

# Chapter 708A

2013 EDITION

## Regulation of Institutions Generally

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**POWERS OF INSTITUTIONS**

**708A.005 Powers of institutions; insurance transactions; rules.** (1) Except as otherwise limited in the Bank Act or the articles of incorporation of an institution, an institution shall have:

(a) Perpetual duration and succession in its corporate name, unless a limited period of duration is stated in its articles of incorporation;

(b) The power to do all things necessary or convenient to carry out its business and affairs including, without limitation, the power to:

(A) Sue and be sued and complain and defend in its corporate name;

(B) Have a corporate seal, which may be altered at will, and use it or a facsimile thereof by impressing, affixing or reproducing it in any other manner;

(C) Make contracts, incur liabilities, borrow money, issue its notes, bonds and other obligations that may be convertible into other securities of the institution or include the option to purchase other securities of the institution;

(D) Conduct its business, locate offices and exercise the powers granted by the Bank Act within or without this state;

(E) Elect or appoint directors, officers, employees and agents of the institution;

(F) Make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state for managing the business and regulating the affairs of the institution;

(G) Make donations for the public welfare or for charitable, scientific or educational purposes;

(H) Transact any business permitted by the Bank Act; and

(I) Pay pensions and establish pension plans, and share option plans and benefit or incentive plans for any or all of its current or former directors, officers, employees and agents;

(c) The powers granted to institutions by the Bank Act;

(d) The power to be licensed as an insurance producer as required by ORS 744.053 to transact one or more of the classes of insurance described in ORS 744.062 except for title insurance; and

(e) All powers necessary or convenient to effect any or all of the purposes for which the institution is organized or to perform any or all of the acts expressly or impliedly authorized or required under the Bank Act.

(2) With respect to any exercise of the power granted under subsection (1)(d) of this section, other than the licensing of the institution to transact types of limited class insurance, as that term is defined in ORS 744.052, designated by the Director of the Department of Consumer and Business Services:

(a) The conduct by the institution of insurance producer activities shall be subject to the approval of the director. The director shall base consideration for approval on the condition of the institution, the adequacy of a formal business plan for the insurance activities and the existence of satisfactory management for the insurance activity.

(b) The director may revoke or restrict the ongoing authority of the institution to engage in the insurance producer activity if the condition of the institution substantially deteriorates or if the insurance activities are adversely affecting the institution.

(c) The institution shall file a written report with the director no later than March 31 of each year disclosing the insurance activities of the institution. The required contents of the report shall be established by the director by rule. Reports filed with the director under this paragraph shall be available for public inspection in the office of the director.

(3) An institution licensed as an insurance producer, as that term is defined in ORS 731.104, shall not in any manner use customer information obtained from another insurance producer to promote, develop or solicit insurance business for the institution unless the other insurance producer consents to such use of the customer information. [1997 c.631 §116; 1997 c.831 §1a; 2001 c.191 §51; 2003 c.363 §6; 2003 c.364 §58a]

**708A.010 Investments and activities of Oregon commercial banks.** (1) Notwithstanding any provision of the Bank Act to the contrary, Oregon commercial banks are authorized to:

(a) Engage as principal in those activities in which national banks may engage as principal and acquire and retain those investments that national banks may acquire and retain, subject to conditions and restrictions that apply to national banks; and

(b) Engage as principal in those activities and acquire and retain those investments that are permissible for state chartered banks under 12 C.F.R. 362.3(b) and 12 C.F.R. 362.4(c), subject to conditions and restrictions provided in 12 U.S.C. 1831a, 12 C.F.R. 362, and other applicable federal law.

(2) Notwithstanding any provision of the Bank Act to the contrary, subsidiaries of Oregon commercial banks are authorized to:

(a) Engage as principal in those activities in which subsidiaries of national banks may engage as principal and acquire and retain those investments that subsidiaries of national banks may acquire and retain, subject to conditions and restrictions that apply to subsidiaries of national banks; and

(b) Engage as principal in those activities and acquire and retain those investments that are permissible for subsidiaries of state chartered bank subsidiaries under 12 C.F.R. 362.3(b) and 12 C.F.R. 362.4(c), subject to conditions and restrictions provided in 12 U.S.C. 1831a, 12 C.F.R. 362, and other applicable federal law.

(3) Activities and investments referred to in subsections (1) and (2) of this section that require notice to or approval of the Comptroller of the Currency shall not require such notice or approval but shall require notice to or approval of the Director of the Department of Consumer and Business Services. For purposes of this section, references in federal statutes, regulations and other authorities that prescribe the permissible activities and investments of national banks and subsidiaries of national banks shall be deemed whenever practicable to refer to comparable provisions of Oregon law. The director may approve an activity or investment that requires director approval, subject to such conditions as the director deems appropriate.

(4) The purpose of this section is to grant Oregon commercial banks and their subsidiaries all investment and activity power and authority, as principal, permitted state chartered banks under federal law. [1997 c.631 §117]

**708A.115 Investment in government obligations.** (1) Institutions may invest, without regard to any limitation based on stockholders' equity, in:

(a) Obligations of the United States, including those of its agencies and instrumentalities;

(b) Obligations of public housing agencies issued pursuant to the United States Housing Act of 1937, as amended; and

(c) Obligations of the State of Oregon or any county, city, school district, port district or other public body with the power to levy taxes issued pursuant to the Constitution or statutes of the State of Oregon or the charter or ordinances of any county or city within the State of Oregon, if the issuing body has not been in default with respect to the payment of principal or interest on any of its obligations within five years preceding the date of the investment.

(2) Subject to a limitation of 20 percent of stockholders' equity, institutions may in-

vest in obligations of any other state of the United States or obligations of any out-of-state county, city, school district, port district or other public body in the United States payable from ad valorem taxes, if the obligations are rated in one of the four highest grades by a recognized investment service organization that has been engaged regularly and continuously for a period of not less than 10 years in rating state and municipal obligations.

(3) Obligations received in satisfaction of debts previously contracted in good faith are not subject to the limitations of this section, if the book value of such obligations in excess of the limitations of this section is reduced to the amount allowed under this section within six months after the date the obligations are acquired. [1997 c.631 §118; 1999 c.59 §215]

**708A.120 Investment in stock of other entity; rules.** (1) An institution may not invest any of the institution's assets in the capital stock of any other corporation or in a membership interest in any limited liability company, except:

(a) In the capital stock of the Federal Reserve Bank.

