. (1) An institution may not engage in banking business or transact trust business if the institution:

- (a) Goes into voluntary liquidation;
- (b) Is closed because of insolvency;
- (c) Sells all or substantially all of its assets to another institution that takes over and assumes all or substantially all of its deposit liabilities; or
- (d) Does not engage in banking business or transact trust business for a period of one year.

(2) An institution shall, within one year after it ceases to do a banking business or trust business, amend its articles of incorporation by eliminating the power to engage in a banking business or trust business or it is dissolved and shall not be reinstated and shall surrender its charter. For the purpose of winding up its affairs, the institution may continue as a body corporate for a period of five years from the date it stops doing a banking business or trust business, and as such:

(a) The dissolution of the institution shall not take away or impair any remedy available to or against such institution, its directors, officers or shareholders for any right or claim existing or any liability incurred prior to such dissolution if an action or other proceeding thereon is commenced within five years after the date of issuance of a certificate of dissolution or filing of a decree of dissolution. Any other action or proceeding by or against the institution may be prosecuted or defended by the institution in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such institution was dissolved by the expiration of its period of duration, such institution may amend its articles of incorporation at any time during such period of five years so as to extend its period of duration.

(b) Whenever any such institution is the owner of real or personal property, or claims any interest or lien whatsoever in any real or personal property, such institution shall continue to exist during such five-year period for the purpose of conveying, transferring and releasing such real or personal property or interest or lien therein. Such institution shall continue, after the expiration of such five-year period, to exist as a body corporate for the purpose of being made a party to and being sued in any action, suit or proceeding against it involving the title to any such real or personal property or any interest therein, and not otherwise. Any such action, suit or proceeding may be instituted and maintained against any such institution as might have been had prior to the expiration of said five-year period. This section shall not be construed as affecting or suspending any statute of limitations applicable to any suit, action or proceeding instituted under this section.

(c) For the purpose of service of any process, notice or demand within the prescribed time following such dissolution, the Director of the Department of Consumer and Business Services shall be an agent of the dissolved institution upon whom service may be made. [Amended by 1959 c.54 s.1; 1973 c.797 s.245; 1987 c.197 s.7; 1989 c.324 s.54; 1997 c.631 s.241]

711.305 [Amended by 1973 c.797 s.246; repealed by 1997 c.631 s.567]

711.310 [Amended by 1973 c.797 s.247; 1975 c.544 s.31; repealed by 1997 c.631 s.567]

711.315 [Amended by 1973 c.797 s.248; 1975 c.544 s.32; 1991 c.249 s.66; repealed by 1997 c.631 s.567]

711.320 [Amended by 1973 c.797 s.249; repealed by 1997 c.631 s.567]

INSOLVENCY; LIQUIDATION BY DIRECTOR

711.400 Supervision of liquidation by circuit court; called “supervising court.” The circuit court of the county in which the principal office of an institution is located:

- (1) Shall, as directed in ORS 711.400 to 711.615, supervise the liquidation of an institution; and
- (2) Is referred to in ORS 711.400 to 711.615 as the supervising court. [1973 c.797 s.250]

711.405 When institution deemed insolvent. An institution will be deemed insolvent when any of the following occurs:

(1) The fair market value of the assets of the institution is insufficient to pay its liabilities, other than liability on account of capital debentures. In determining the value of its assets, bonds held by the institution shall be valued in accordance with rules promulgated by the Director of the Department of Consumer and Business Services pursuant to ORS 183.310, 183.315, 183.330, 183.335 and 183.341 to 183.410.

(2) An Oregon stock bank fails to make good its reserve requirements under applicable law for a period of 30 days.

(3) The institution cannot meet its obligations or the demands upon it as they become due. [Amended by 1973 c.797 s.251; 1975 c.544 s.35; 1997 c.631 s.242]

711.410 Transfer of assets after commission of act of insolvency or in contemplation of insolvency is void. All

transfers of assets made after the commission of an act of insolvency or in contemplation of insolvency, to prevent the application of the assets in the manner prescribed by the Bank Act or to the preference of one creditor to another are void. [Amended by 1973 c.797 s.252]

711.415 Receiving deposits in excess of insurance while insolvent. A director, officer or employee of an Oregon stock bank shall not receive or permit to be received any deposit in excess of the insurance that the Oregon stock bank holds for its deposits under ORS 708A.405, if the director, officer or employee knows that the Oregon stock bank is insolvent. [Amended by 1973 c.797 s.253; 1985 c.786 s.41; 1997 c.631 s.243]

711.419 Taking possession of Oregon stock bank by director. After an Oregon stock bank commits an act of insolvency or the insurance required for its deposits under ORS 708A.405 is canceled by the insurer, the Director of the Department of Consumer and Business Services may take possession of the property and affairs of the Oregon stock bank and proceed to liquidate it as provided for an insolvent Oregon stock bank under ORS 711.400 to 711.615. [1975 c.544 s.34; 1985 c.786 s.42; 1997 c.631 s.244]

711.420 [Repealed by 1973 c.797 s.428]

711.425 [Repealed by 1973 c.797 s.428]

711.430 Placing business in control of director; notice. (1) An institution may place its property and affairs under the control of the Director of the Department of Consumer and Business Services to be liquidated by notifying the director of its proposed action and by posting a notice on its doors as follows: "This Bank (or Trust Company) Is Under the Control of the Department of Consumer and Business Services."

(2) The posting of the notice or the taking possession of an institution by the director is sufficient to place all its property and affairs of whatever nature in the possession of the director and operates as a bar and dissolution to any attachment proceedings. [Amended by 1973 c.797 s.254; 1975 c.544 s.36; 1987 c.373 s.54]

711.435 Resumption of business of institution placed in control of director. (1) If the Director of the Department of Consumer and Business Services determines upon taking charge of an institution that it is only temporarily short of available funds and that its assets are sufficient to pay its liabilities, leaving its stockholders' equity unimpaired, or the stockholders will arrange to make good its stockholders' equity, if impaired, the director may permit the officers and directors of the institution to arrange with its depositors and creditors for an extension of time for payment of the depositors and creditors.

(2) When the director is satisfied that the stockholders' equity of the institution has been brought into conformance with the Bank Act, the institution is solvent and has funds on hand with which to meet the demands made on it in the ordinary course of business, and the institution has arranged with its depositors and creditors for an extension of time to enable the institution to realize on its assets to meet the obligations, the director may within 60 days after taking charge of the institution permit it to resume business.

(3) The institution shall pay, at the actual per diem cost, for the service of the director and the employees of the director in taking charge of and looking after the affairs of the institution during the time it was under control of the director. The money so received shall be deposited with the State Treasurer to be credited to the Consumer and Business Services Fund. [Amended by 1973 c.797 s.255; 1997 c.631 s.245]

711.440 Receivers and assignments for benefit of creditors; notice to and action by director. (1) Notice shall be given to the Director of the Department of Consumer and Business Services before a receiver is appointed by any court or a deed of assignment for the benefit of creditors is filed in any court for an institution unless it is necessary so to do in order to preserve the assets of the institution.

(2) The director may, within five days after the service of the notice upon the director, take possession of the institution, in which case no further proceedings shall be had upon the application for the appointment of receiver or under the deed of assignment. If a receiver has been appointed or the assignee has entered upon the administration of the trust of the assignee, the appointment shall be vacated or the assignee shall be removed upon application of the director to the court.

(3) The director shall proceed to administer the assets of the institution as provided in ORS 711.475 to 711.510. [Amended by 1973 c.797 s.256]

711.445 Notice of taking possession of institution; liens subsequent to insolvency prohibited. (1) Upon taking possession of the property and business of an institution, the Director of the Department of Consumer and Business Services shall give written notice of the fact to all persons holding or in possession of any assets of the institution.

(2) A person knowing that the director has taken possession of an institution shall not have a lien or charge for any payment advanced or any clearance thereafter made, or liability thereafter incurred, against any of the assets of the institution. [Amended by 1973 c.797 s.257]

711.450 Prohibition against applying to enjoin director from continuing possession. An institution may not apply to the supervising court for an order requiring the Director of the Department of Consumer and Business Services to show cause why the director should not be enjoined from continuing possession pursuant to ORS 711.419. [Amended by 1973 c.797 s.258; 1975 c.544 s.37; 1985 c.786 s.43]

711.455 [Repealed by 1973 c.797 s.428]

711.460 [Repealed by 1973 c.797 s.428]

711.465 Transfer of liquidation functions to Federal Deposit Insurance Corporation. (1) Upon taking possession of the business and property of an insolvent Oregon stock bank, the deposits of which are to any extent insured by the Federal Deposit Insurance Corporation, if the Federal Deposit Insurance Corporation will accept the duty of liquidating the Oregon stock bank, the Director of the Department of Consumer and Business Services may appoint without bond the Federal Deposit Insurance Corporation to act as receiver for the Oregon stock bank. When so appointed the Federal Deposit Insurance Corporation shall exercise all the powers and perform all the duties of the director in connection with the liquidation of Oregon stock banks.

(2) Upon being notified in writing of the acceptance of the appointment, the director shall file a certificate evidencing the appointment of the Federal Deposit Insurance Corporation in the office of the director. Upon the filing of the certificate the possession of all the assets, business and property of the Oregon stock bank except those securities pledged under ORS 295.015 shall be transferred from the Oregon stock bank and the director to the Federal Deposit Insurance Corporation, and without the execution of any instruments of conveyance, assignment, transfer or indorsement the title to all such assets and property shall vest in the Federal Deposit Insurance Corporation. The director shall be relieved from all responsibility and liability in respect to the liquidation of the Oregon stock bank. [Amended by 1973 c.797 s.259; 1983 c.296 s.11; 1993 c.98 s.25; 1997 c.631 s.246]