(b) In stock or a membership interest the institution acquired or purchased to save a loss on a preexisting debt. The institution shall sell the stock or membership interest within two years of the date the institution acquired or purchased the stock or membership interest. The Director of the Department of Consumer and Business Services may extend the time if the director finds that an extension will not be detrimental to the public interest and will not contravene any other law.

(c) In the capital stock or a membership interest of any safe deposit company that does an exclusive safe deposit business on premises the institution owns or leases upon 30 days' advance notice to the director subject to the same limitations applicable to a national bank.

(d) In the capital stock or a membership interest of an agricultural and livestock finance company, subject to the same limitations applicable to national banks and to the approval of the director.

(e) In the capital stock or a membership interest, eligible for purchase by national banks, of a small business investment company, but the aggregate investment in the stock or membership interest may not exceed two percent of the institution's capital.

(f) In the common stock of any federally chartered corporation that is chartered for the purpose of providing secondary markets for the sale of mortgages by institutions.

(g) In the stock of the Federal Home Loan Bank.

(h) In the capital stock of a corporation exclusively engaged in a trust business or a banker's bank, subject to the same limitations applicable to national banks.

(i) In the capital stock of a bank service corporation, as provided in ORS 708A.130 to 708A.145.

(j) In the capital stock of a community development corporation, as provided in ORS 708A.150.

(k) If a trust company is not engaged in a banking business and if the director first approves the investment, the trust company may invest an amount that does not exceed 20 percent of the capital of the trust company:

(A) In the capital stock or a membership interest of a subsidiary investment company of a type defined in the Investment Company Act of 1940, as amended; or

(B) In a company one of the purposes of which is to act as a federal covered investment adviser or a state investment adviser, as defined in ORS 59.015, with all the powers a federal covered investment adviser or a state investment adviser customarily exercises.

(L) In adjustable rate preferred stock of the Student Loan Marketing Association established in 20 U.S.C. 1087-2, except that the aggregate investment in the stock may not exceed 15 percent of the institution's capital.

(m) In the capital stock or a membership interest of a company acquired for the purpose of strengthening the institution's capital structure or eliminating undesirable assets, as provided in ORS 708A.125.

(n) In the capital stock or a membership interest of a bank, limited liability company or corporation that is engaged in international or foreign banking or foreign banking in a dependency or insular possession of the United States, as provided in ORS 708A.155.

(o) In the capital stock of a corporation, or a membership interest in a limited liability company, that was created to establish ATMs, as provided in ORS 708A.160.

(2) An institution may invest the institution's assets in shares of any mutual fund, the assets of which are invested solely in obligations of the type described in and limited under ORS 708A.115.

(3) An institution may, subject to the director's approval, acquire or continue to hold the fully paid stock of a corporation or a membership interest in a limited liability company, one of the purposes of which is to assist the institution in handling real estate,

claims, judgments or other assets or in holding title to the assets.

(4) An institution may acquire or continue to hold the fully paid stock of a corporation or a membership interest in a limited liability company, the purpose of which is to permit the institution to engage in any business in which a financial holding company, a bank holding company or a nonbank subsidiary of a financial holding company or a bank holding company is authorized to engage. This subsection does not apply unless the institution is the owner of at least 80 percent of the common stock of the subsidiary corporation or the membership interests of the limited liability company, except qualifying shares of directors or qualifying membership interests of members.

(5) An institution may, subject to the director's approval and to rules the director adopts, acquire and continue to hold at least 80 percent of the fully paid stock of a corporation, or at least 80 percent of the membership interests of a limited liability company, that is engaged in any business in which an institution is authorized to engage. Except as otherwise permitted by statute or rule, the investment limitations applicable to the institution apply to the subsidiary.

(6) An institution may, subject to the director's approval and under rules the director adopts, acquire and continue to hold all the fully paid stock of a subsidiary corporation, or all of the membership interests of a limited liability company, that is engaged in the business of purchasing the stock of the institution for purposes of holding that stock and making a market for that stock, if not more than 20 percent of the net profit of the banking institution is disbursed to the subsidiary or the limited liability company in any one fiscal year. Except as otherwise permitted by statute or rule, the investment limitations applicable to the institution apply to the subsidiary or the limited liability company. Acquisitions under this subsection may not exceed 15 percent of the institution's capital.

(7) An institution may acquire and hold all or part of the stock of a corporation, or the membership interests of a limited liability company, that is or may be licensed after the acquisition as an insurance producer as required by ORS 744.053 to transact one or more of the classes of insurance described in ORS 744.062, subject to the following requirements:

(a) Acquiring and holding the stock or the membership interests are subject to the director's approval. The director shall base consideration for approval on the condition of the institution, the adequacy of a formal business plan for the insurance activities,

and the existence of satisfactory management for the corporation or the limited liability company.

(b) The director may revoke or restrict the ongoing authority of the institution to hold stock in the corporation or membership interests in the limited liability company if the condition of the institution substantially deteriorates or if the insurance activities are adversely affecting the institution.

(c) For each calendar year during which an institution owns all or part of a corporation, or a limited liability company, that is licensed as an insurance producer as required by ORS 744.053, the institution shall file a written report with the director. The report must be filed not later than March 31 of the following year and shall disclose the insurance activities of the corporation or the limited liability company. The director shall establish the required contents of the report by rule. The reports filed with the director under this paragraph must be available for public inspection in the director's office.

(d) The corporation or limited liability company may not in any manner use customer information that the institution obtained from another insurance producer to promote, develop or solicit insurance business for the corporation or the limited liability company unless the other insurance producer consents to such use of the customer information.

(e) The corporation or the limited liability company is subject to the limitations that apply to depository institutions under ORS 746.213 to 746.219. For the purpose of this paragraph, "depository institution" has the meaning given that term in ORS 746.213. [1997 c.631 §119; 1997 c.772 §31b; 1997 c.831 §2a; 2001 c.191 §52; 2001 c.377 §47; 2003 c.363 §7; 2003 c.364 §59a; 2005 c.80 §4; 2005 c.194 §1; 2013 c.104 §3]

**708A.125 Stock in corporations acquired to strengthen capital or eliminate undesirable assets.** (1) Upon the written application of the board of directors filed with the Director of the Department of Consumer and Business Services and subject to the written approval of the director and any limitations the director may prescribe, an institution may carry fully paid and nonassessable capital stock of any other corporation as an asset, if the stock is acquired for the purpose of strengthening the institution's capital structure or the elimination of undesirable assets.