711.470 Subrogation rights of Federal Deposit Insurance Corporation. If any Oregon stock bank in which the deposits are to any extent insured by the Federal Deposit Insurance Corporation is closed for the purpose of liquidation without adequate provision being made for the payment of its depositors and if the Federal Deposit Insurance Corporation pays or makes available for payment the insured deposit liabilities of the closed insured Oregon stock bank, the Federal Deposit Insurance Corporation is subrogated to all rights against the closed insured Oregon stock bank of the owners of deposits to the extent of any payments made by the corporation to the depositors. [Amended by 1973 c.797 s.260; 1997 c.631 s.247]

711.475 Inventory of assets; filing notice of taking possession. Upon taking possession of the property of an institution to liquidate its affairs, the Director of the Department of Consumer and Business Services shall:

(1) Inventory the assets of the institution. The inventory shall be prepared in duplicate with one copy filed in the office of the director and one in the office of the clerk of the county in which the principal office of the institution is located.

(2) Within a reasonable time, file with the clerk of the supervising court a notice that the director has taken possession and the time of taking possession.

(3) Proceed to liquidate the affairs of the institution, collect debts due the institution and do what is necessary to preserve the assets and business of the institution. [Amended by 1973 c.797 s.261]

711.480 Sale of assets. (1) Upon order of the supervising court, the Director of the Department of Consumer and Business Services may:

(a) Sell or compromise any bad or doubtful debts, including the individual liability of any stockholder of the

institution.

(b) Sell all or any of the real estate and personal property of the institution on terms directed by the supervising court.

(2) The director, upon compliance with the terms of the sale of property, shall execute and deliver to the purchaser of the property the necessary deeds or instruments to evidence the passing of the title. If the real estate is situated outside the county in which the principal office of the institution is located, a certified copy of the order authorizing and ratifying the sale shall be filed in the office of the clerk of the county in which the property is situated. [Amended by 1973 c.797 s.262]

711.485 Borrowing funds to pay closed institution expenditures. The Director of the Department of Consumer and Business Services may, after the director has obtained the consent of the supervising court, borrow funds from any source available to be used for distribution among depositors or other creditors of the institution in the process of liquidation, or for expense of liquidation or preservation of the assets of the institution. To secure the loan, the director may pledge, on terms fixed by the lender and agreed to by the director, all or any portion of the assets of the institution. The director is not personally obligated to pay the loans. [Amended by 1973 c.797 s.263]

711.490 Capital stock requirements of institution purchasing assets and assuming liabilities of insolvent institution. If the assets of an insolvent institution are sold to a new institution and the new institution assumes any or all of the deposit liabilities of the insolvent institution with the approval of the Director of the Department of Consumer and Business Services and the supervising court, the new institution may be organized with a capital stock equal to the capital stock of the insolvent institution without regard to the capital requirements of ORS 707.050. [Amended by 1973 c.797 s.264]

711.495 Action by director to collect balance due on stock or stock assessment. If an institution becomes insolvent and is taken in charge by the Director of the Department of Consumer and Business Services for liquidation, the director may maintain an action against any stockholder, whose stock or assessment on the stock has not been fully paid, for the collection of the unpaid balance. The action may be prosecuted against one or more stockholders, singly or collectively. [Amended by 1973 c.797 s.265]

711.500 Liability of transferor of stock made in contemplation of insolvency; proceedings to relieve stockholder of liability prohibited. (1) Stockholders in an institution who have transferred their stock or registered the transfer of their stock within 60 days before the date of the closing of the institution or with the knowledge of the impending closing or failure, are liable, as if the transfer had not been made, to the extent that the subsequent transferee fails to pay the unpaid balance on the stock. This subsection does not affect any recourse which a former stockholder might otherwise have against those in whose name the stock is registered at the time the institution closes.

(2) An action may not be brought by the holder of any stock standing in the name of the stockholder on the books of an institution at the time it closes which will relieve the stockholder of liability as a stockholder. [Amended by 1973 c.797 s.266]

711.505 Liability of fiduciary as stockholder; liability of estate and funds. A person holding stock of an institution as a fiduciary, as collateral security or in pledge, is not personally subject to any liability as a stockholder. The person pledging the stock is liable as a stockholder. The estate and funds in the hands of the fiduciary are liable to the same extent as the testator, intestate, protected person or person interested in the trust fund would be liable if able to act and hold the stock in the name of that person. [Amended by 1973 c.797 s.267; 1973 c.823 s.146; 1974 c.36 s.27]

711.510 Deposit of money collected under ORS 711.495; security for deposit. (1) The moneys collected by the Director of the Department of Consumer and Business Services under ORS 711.495 shall be, from time to time, deposited in one or more insured institutions, subject to the order of the director.