(2) The stock may be held for such period as the director may determine, but in no event longer than 15 years.

(3) This section is not applicable to any stock that may be acquired in connection with the insurance of deposits, any stock that may be acquired under ORS 708A.120,

or any stock that may be purchased as a part of any transaction in which an institution borrows from the United States or an agency of the United States. This section does not repeal or in any way limit or modify ORS 711.470. [1997 c.631 §120]

**708A.130 Definition for ORS 708A.135 to 708A.145.** As used in ORS 708A.135 to 708A.145, unless the context requires otherwise, "invest" includes any advance of funds to a bank service corporation, whether by the purchase of stock, the making of a loan or otherwise, but does not include a payment for rent earned, goods sold and delivered or services rendered prior to the making of the payment. [1997 c.631 §121]

**708A.135 Investment in bank service corporation.** An Oregon commercial bank may invest not more than 10 percent of its capital in a bank service corporation. An Oregon commercial bank shall not invest more than five percent of its total assets in a bank service corporation. [1997 c.631 §122]

**708A.140 Discrimination by bank service corporation prohibited against non-stockholding depository institution; permitted conduct.** A bank service corporation shall not unreasonably discriminate in the provision of any services authorized under ORS 708A.130 to 708A.145 against any financial institution that does not own stock in the bank service corporation on the basis of the fact that the nonstockholding financial institution is in competition with a financial institution that owns stock in the bank service corporation, except that:

(1) It shall not be considered unreasonable discrimination for a bank service corporation, at its option, to either:

(a) Provide services to nonstockholding financial institutions only at a price that fully reflects all of the costs of offering those services, including the cost of capital and a reasonable return thereon; or

(b) If an Oregon commercial bank is authorized under ORS 708A.135 to invest in a bank service corporation, the bank service corporation may require that the Oregon commercial bank invest in the stock of the bank service corporation, in which case the bank service corporation shall provide services to the Oregon commercial bank on the same basis as for other stockholder financial institutions of the bank service corporation.

(2) A bank service corporation may refuse to provide services to a nonstockholding financial institution if comparable services are available from another source at competitive overall costs, or if the providing of services would be beyond the practical capacity of the bank service corporation. [1997 c.631 §123]

**708A.145 Authorized services of bank service corporations; sale of insurance; regulation of services.** (1) A bank service corporation may perform any of the following services for financial institutions:

- (a) Check and deposit sorting and posting;
- (b) Computation and posting of interest and other credits and charges;
- (c) Preparation and mailing of checks, statements, notices and similar items; or
- (d) Any other clerical, bookkeeping, accounting, statistical or similar functions performed for a financial institution.

(2) In addition to the services that may be performed by a bank service corporation for financial institutions under subsection (1) of this section, a bank service corporation:

(a) May perform for any person any service that may lawfully be performed by all shareholders of the bank service corporation, or by any holding company or subsidiary of any such shareholder, except that a bank service corporation shall not take deposits.

(b) With respect to the sale of insurance, shall be subject to the limitations applicable to depository institutions under ORS 746.213 to 746.219. For the purpose of this paragraph, "depository institution" has the meaning given that term in ORS 746.213.

(3) A banking institution may not cause to be performed, by contract or otherwise, any of the services described in subsection (1) of this section for itself, whether on or off its premises, unless assurances satisfactory to the Director of the Department of Consumer and Business Services are furnished to the director by both the banking institution and the person performing the services that the performance of the services will be subject to regulation and examination by the director to the same extent as if the services were performed by the banking institution itself on its own premises.

(4) The director may regulate and examine the performance of the services described in subsection (1) of this section for financial institutions, and may regulate and examine the performance by bank service corporations of the services described in subsection (2) of this section. [1997 c.631 §124; 2003 c.363 §8]

**708A.150 Community development corporations; authority to invest or organize; conditions; corporate form; functions.** (1) As provided in this section:

(a) A banking institution may invest its capital in a community development corporation.

(b) A banking institution may organize a community development corporation as a

wholly owned subsidiary of the banking institution and invest its capital in the corporation.

(2) A banking institution may invest in or organize and invest in a community development corporation under subsection (1) of this section, if the following conditions are satisfied:

(a) The projects undertaken by the community development corporation must be predominantly of a civic, community or public nature, and not merely of a private or entrepreneurial nature.

(b) The banking institution's aggregate investment in community development corporations and their projects must not exceed two percent of its capital for any project and five percent of its capital for all projects, or 10 percent of its capital for all projects with the approval of the Director of the Department of Consumer and Business Services.

(c) The banking institution must submit to the director its proposal for investing in or organizing and investing in a community development corporation and the proposal must receive the director's approval.

(d) The membership of the board of directors of the community development corporation must be representative of the community in which the corporation is to operate.

(3) A community development corporation may be organized as a for-profit corporation under ORS chapter 60 or as a nonprofit corporation under the Oregon Nonprofit Corporation Law. A community development corporation must be authorized under its articles of incorporation or applicable law to:

(a) Acquire real estate. This paragraph does not authorize real estate investment that is primarily speculative in nature.

(b) Make equity investments in small businesses and in development projects that primarily benefit small businesses.

(c) Participate in joint ventures with outside partners.

(4) A banking institution wishing to invest in or organize and invest in a community development corporation shall submit to the director, on an application form designed by the director, a proposal that describes in detail the nature and scope of development activities the community development corporation intends to undertake.

(5) The director may submit an application to any appropriate state agency or city, county or other local government for its advice and assistance on determining the need and practicability of the projects proposed in the application. [1997 c.631 §125]

**708A.155 Investment in foreign banks.**

(1) Upon the approval of the Director of the Department of Consumer and Business Services and subject to rules promulgated by the director pursuant to ORS 183.310, 183.315, 183.330, 183.335 and 183.341 to 183.410, an institution may invest an amount not exceeding in the aggregate 10 percent of its stockholders' equity in the stock of banks or corporations chartered or incorporated under the laws of the United States or of any other state. Such banks or corporations shall be principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States, either directly or through the agency, ownership or control of local institutions in foreign countries, or in such dependencies or insular possessions, including the stock of one or more banks or corporations chartered or incorporated under section 25(a) of the Federal Reserve Act, as approved December 24, 1919.

(2) An institution shall file with the director an application for permission to exercise the powers established in subsection (1) of this section. The application shall specify the name, stockholders' equity of the institution filing it, the powers applied for and the place or places where the banking operations are to be carried on.

(3) The director may approve or reject the application, in whole or in part, if the granting of the application is considered inexpedient. The director may increase or decrease the number of places where the banking operations may be carried on.

(4) Before an institution may purchase stock in any corporation mentioned in subsection (1) of this section, the corporation shall agree to restrict its operations or conduct its business in the manner and under the limitations prescribed by the director for the places in which the business is to be conducted.

(5) If the director determines that the limitations prescribed are not being complied with, the director may investigate the matter. If the investigation shows that the corporation, or the institution holding stock in the corporation, has not complied with the limitations, the director may require the institution to dispose of stock holdings in the corporation.

(6) An institution investing in the capital stock of banks or corporations, as provided in subsection (1) of this section, shall furnish information concerning the condition of the banks or corporations to the director upon demand, and the director may order special examinations of the banks or corporations. [1997 c.631 §126; 1999 c.59 §216]

**708A.160 Corporation created to establish ATMs; banking institution as stockholder.** A banking institution may, subject to the approval of the Director of the Department of Consumer and Business Services, acquire and continue to hold a membership in or the fully paid stock of a corporation created to establish and operate ATM facilities. [1997 c.631 §127]

**708A.165 Membership in Federal Reserve System; member bank, officers, directors and shareholders subject to duties and liabilities imposed by laws of this state.** (1) Any Oregon commercial bank may subscribe to the capital stock and become a member of a Federal Reserve Bank.

(2) An Oregon commercial bank that is a member of a Federal Reserve Bank is subject to supervision and examination required by the laws of this state. The Federal Reserve Board may also examine such Oregon commercial banks. The authorities of this state having supervisory authority over an Oregon commercial bank may disclose to the Federal Reserve Board, or to examiners appointed by it, all information in reference to the affairs of any Oregon commercial bank that has become, or desires to become, a member of a Federal Reserve Bank.

(3) An Oregon commercial bank that is a member bank and its directors, principal officers and stockholders are subject to all liabilities and duties imposed upon them by the laws of this state. [1997 c.631 §128]

**708A.170 Securities powers.** An institution may, with the approval of the Director of the Department of Consumer and Business Services, purchase, sell, issue, underwrite and deal in securities to the same extent national banks may do so. [1997 c.631 §129]

**708A.175 Right to purchase, hold and dispose of real and personal property.** An institution may purchase, hold, convey, sell or lease:

(1) The real estate and improvements thereto in which the business of the institution is carried on, including, with its offices, other space in the same building to rent as a source of income.

(2) Furniture, fixtures, vaults, safe deposit boxes and other personal property necessary or convenient to carrying on the business of the institution.

(3) Real or personal property purchased by or conveyed to the institution in satisfaction of or on account of debts previously contracted in the course of its business, or otherwise acquired in the course of collecting debts.

(4) Real estate purchased at execution sale or under a judgment.



(5) Real estate conveyed to the institution in connection with its purchase of a bona fide contract of sale covering the real estate conveyed.

(6) Real estate purchased with the approval of the Director of the Department of Consumer and Business Services for the purpose of future location or expansion of the business of the institution.

(7) Real estate held in trust and real estate purchased with assets other than those of the institution. [1997 c.631 §131; 2003 c.576 §545]

**708A.180 Acquisition of personal property for leasing purposes.** An Oregon commercial bank may acquire and lease personal property at the request of a lessee who wishes to lease it upon terms requiring payment, during the minimum period of the lease, of rents which exceed the total expenditures by the Oregon commercial bank in the acquisition, ownership, financing and protection of the property. Rents may include residual values, the payment of which is guaranteed by a responsible third party. [1997 c.631 §132]

**708A.185 Purchase of real estate contracts.** Institutions may purchase the vendor's interest in bona fide contracts covering the sale of real estate that comply with the requirements of ORS 708A.270. [1997 c.631 §133]

**708A.190 Acceptance of drafts and bills of exchange; issuance of letters of credit; obligation for participation share in bills; rules.** (1) An Oregon commercial bank may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace, that grow out of transactions involving the importation or exportation of goods, or that grow out of the domestic shipment of goods, or that are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples.

(2) An Oregon commercial bank shall not accept drafts or bills of exchange or issue letters of credit, whether in a foreign or domestic transaction, for any one person to an amount equal at any one time in the aggregate to more than 20 percent of its capital, unless the Oregon commercial bank is fully secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance or letter of credit.

(3) Except as provided in subsection (5) of this section, an Oregon commercial bank shall not accept bills or issue letters of credit, or be obligated for a participation share in bills, to an amount equal at any time in the aggregate to more than 150 per-

cent of its capital. The aggregate of acceptances or bills, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50 percent of the aggregate of all acceptances, including obligations for a participation share in such acceptances, authorized for the Oregon commercial bank under this section.

(4) An Oregon commercial bank may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace, drawn under rules prescribed by the Director of the Department of Consumer and Business Services or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange, as required by the usages of trade in the respective countries, dependencies or insular possessions. An Oregon commercial bank shall not accept the drafts or bills of exchange for any one bank to any amount exceeding in the aggregate 20 percent of the capital of the accepting Oregon commercial bank, unless the draft or bill of exchange is accompanied by documents conveying or securing the title or by some other adequate security. An Oregon commercial bank shall not accept the drafts or bills of exchange in an amount exceeding at any time the aggregate of its capital.

(5) The director, under such conditions as the director may prescribe, may authorize, by rule or order, any Oregon commercial bank to accept bills and issue letters of credit, or be obligated for a participation share in bills, in an amount not exceeding at any time in the aggregate 200 percent of its capital. [1997 c.631 §134]

**708A.195 Disposition of real and personal property.** (1) An institution shall promptly dispose of real and personal property that the institution is not authorized to own or hold under the Bank Act.