(2) The director may require any bank in which the director deposits money under this section to furnish security therefor satisfactory to the director for the safekeeping and prompt payment of the money deposited. [Amended by 1973 c.797 s.268; 1997 c.631 s.248]

711.515 "Depositor" defined; preferences among depositors. (1) As used in ORS 711.515 to 711.525, "depositor" includes purchasers or holders in due course of certificates of deposit, cashiers' checks, certified checks,

outstanding unpaid drafts drawn or issued by an Oregon stock bank, unsecured letters of credit and unsecured drafts accepted by the Oregon stock bank if the instruments enumerated are issued pursuant to cash or credit actually received or realized by the Oregon stock bank.

(2) A depositor or deposit, including deposits of the State of Oregon or any county, city or political subdivision thereof, shall not have a preference or prior lien on any assets of an insolvent Oregon stock bank over the claims of other depositors or deposits, unless the assets have been pledged as security in compliance with the provisions of law. This subsection does not apply to any claims or demands involving funds held by an Oregon stock bank under an express oral or written trust agreement, where a preference to the trust funds may be established by evidence satisfactory to the Director of the Department of Consumer and Business Services and the supervising court. [Amended by 1973 c.797 s.269; 1997 c.631 s.249]

711.520 Priority of claimants against assets of Oregon stock bank that is insolvent or in liquidation. If an Oregon stock bank becomes insolvent or goes into voluntary or involuntary liquidation, the assets of the Oregon stock bank shall be applied in the following order of priority:

- (1) First, if collateral has been pledged under ORS 295.015 and assets have been pledged under ORS 709.030, to the benefit of those for whom the collateral and assets have been pledged;
- (2) Second, to pay the expenses of liquidation;
- (3) Third, to satisfy the amount due the depositors; and
- (4) Fourth, to satisfy the amount due sellers of federal funds. [Amended by 1973 c.797 s.270; 1993 c.373 s.1; 1997 c.631 s.250; 1999 c.311 s.5]

711.525 Interest on deposits after Oregon stock bank closes. Interest on unsecured interest-bearing deposits and on secured interest-bearing deposits other than public funds shall stop on the date any Oregon stock bank is placed in the hands of the Director of the Department of Consumer and Business Services for liquidation. Interest on public funds that are secured as provided in ORS chapter 295, shall continue at the rate being paid by the Oregon stock bank prior to the time it closed. [Amended by 1973 c.797 s.271; 1997 c.631 s.251]

711.530 Notice to creditors to present claims. The Director of the Department of Consumer and Business Services shall cause notice to be given by advertisement, in a newspaper of the choice of the director, weekly for four consecutive weeks, notifying persons with claims against an institution which the director has taken possession of for the purpose of liquidating its affairs, to present the claim to the director, with legal proof of the claim, at a designated place on or before the expiration of 60 days after the date of the first publication of the notice. The notice shall state the date of the first publication. The director shall mail a similar notice to all persons whose names appear as creditors upon the books of the institution. Failure to mail the notice to any creditor does not give the creditor any right or impose any liability on the director. [Amended by 1973 c.797 s.272]

711.535 Verification and filing of claims; demand for preference. (1) All claims shall be verified and filed with the Director of the Department of Consumer and Business Services. If a claimant asserts a preference other than the preference given in ORS 711.520 to depositors, the claim shall include a demand for preference and a statement of the grounds upon which preference is claimed.

(2) Any claim for preference shall be filed with the director and the supervising court, before the expiration of the time fixed under ORS 711.530 in the notice to creditors. If a claim for preference is not filed within the designated time, it is barred. [Amended by 1973 c.797 s.273]

711.540 Approval or rejection of claims. (1) Within a reasonable time after the expiration of the time fixed in the notice to creditors the Director of the Department of Consumer and Business Services shall approve or reject, in whole or in part, every claim filed.

(2) Depositors' claims asserting no priority or preference other than the preference given under ORS 711.520 to depositors, which are filed after the expiration of the time fixed in the notice to creditors for the filing of all claims, shall be approved or rejected, in whole or in part within a reasonable time after the claims are filed with the director.

(3) The approval or rejection of any claim by the director shall be indorsed in writing upon the claim and the director need not state the reasons for the approval or rejection. The director may at any time alter or amend the previous approval or rejection of any claim. [Amended by 1973 c.797 s.274]

711.545 Objection to approval of claims. (1) If a creditor of the closed institution or any interested party objects to the action of the Director of the Department of Consumer and Business Services in allowing in whole or in part any claim filed with the director, the creditor shall, within 10 days after the list of allowed claims has been filed with the clerk of the supervising court, make and file with the clerk of the supervising court a verified statement of the objections of the creditor. The statement shall state the facts and reasons upon which the objections are based and include a notice that the objecting party appeals to the supervising court. Objections to the approval of any claim may be made at any time but, if not filed within the 10-day period, the objections shall apply only to that portion of the claim which has not yet been paid.

(2) A copy of the objections and notice shall be served upon the director and upon the creditor whose claim is challenged. Proof of the service shall be filed in the supervising court with the statement of objections.