(2) Real estate acquired by an institution pursuant to ORS 708A.175 (3) and (4) shall be sold or exchanged for other real estate within 10 years after title has vested in the real estate, unless the Director of the Department of Consumer and Business Services extends the time. Title vests for purposes of this section on the date the institution is first entitled to receive a deed to the real estate. An institution may not exchange real estate for other real estate without the director's prior written consent. An institution may hold real estate taken in exchange for other real estate for a period of time that the director fixes, not to exceed 10 years from the date of the exchange.

(3) An institution shall promptly dispose of personal property the institution acquires

under ORS 708A.175 (3). [1997 c.631 §135; 2011 c.478 §2]

**708A.200** [1997 c.631 §136; 2001 c.191 §53; 2001 c.377 §48; repealed by 2003 c.363 §16]

**708A.210 Challenge to validity of institution action; prohibition; exceptions.**

(1) Except as provided in subsection (2) of this section, the validity of an institution's action may not be challenged on the grounds that the institution lacks or lacked power to act.

(2) An institution's power to act may be challenged:

(a) In a proceeding by a stockholder against the institution to enjoin the act;

(b) In a proceeding by the institution, directly, derivatively or through a receiver, trustee or other legal representative, against an incumbent or former director, officer, employee or agent of the institution; or

(c) By the Director of the Department of Consumer and Business Services.

(3) In a stockholder's proceeding under subsection (2)(a) of this section to enjoin an unauthorized act, the court may enjoin or set aside the act if equitable and if all affected persons are parties to the proceeding, and may award damages for loss other than anticipated profits suffered by the institution or another party because of enjoining the unauthorized act. [1997 c.631 §137]

### LOANS GENERALLY

**708A.250 Lending money.** Except as specifically limited by the Bank Act and other applicable law, institutions have the general power to loan money upon terms and conditions that are consistent with safe and sound banking practices. [1997 c.631 §138]

**708A.255 Interest rates on loans or uses of money; late charges.** (1) Except as otherwise provided in this section, there is no limitation on the rate of interest or on the amount of other charges that a financial institution may contract for and receive for a loan or use of money.

(2) If a loan made by a financial institution is repaid before maturity, the unearned portion of the charges, if any, shall be refunded or credited to the borrower as provided in this subsection. The amount of the refund shall not be less than the total interest contracted for to maturity, less the greater of:

(a) Ten percent of the amount financed, or \$75, whichever is less; or

(b) The interest earned to the installment due date nearest the date of prepayment, computed by applying the simple interest rate of the loan to the actual principal balances outstanding, for the periods of time the

balances were actually outstanding. For purposes of rebate computations under this paragraph, the installment due date preceding the date of prepayment shall be considered to be nearest if prepayment occurs 15 days or less after that installment date. If prepayment occurs more than 15 days after the preceding installment due date, the next succeeding installment due date shall be considered to be nearest the date of prepayment. In determining the simple interest rate, the lender may apply to the scheduled payments the actuarial method, by which each scheduled payment is applied first to accrued and unpaid interest and any amount remaining is applied to reduction of the principal balance.

(3) Any installment of an installment loan or payment under an open-end credit arrangement that is not paid when due shall continue to bear interest until paid. In addition, if the installment or payment is not paid when due, the installment or payment may bear a late charge in such amount as is agreed to by the lender and the borrower. However, except for loans secured by real property, the lender may impose a late charge only if:

(a) The installment or payment is not received by the lender within 10 days after the due date or, if the open-end credit arrangement is a credit card account, the payment is not received by the lender on or before the due date;

(b) The loan agreement or open-end credit arrangement provides for a late charge upon delinquent installments or payments; and

(c) A monthly billing, coupon or notice is provided by the lender disclosing the date on which installments or payments are due and that a late charge may be imposed if payment is not received by the lender within 10 days thereafter or, in the case of an open-end credit arrangement that is a credit card account, that a late charge may be imposed if payment is not received by the lender on or before the date on which the payment is due. However, if the lender and the borrower have provided in the note or other written loan agreement that the payments on the loan shall be made by the means of automatic deductions from a deposit account maintained by the borrower, the lender shall not be required to provide the borrower with a monthly billing, coupon or notice under this paragraph with respect to any occasion on which there are insufficient funds in the borrower's account to cover the amount of a loan payment on the date the loan payment becomes due and within the periods described in paragraph (a) of this subsection. [1997 c.631 §139; 1997 c.631 §139a; 2001 c.440 §1]

**708A.260 Accepting own stock as collateral.** An institution shall not accept as collateral its own capital stock, except where the taking of such collateral is necessary to prevent loss upon an indebtedness previously contracted in good faith. If such indebtedness is not paid in full within six months from the date such stock was taken as collateral, the stock shall be promptly sold by the institution. [1997 c.631 §140]

**708A.265 Accepting stock of other institutions as collateral.** An institution shall not accept or hold as loan collateral in the aggregate more than 25 percent of the capital stock of any other insured stock institution. [1997 c.631 §141]

**708A.270 Real estate loans.** (1) With respect to any loans secured primarily by real estate, an Oregon commercial bank shall maintain a file containing such appraisal, evidence of merchantable title and insurance as may be required by the Director of the Department of Consumer and Business Services.

(2) All loans made by an Oregon commercial bank to finance the construction of buildings and the improvements appurtenant thereto shall be subject to such requirements as the director may determine. [1997 c.631 §142]

**708A.275 Establishment of loan production office; notice; fee.** (1) A financial institution shall file a notice with the Director of the Department of Consumer and Business Services within 30 days of establishing a loan production office in this state. The notice shall include:

(a) The name of the financial institution and address of the main office;

(b) The name and address of the loan production office; and

(c) The name and address of the officer of the financial institution responsible for loan production office activities.

(2) A notice shall be filed for each loan production office in this state.

(3) Each notice filed under subsection (1) of this section shall be:

(a) Accompanied by a nonrefundable fee of \$100.

(b) Amended when there is a material change in the information provided pursuant to subsection (1) of this section. No fee is required for amendments.

(4) A financial institution shall notify the director of the closure of a loan production office in this state, the date of closure and the disposition of any records previously maintained at the loan production office subject to closure. No fee is required for a notice of closure. [1999 c.107 §5]

## LOAN AND OTHER OBLIGATION LIMITS

**708A.290 "Capital" defined for ORS 708A.290 to 708A.375.** As used in ORS 708A.290 to 708A.375, the term "capital," when referring to an Oregon commercial bank, means tier 1 and tier 2 capital, as defined under the federal risk-based capital guidelines of the appropriate federal banking agency and issued under 12 U.S.C. 1813, plus the balance of allowance for loan and lease losses excluded from tier 2 capital. The amounts described in this section shall be determined from the most recent consolidated report of condition and income filed under 12 U.S.C. 1817(a)(3). [1997 c.631 §143]

**708A.295 Limitations on amount of obligations to Oregon commercial bank; applicability.** Except as provided in ORS 708A.300 to 708A.375, the loans and other obligations of a person to an Oregon commercial bank outstanding at any time shall not exceed 15 percent of the Oregon commercial bank's capital. Any loan made or other obligation acquired in accordance with ORS 708A.300 to 708A.375 shall be in addition to and shall not be applied against the 15 percent limitation. Any loan made or obligation acquired that complies with ORS 708A.290 to 708A.375 when made or acquired shall not be considered out of compliance on account of a subsequent decline in the capital of the Oregon commercial bank. Obligations in the name of one person for the benefit of another person shall be considered obligations of both the named person and the benefited person. [1997 c.631 §144]

**708A.300 Obligations secured by readily marketable collateral.** In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may make loans to or acquire other obligations of a person, not to exceed 10 percent of its capital, if:

(1) The loans or obligations are fully secured by readily marketable collateral having a market value that may be determined by reliable and continuously available price quotations;

(2) The market value is at least 15 percent greater than the amount of the obligation at the time it is incurred; and

(3) The market value is at all times while the obligation is outstanding at least 100 percent of the balance of principal, interest and other charges applicable to the obligation. [1997 c.631 §145]

**708A.305 Obligations of other financial institutions.** In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may acquire obligations of other financial institutions without regard to amount in the form of time or demand de-

posits that it places with such other financial institutions. [1997 c.631 §146]

**708A.310 Obligations of indorser of discounted commercial paper.** (1) In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may acquire obligations of a person without regard to amount as an indorser, arising out of the discount of commercial or business paper owned by the person negotiating the paper.

(2) As used in this section, “commercial or business paper” means negotiable notes, drafts, acceptances or bills of exchange having a maturity of not more than six months, that have been given by one person to another in settlement of a commercial or business transaction involving the purchase of goods, and upon which both parties to the transaction are liable either as maker, drawer, acceptor or indorser. [1997 c.631 §147]

**708A.315 Noncommercial short-term notes.** In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may acquire obligations of a person, not to exceed 15 percent of the bank’s capital, as an indorser or guarantor of notes, other than commercial or business paper excepted under ORS 708A.310, having a maturity of not more than six months, and owned by the person indorsing and negotiating the same. [1997 c.631 §148]

**708A.320 Obligations secured by shipping documents.** In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may make loans to or acquire other obligations of a person without regard to amount, provided the obligations are fully secured by shipping documents conveying or securing title to goods or commodities in process of shipment. [1997 c.631 §149]

**708A.325 Installment consumer paper.** (1) In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may acquire obligations of a person, not to exceed 25 percent of the Oregon commercial bank’s capital, as an indorser or guarantor of negotiable or nonnegotiable installment consumer paper that carries a full or partial recourse indorsement or unconditional guarantee by the person transferring the obligation and conforms to rules prescribed by the Director of the Department of Consumer and Business Services.

(2) The 25 percent limitation of subsection (1) of this section does not apply to the extent the Oregon commercial bank relies primarily on the obligors on the consumer paper for the payment of the consumer paper, the Oregon commercial bank has reasonably

adequate knowledge of the financial condition of the obligors on the consumer paper and an officer of the Oregon commercial bank certifies in writing that the creditworthiness of the obligors on the consumer paper has been evaluated. The certificate shall be retained as part of the records of the Oregon commercial bank. [1997 c.631 §150]

**708A.330 Bankers’ acceptances of other financial institutions.** In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may acquire obligations of a person without regard to amount in the form of bankers’ acceptances of other financial institutions of the kind described in section 13 of the Federal Reserve Act. [1997 c.631 §151]

**708A.335 Obligations secured by documents covering readily marketable staples.** (1) In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may make loans and acquire other obligations of a person secured by documents of title covering readily marketable staples, provided the obligation does not exceed:

(a) 15 percent of the Oregon commercial bank’s capital, where the principal amount of the obligation does not exceed 85 percent of the market value of the staples.

(b) 20 percent of the Oregon commercial bank’s capital, where the principal amount of the obligation does not exceed 80 percent of the market value of the staples.

(c) 25 percent of the Oregon commercial bank’s capital, where the principal amount of the obligation does not exceed 75 percent of the market value of the staples.

(d) 35 percent of the Oregon commercial bank’s capital, where the principal amount of the obligation does not exceed 70 percent of the market value of the staples.

(e) 40 percent of the Oregon commercial bank’s capital, where the principal amount of the obligation does not exceed 65 percent of the market value of the staples.

(2) If it is customary to insure the staples mentioned in subsection (1) of this section, the staples shall be fully covered by insurance.

(3) This section does not apply to obligations of a person secured by the same staples for more than 10 months.

(4) Staples, for purposes of this section, in addition to being readily marketable, must be either:

(a) Nonperishable; or

(b) Perishable, but frozen, freeze-dried, irradiated or refrigerated for the purpose of protecting the staple against deterioration. [1997 c.631 §152]

**708A.340 Obligations secured by documents covering livestock.** In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may make loans to and acquire other obligations of a person, not to exceed 15 percent of the Oregon commercial bank's capital, secured by documents of title covering livestock if the principal amount of the obligation is not more than 80 percent of the market value of the livestock. Turkeys are considered livestock within the meaning of this section. [1997 c.631 §153]

**708A.345 Obligations secured by government obligations or shares of mutual fund or unit trust.** In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may make loans to and acquire other obligations of any person if the obligation is secured by one or more of the following types of security and the principal amount of the obligation is not more than 90 percent of the market value of the security:

(1) Obligations of the United States, including those of its agencies and instrumentalities;

(2) Obligations of public housing agencies issued pursuant to the United States Housing Act of 1937, as amended;