(3) The statement of objection filed in the supervising court shall also have attached to it a copy, certified as correct by the director, of the claim so approved and the approval of the claim indorsed thereon by the director. [Amended by 1973 c.797 s.275]

711.550 Objection to rejection of claims. (1) If the Director of the Department of Consumer and Business Services rejects any claim in whole or in part written notice of the rejection shall be given to the claimant, either in person or by mail. If notice by mail is given it is sufficient that the notice be sent to the address indicated by the claimant on the proof of claim filed with the director. If no address is given, then it is sufficient if the notice is mailed to the last address of the claimant as shown by the books and records of the closed institution. If notice of rejection is given by mail, the notice is considered to have been given by the director on the day when the notice of rejection is properly addressed and deposited in the mails, postage prepaid. Proof of giving of notice of rejection by the director shall be made by affidavit, and the affidavit shall be prima facie evidence of the giving of notice. The affidavit shall be filed in the office of the director.

(2) Within 30 days after the giving of the notice of rejection, the claimant, may appeal the rejection by serving the director with notice of appeal and by filing the notice with the clerk of the supervising court with proof of service of the notice upon the director and a copy, certified as correct by the director, of the rejected claim and the indorsement made thereon by the director. [Amended by 1973 c.797 s.276]

711.554 Procedure for determination of claims. (1) After the filing of objections under ORS 711.545 or the filing of the notice and other papers under ORS 711.550 and upon the motion of any of the parties in interest, the supervising court, upon notice to all the parties, shall set the matter for trial.

(2) The trial shall be held in a summary manner upon the documents filed with the court. The person filing the statement of objection or the claimant whose claim was rejected has the burden of proof.

(3) An appeal from the decision of the supervising court to the appellate court may be taken by either party as from any other judgment or decree of the supervising court. [1973 c.797 s.277]

711.555 [Repealed by 1973 c.797 s.428]

711.560 Costs and disbursements in claim proceedings. A party to the proceedings upon any hearing provided for in ORS 711.554 shall not recover costs or disbursements from any other party. [Amended by 1973 c.797 s.278]

711.565 Claims presented after time expired. Depositors' claims presented and allowed after the expiration of the time fixed in the notice to creditors may be paid the amount of all prior dividends therein, if there are sufficient funds, and share in the distribution of the remaining assets in the hands of the Director of the Department of Consumer and Business Services equitably applicable thereto. [Amended by 1973 c.797 s.279]

711.567 Supervising court to bar claims to facilitate closing. To facilitate the final closing of the liquidation of the institution, the supervising court may, by order, bar all claims at any time after one year from the date of the first publication of notice to creditors under ORS 711.530. [1973 c.797 s.280]

711.570 Lists of claims. (1) Upon the expiration of the time fixed under ORS 711.530 for the presentation of claims, the Director of the Department of Consumer and Business Services shall make in duplicate a list of the claims presented specifying whether the claims have been approved, rejected or neither approved nor rejected pending further investigation. The list shall also note which claims have been presented to the supervising court for appeal. One copy

of the list shall be filed in the office of the director and one in the office of the clerk of the supervising court.

(2) The director shall, in like manner, make and file supplemental lists showing all claims presented subsequent to the filing of the first list.

(3) The lists shall be filed in the supervising court at least 15 days before the payment of any dividend on the claims or the payment of any preferred claims. [Amended by 1973 c.797 s.281]

711.572 Liability of directors for distributing assets without payment of known debts. The directors of an institution who vote for or assent to any distribution of assets of the institution to its stockholders during the liquidation of the institution without the payment and discharge of, or making adequate provision for, all known liabilities of the institution shall be jointly and severally liable to the institution for the value of the assets which are distributed, to the extent that the liabilities of the institution are not thereafter paid and discharged. [1973 c.797 s.282]

711.575 Dividends to depositors. At any time after the expiration of the date fixed for the presentation of claims under ORS 711.530 the Director of the Department of Consumer and Business Services may, out of the funds remaining in the hands of the director after the payment of expenses, declare one or more dividends. After the expiration of one year from the first publication of notice to creditors the director may declare a final dividend. The dividends shall be paid to the persons, in the amounts and upon the notice as may be directed by the supervising court. [Amended by 1973 c.797 s.283]

711.577 Death of depositor; payment of claim. (1) Any person who would be entitled to withdraw a deposit under ORS 708A.430 may claim the deposit and receive dividends thereon, or if claim has been made it may be amended after the death of the claimant so that future dividends are paid to the person entitled thereto under ORS 708A.430.

(2) If any claim is more than \$500, dividends may be paid to the person entitled thereto, as provided in ORS 708A.430, if the Director of the Department of Consumer and Business Services is satisfied that the total dividends to be paid after the death of the claimant are less than \$100.