(3) Obligations of the State of Oregon or any county, city, school district, port district or other public body with the power to levy taxes issued pursuant to the Constitution or statutes of the State of Oregon or the charter or ordinances of any county or city within the State of Oregon, if the issuing body has not been in default with respect to the payment of principal or interest on any of its obligations within five years preceding the date of the investment; or

(4) Shares in any mutual fund or unit trust, the assets of which are invested solely in obligations of the type described in subsections (1) to (3) of this section. [1997 c.631 §154]

**708A.350 Obligations secured by government bonds.** In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may make loans to and accept other obligations of a person, not to exceed 20 percent of the Oregon commercial bank's capital, if:

(1) The obligation is secured by bonds of any state of the United States or bonds of any county, city, school district, port district or other public body in the United States;

(2) The principal amount of the obligation is not more than 90 percent of the market value of the bonds that secure the obligation;

(3) The bonds are payable from ad valorem taxes; and

(4) The bonds are rated in one of the four highest grades by a recognized investment service organization that has been engaged regularly and continuously for a period of not less than 10 years in rating state and municipal bonds. [1997 c.631 §155]

**708A.355 Insured and guaranteed obligations.** In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may make loans to and acquire other obligations of a person without regard to amount to the extent the obligations are insured, guaranteed or covered by commitments or agreements to take over or purchase made by a private mortgage insurance company, the State of Oregon, any Federal Reserve Bank, the United States or any department, bureau, board, commission or agency of the United States, including any corporation wholly owned, directly or indirectly, by the United States. [1997 c.631 §156]

**708A.360 Obligations secured by deposits.** (1) In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may make loans to and acquire other obligations of a person without regard to amount to the extent the obligations are fully secured by any kind of deposit held by the Oregon commercial bank, including but not limited to deposits held in an automatic savings to checking transfer account or a negotiable order of withdrawal account.

(2) In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may make loans to and acquire other obligations of a person without regard to amount to the extent the obligations are fully secured at all times by any kind of deposit, including but not limited to deposits held in an automatic savings to checking transfer account or a negotiable order of withdrawal account that are fully insured, guaranteed or underwritten by the United States Government or any agency or instrumentality of the United States by virtue of any Act of Congress or amendments thereto. [1997 c.631 §157]

**708A.365 Obligations secured by life insurance policy values.** In addition to obligations permitted under ORS 708A.295, an Oregon commercial bank may make loans to and acquire obligations of a person not to exceed 10 percent of the Oregon commercial bank's capital that are secured by a life insurance policy having a cash surrender value of not less than 100 percent of the amount of the obligations, plus an amount equal to one annual premium on the insurance policy. [1997 c.631 §158]

**708A.370 Obligations secured by first lien on real estate.** In addition to obligations permitted by ORS 708A.295, an Oregon commercial bank may make loans to and acquire other obligations of a person not to exceed 10 percent of the Oregon commercial bank's capital that are secured by a first lien on real estate if the obligation does not exceed 80 percent of the fair market value of the real estate as determined by an independent appraisal. Obligations secured by a first lien on real estate that are subject to ORS 708A.295 may become exempt from ORS 708A.295 if:

(1) Title to the real estate has, in good faith, passed to another and the original maker of the note is no longer either directly or through some other person the owner of the real estate;

(2) The new owner has assumed the obligation and the Oregon commercial bank looks to the owner of the real estate rather than the maker of the obligation for payment;

(3) The obligation is not in default at the time the obligation becomes no longer subject to ORS 708A.295; and

(4) The obligation does not exceed 80 percent of the fair market value of the real estate at the time the obligation becomes no longer subject to ORS 708A.295. [1997 c.631 §159]

**708A.375 Obligations of guarantors.** In addition to obligations permitted by ORS 708A.295, an Oregon commercial bank may acquire obligations of a person, in the form of a guaranty or otherwise, without regard to amount, on account of obligations previously contracted in good faith or to reduce the risk of loss. Any such obligations shall, however, be subject to ORS 708A.295 in determining whether the Oregon commercial bank may make additional loans to or acquire other obligations of the person. [1997 c.631 §160]

## DEPOSITS

**708A.400 Deposit accounts.** Oregon commercial banks may, consistent with applicable law and safe and sound banking practices, offer deposit accounts upon such terms and conditions as they consider appropriate. [1997 c.631 §161]

**708A.405 Deposits; FDIC insurance required.** Oregon commercial banks shall secure insurance for their deposits from the Federal Deposit Insurance Corporation or a similar organization organized under the laws of the United States. [1997 c.631 §162]

**708A.410 Savings accounts; conditions for withdrawal; interest rate; inadvertent overdraft.** (1) Within the limits established under applicable federal statutes and regulations, an Oregon commercial bank that receives savings accounts shall prescribe by the Oregon commercial bank's bylaws or by contract with the Oregon commercial bank's depositors, the time and conditions on which repayment is to be made to depositors or to the depositors' order.

(2) A bank may require 30 days' notice to withdraw any sum up to \$5,000, 90 days' notice to withdraw any sum over \$5,000 and not over \$50,000, and 180 days' notice to withdraw any sum over \$50,000. The bank may limit, in the aggregate, withdrawals during a specified time period to the amount designated for the time period.

(3)(a) Except for negotiable orders of withdrawal and similar deposit accounts, withdrawal from which is made subject to check, and except for inadvertent overdrafts, an Oregon commercial bank may not knowingly permit a depositor to overdraw the depositor's savings account.

(b) As used in paragraph (a) of this subsection, "inadvertent overdraft" means an overdraft that:

(A) Is not expressly permitted or provided for in the bylaws or deposit contract of the Oregon commercial bank;

(B) Results from events or circumstances beyond the Oregon commercial bank's reasonable control; and

(C) Is eliminated within 14 days after the Oregon commercial bank becomes aware of the overdraft. [1997 c.631 §163; 2013 c.104 §4]

**708A.415 Securing deposits by surety bond, letter of credit or insurance.** (1) An Oregon commercial bank may secure any of the funds deposited with the Oregon commercial bank by giving a surety bond, an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, or a policy of insurance under which some person other than the Oregon commercial bank becomes liable for deposits, provided that the aggregate face amount of the bonds, letters of credit and policies of insurance does not exceed 20 percent of the capital of the Oregon commercial bank.