(3) The director is under no obligation to determine the relationship of the affiants to the deceased depositor and the payment of dividends made in good faith to parties making the affidavit shall be a release of the director for the amount of the dividends so paid. [1973 c.797 s.284; 1997 c.631 s.251a]

711.580 Safety deposit boxes; removal of property. (1) If an institution, at the time the Director of the Department of Consumer and Business Services takes possession of its property and business, has in its possession, as bailee, for safekeeping and storage, any valuable personal property, or has rented any vaults, safes or safe deposit boxes or any portion thereof for the storage of property of any kind, the director may mail a notice to the person claiming to be or appearing upon the institution's books to be the owner of the property, or the person in whose name the safe, vault or box stands notifying them to remove the property within a period fixed by the notice but not less than 90 days after the date the notice is mailed. The notice shall be in writing and sent by registered mail or by certified mail with return receipt directed to the person at the person's post-office address as recorded upon the books of the institution. The director shall allow a person access to the institution so that the person may remove the person's property stored or kept with the institution as described in this subsection. The director may require that the person show identification reasonably identifying the person as the person whose name appears as owner of the property on the institution's books or as the person in whose name the safe, vault or box stands. The director may limit access to normal business hours.

(2) Upon the date fixed by the notice, the contract, if any, between a person and the institution for the storage of the property or for the use of the safe, vault or box is terminated, and the amount of the unearned rent or charges, if any, paid by the person becomes a debt of the institution to the person.

(3) After the date fixed in the notice the safe, vault or box may be opened in the presence of the director, and a witness who is not an officer or employee of the institution. A list and description of the property shall be made by the person opening the safe, vault or box and shall be attached to the property. The director shall keep the property in one of the general safes or boxes of the institution until it is delivered to the person entitled to receive it or is disposed of as provided in ORS 711.582. [Amended by 1973 c.797 s.285; 1981 c.397 s.1; 1991 c.249 s.67]

711.582 Disposition of contents of safety deposit boxes. (1) If property is not removed within six months after the time fixed by the notice of the Director of the Department of Consumer and Business Services under ORS 711.580, the

director may sell the property under the direction of the supervising court. The proceeds of the sale shall be held for the benefit of the person entitled to the property. Any funds which have not been claimed within two years after the final order closing the liquidation of the institution may be disposed of in the manner prescribed in ORS 711.590 for unclaimed dividends and deposits.

(2) If papers or other articles which have no value and cannot be sold are not removed within six months after the time fixed in the notice of the director, the director shall store the papers and articles with the records of the insolvent institution. One year after the final order closing the liquidation of the institution the papers and articles may be destroyed in the manner prescribed in ORS 711.595 for the records of an insolvent institution. [1973 c.797 s.286]

711.585 Selection of agents to wind up affairs of institution; bond or letter of credit; duties of agent. (1)

When the Director of the Department of Consumer and Business Services has paid to each depositor and creditor of the institution whose claim as a depositor or creditor has been proved and allowed, the full amount of the claim and has made proper provision for unclaimed or unpaid deposits or dividends and has paid all the expenses of the liquidation, the director shall call a meeting of the stockholders of the institution by giving notice of the meeting for 30 days in one or more newspapers circulated in the county in which the principal office of the institution is located. At the meeting the stockholders shall select, by ballot, one or more agents to administer the assets and wind up the affairs of the institution. A majority of the stock present and voting in person or by proxy is necessary to select an agent.

(2) The agent shall file with the director a bond or an irrevocable letter of credit to the State of Oregon in an amount not less than 20 percent of the book value of the assets to be surrendered to the agent, but in no case shall the bond or letter of credit be less than \$1,000. The bond or letter of credit shall be executed by the agent as principal. The bond shall be executed by a surety company authorized to do business in this state as surety, and any letter of credit shall be issued by an insured institution. The bond or letter of credit shall be conditioned for the faithful performance of all the duties of the agent's trust.

(3) When the agent files the required bond or letter of credit, the director shall transfer to the agent all the assets of the institution remaining in the hands of the director. Upon the transfer and delivery the director is discharged from all further liability to the institution and its creditors. The agent shall complete the liquidation of the affairs of the institution, and, after paying the expenses of the liquidation, shall distribute the proceeds among the stockholders in proportion to the several holdings of stock.

(4) If the stockholders fail to meet on the date advertised for the stockholders' meeting or within 15 days after the advertised date or fail to appoint an agent, or if the agent fails to qualify as required in this section within 30 days after the date of their selection, the director may appoint an agent. This agent shall file a bond or letter of credit and liquidate the affairs of the institution as though the agent had been selected by the stockholders. Upon the transfer and delivery to the agent appointed by the director of all the remaining assets in the hands of the director, the director is discharged from all further liability to the institution and its creditors. [Amended by 1973 c.797 s.287; 1991 c.331 s.116; 1997 c.631 s.252]

711.590 Disposition of unclaimed deposits; interest. (1) Two years after the date of the final order closing the liquidation of an institution, the Director of the Department of Consumer and Business Services may withdraw any unclaimed deposits or balances remaining to the credit of dividend accounts, representing the aggregate of undelivered checks or unpaid dividend funds in the possession of the Department of Consumer and Business Services, and pay the funds to the Division of State Lands as unclaimed property to be disposed of as provided in ORS 98.302 to 98.436 and 98.992.

(2) The interest earned on the dividend accounts while they remain in the possession of the director shall be paid to the State Treasurer to be credited to the Consumer and Business Services Fund and the owner, the heirs or personal representative of the owner have no claim to the interest. [Amended by 1959 c.138 s.4; 1973 c.797 s.288; 1993 c.694 s.37]

711.595 Destruction of liquidation records in possession of director. If any files, records, documents, books of account or other papers have been taken over and are in the possession of the Director of the Department of Consumer and Business Services in connection with the liquidation of an insolvent institution, the director may, after one year from the declaration of the final dividend or from the date the liquidation has been closed by order of the supervising court, destroy any of the files, records, documents, books of account or other papers which appear to the director to be unnecessary for future reference as part of the liquidation and files of the office of the director. [Amended by 1973 c.797 s.289]

711.600 Liquidation expenses. The expenses incurred by the Director of the Department of Consumer and Business Services in the liquidation of an institution include the expenses of all employees of the Department of Consumer and Business Services employed in the liquidation, reasonable attorney fees for counsel employed by the director in the course of the liquidation, and stationery, rent, postage, telephone, telegraph and other office and traveling expense. The compensation of the employees and the expense of supervision and liquidation shall be fixed by the director, subject to the approval of the supervising court. The supervising court shall not increase the compensation or expenses over the amount fixed by the director. [Amended by 1973 c.797 s.290; 1985 c.762 s.44]

711.605 Petitions relating to insolvent institutions; ruling by director; court review. Any petition relating to an insolvent institution, except a petition by the Director of the Department of Consumer and Business Services, shall be filed with the supervising court and the director. The director shall, within a reasonable time after the petition is filed, grant or refuse the petition and notify the petitioner in writing of the decision. If a petitioner is dissatisfied with the decision of the director the petitioner may, within 30 days after the decision of the director, present the petition, with the decision of the director, to the supervising court. The supervising court shall fix a date for the hearing of the petition, giving reasonable notice of the date to the petitioner and to the director. The supervising court shall determine the matter upon the evidence produced by all the parties, and the burden of proof is upon the petitioner. [Amended by 1973 c.797 s.291]

711.610 [Repealed by 1973 c.797 s.428]

711.615 Court filing fees. Fees shall not be charged for the filing in the supervising court by the Director of the Department of Consumer and Business Services, the deputies of the director or attorneys of any papers relating to the liquidation of an institution or which are necessary or convenient in connection with the collection of assets of an institution. [Amended by 1973 c.797 s.292; 1999 c.803 s.7]

711.620 Suspending or restricting payment of liabilities; duration. (1) The Director of the Department of Consumer and Business Services may order an Oregon stock bank to suspend or restrict the payment of its liabilities to depositors and other creditors except as provided in ORS 711.620 to 711.670, if the action is necessary for the protection of the depositors and other creditors of the Oregon stock bank and is in the public interest.

(2) The order of the director is effective upon receipt by the Oregon stock bank of written notice thereof signed by the director and shall continue in effect until released or modified by the written order of the director. The suspension and restriction shall not exceed a period of 90 days, but may be extended for further periods not to exceed 90 days each upon the written order of the director. [1973 c.797 s.293; 1997 c.631 s.253]

711.625 Taking possession of Oregon stock bank by director; powers of director; expenses. (1) When the order mentioned in ORS 711.620 takes effect, the Director of the Department of Consumer and Business Services shall immediately take possession of the property and affairs of the Oregon stock bank, and take whatever action is necessary to conserve the assets of the Oregon stock bank pending further disposition of its business.

(2) While the director is in possession of an Oregon stock bank, the director shall have all the powers given to the director in connection with insolvent Oregon stock banks, and the rights of interested parties shall, subject to ORS 711.620 to 711.670, be the same as if the director had taken possession of the Oregon stock bank because of insolvency.

(3) All expenses of the director while in possession of the Oregon stock bank shall be paid out of the assets of the Oregon stock bank and shall be a lien on the assets prior to any other lien. [1973 c.797 s.294; 1975 c.544 s.38; 1997 c.631 s.254]

711.630 Pro rata withdrawals by depositors. While the Oregon stock bank is in the possession of the Director of the Department of Consumer and Business Services under ORS 711.625, the director may set aside and make available for withdrawal by depositors on a ratable basis such amounts as in the opinion of the director may safely be used for the purpose. [1973 c.797 s.295; 1997 c.631 s.255]

711.635 Receiving new deposits; segregation. (1) While the Oregon stock bank is in the possession of the

Director of the Department of Consumer and Business Services under ORS 711.625, the Oregon stock bank may accept deposits but the deposits shall not be subject to any limitation as to payment or withdrawal.

(2) Deposits received after the director takes possession and the amounts released for payment to depositors under ORS 711.630, shall be segregated and held and used solely to meet the deposit liability and the pro rata amount so released. They shall not be used to liquidate any indebtedness of the Oregon stock bank existing at the time the director took possession, or any subsequent indebtedness incurred in liquidating any indebtedness of the Oregon stock bank existing at the time the director took possession.

(3) Deposits received while the Oregon stock bank is in the possession of the director shall be kept on hand in cash, invested in direct obligations of the United States or deposited with an approved reserve depository. [1973 c.797 s.296; 1997 c.631 s.256]

711.640 Termination of suspension or restriction on payment of liabilities. (1) The Director of the Department of Consumer and Business Services may, by order, on a date fixed by the order and at least 10 days after the date of the order, terminate the suspension or restriction on payment of liabilities of the Oregon stock bank designated in the order.

(2) Immediately upon the termination of the suspension or restriction on payment of liabilities of the Oregon stock bank designated in the order, the director shall surrender possession of the assets and properties of the Oregon stock bank to the proper officers of the Oregon stock bank. The receipt of the officers operates as a full release of the director. [1973 c.797 s.297; 1997 c.631 s.257]

711.645 Notice of termination of suspension or restriction on payment of liabilities. (1) At least 10 days before the date on which the suspension or restriction on the payment of liabilities is terminated, the Director of the Department of Consumer and Business Services shall cause a notice to be published in a newspaper circulated in the city, town or county in which the principal office of the Oregon stock bank is located. Only one publication of the notice is required.

(2) The notice shall specify:

(a) The date on which the suspension or restriction on the payment of liabilities will be removed;

(b) That the provisions of ORS 711.635 pertaining to the segregation of deposits will not be effective after that date; and

(c) That the segregated deposits after the removal of the restriction or suspension will be general deposits.

(3) On or before the date of the publication of the notice, the director shall mail, postage prepaid, to each depositor in the Oregon stock bank whose deposit has been segregated as provided by ORS 711.635 a copy of the notice addressed to the last-known address of each depositor as shown by the records of the Oregon stock bank.

(4) The director shall hand a copy of the notice to every depositor making a deposit in the Oregon stock bank after the date of the newspaper publication and up to the time the suspension or restriction on the payment of liabilities of the Oregon stock bank is removed. [1973 c.797 s.298; 1997 c.631 s.258]

711.650 Deposits to remain segregated until termination notice has been given. If the Director of the Department of Consumer and Business Services removes the restrictions or suspensions on the payment of liabilities of any Oregon stock bank and surrenders possession of the assets and properties of the Oregon stock bank to the proper officers of the Oregon stock bank, before the 10 days' notice provided for by ORS 711.645 has been given, the Oregon stock bank shall keep deposits segregated under ORS 711.635 separate and apart from its other assets until the notice has been given by the Oregon stock bank in the manner provided in ORS 711.645. After the notice has been given, the segregated deposits shall become general deposits and may be mingled with the other assets of the Oregon stock bank and the provisions of ORS 711.635 with respect to segregation of deposits shall no longer apply. [1973 c.797 s.299; 1997 c.631 s.259]

711.655 Use of suspended deposits to pay indebtedness of depositor. Nothing in ORS 711.620 to 711.670 prevents the assignment of a suspended deposit liability or the application of all or a part of a suspended deposit to payment at maturity of any indebtedness of the depositor to the Oregon stock bank that existed at the time the suspension became effective, but a deposit liability subsequently assigned may not be so applied. [1973 c.797 s.300; 1997 c.631 s.260]

711.660 Assignment or transfer of capital stock invalid while payment of liabilities suspended or restricted.

While the payment of the liabilities of any Oregon stock bank is suspended or restricted under ORS 711.620, an assignment or transfer of the capital stock of the Oregon stock bank is invalid. [1973 c.797 s.301; 1997 c.631 s.261]

711.665 Suspension or restriction of liability payment not evidence of insolvency. An order of the Director of the Department of Consumer and Business Services under ORS 711.620 to 711.670 or the taking possession of the assets and properties of an Oregon stock bank by the director under ORS 711.620 to 711.670 is not an act of insolvency of the Oregon stock bank and does not raise any presumption of insolvency. [1973 c.797 s.302; 1997 c.631 s.262]

711.670 Compliance with ORS 711.620 to 711.670 as defense to depositor's action. Compliance with the terms and conditions of ORS 711.620 to 711.670 and orders and rules promulgated as a result of ORS 711.620 to 711.670 is a complete defense to any suit or action brought by any depositor or creditor against an Oregon stock bank with respect to any deposit or contract liability. [1973 c.797 s.303; 1997 c.631 s.263]

PENALTIES

711.980 Civil penalties. Any person who violates ORS 711.415 shall forfeit and pay to the State Treasurer to be deposited in the Consumer and Business Services Fund a civil penalty in an amount determined by the Director of the Department of Consumer and Business Services of not more than \$2,500 for each offense. The civil penalty may be recovered as provided in ORS 706.980. [1975 c.544 s.40]

711.990 [Amended by 1973 c.797 s.304; repealed by 1975 c.544 s.62]

CHAPTER 712

[Reserved for expansion]