(2) A depositor may insure any deposit if the Oregon commercial bank is not a party to the insurance and does not pay any premium or other charges. [1997 c.631 §164]

**708A.420 Notice to depositor upon change in terms, charges, withdrawal conditions or decrease in interest rate; exception.** (1) If an Oregon commercial bank changes the terms, service charges or condi-

tions for withdrawal of any deposit account, the Oregon commercial bank shall notify the depositor in writing before the change is effective. If an Oregon commercial bank decreases the interest rate on any deposit account, other than an account that by its terms provides for a floating, variable or indexed rate of interest, the Oregon commercial bank shall notify the depositor in writing before the change is effective. With respect to deposit accounts that by their terms provide for a floating, variable or indexed rate of interest, the Oregon commercial bank shall not be required to give notice to the depositor concerning changes in the interest rate other than by means of account statements provided to the depositor in the ordinary course, not less than once each calendar quarter. Any notice required by this section may be given to the depositor in person or sent to the depositor by regular mail at the last address shown on the Oregon commercial bank's deposit account records. In the case of accounts held in the names of two or more depositors, the Oregon commercial bank may give or send the notice to any of the depositors.

(2) The provisions of subsection (1) of this section shall not apply to any change in the interest rate payable upon an account as described in ORS 86.245. [1997 c.631 §165]

**708A.425 Deposit made in name of minor.** Any deposit to a financial institution made to an account in the name of a minor shall be held for the exclusive right and benefit of the minor free from the control or lien of all other persons, except other parties to the account and creditors, and shall be paid, in accordance with the terms of the account, together with any interest thereon, to or upon the order of the minor. [1997 c.631 §166]

**708A.430 Disposition of deposit on death of depositor.** (1) On the death of a depositor of a financial institution, if the deposit is \$25,000 or less, the financial institution may, upon receipt of an affidavit from the person claiming the deposit as provided in subsection (2) of this section, pay the moneys on deposit to the credit of the deceased depositor:

(a) To the surviving spouse on demand of the surviving spouse at any time after the death of the depositor;

(b) If there is no surviving spouse, to the Oregon Health Authority or the Department of Human Services, on demand of the authority or the department no less than 46 days and no more than 75 days from the death of the depositor when there is a preferred claim arising under ORS 411.708, 411.795 or 416.350;

(c) If there is no surviving spouse and no authority or department claim, to the depositor's surviving children 18 years of age or older;

(d) If there is no surviving spouse, authority claim, department claim or surviving child 18 years of age or older, to the depositor's surviving parents; or

(e) If there is no surviving spouse, authority claim, department claim, surviving child 18 years of age or older or surviving parent, to the depositor's surviving brothers and sisters 18 years of age or older.

(2) The affidavit shall:

(a) State where and when the depositor died;

(b) State that the total deposits of the deceased depositor in all financial institutions in Oregon do not exceed \$25,000;

(c) Show the relationship of the affiant to the deceased depositor; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased depositor out of the deposit to the full extent of the deposit if necessary, in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who are entitled to those moneys by law.

(3) In the event the depositor died intestate without known heirs, an estate administrator of the Department of State Lands appointed under ORS 113.235 shall be the affiant and shall receive the moneys as escheat property.

(4) The financial institution shall determine the relationship of the affiant to the deceased depositor. However, payment of the moneys in good faith to the affiant discharges and releases the transferor from any liability or responsibility for the transfer in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the deceased depositor.

(5) A probate proceeding is not necessary to establish the right of the surviving spouse, authority, department, surviving child, surviving parent, surviving brothers and sisters or an estate administrator of the Department of State Lands to withdraw the deposits upon the filing of the affidavit. If a personal representative is appointed in an estate where a withdrawal of deposits was made under this section, the person withdrawing the deposits shall account for them to the personal representative.

(6) When a financial institution transfers moneys under subsection (1) of this section, the transferor may require the transferee to furnish the transferor a written indemnity

agreement, indemnifying the transferor against loss for moneys paid to the extent of the amount of the deposit.

(7) This section is subject to the rights of other parties in the account under ORS 708A.455 to 708A.515. [1997 c.631 §167; 2003 c.395 §20; 2005 c.381 §26; 2007 c.369 §1; 2009 c.595 §1113; 2011 c.720 §217]

**708A.435 Adverse claim to deposit; notice; restraining order or other process; indemnity bond or letter of credit.** (1) An Oregon operating institution shall be obligated to recognize an adverse claim to a deposit it holds only if the adverse claimant gives notice to the Oregon operating institution of its claim and:

(a) Procures a restraining order, injunction or other appropriate process against the Oregon operating institution in an action wherein the person to whose credit the deposit stands is made a party and served with summons; or

(b) Delivers to the Oregon operating institution in a form, and with sureties acceptable to the Oregon operating institution, a bond or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, indemnifying the Oregon operating institution from any liability, damage and expenses on account of the payment of the adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands.

(2) This section does not apply where the person in whose name the account is carried is a fiduciary for the adverse claimant, and the affidavit of the adverse claimant states the facts constituting the fiduciary relationship and the facts showing reasonable cause of belief on the part of the claimant that the fiduciary is about to misappropriate the deposit.

(3) An Oregon operating institution may, at its option, interplead a deposit that is subject to an adverse claim. [1997 c.631 §168]

**708A.440 Checks drawn by agents presumed to be in authorized manner.** If a person who owns a deposit account subject to check authorizes another person as agent to draw checks against the account, the financial institution, in the absence of written notice to the contrary, may presume that any check drawn by the agent in the manner authorized by the terms and conditions of the account, including checks drawn to the personal order of the agent, is drawn for a purpose authorized by the principal and within the scope of the authority conferred upon the agent. [1997 c.631 §169]

**708A.445 Checks of intoxicated or drugged persons.** An Oregon commercial bank or a national bank may refuse to pay any check, draft or order drawn upon it when the officers or employees of the bank have reason to believe that the person signing or indorsing the instrument was so under the influence of liquor, drugs or controlled substances or that the person is otherwise so incapacitated as to make it reasonably doubtful whether the person was at the time of signing or indorsing the check, draft or order capable of transacting business. [1997 c.631 §170]

**708A.450 Certified checks.** (1) An Oregon commercial bank shall certify a check only if the amount of the check actually stands to the credit of the drawer in collected funds on the books of the Oregon commercial bank.

(2) The amount of any certified check shall be immediately charged to the drawer's account. [1997 c.631 §171]

**708A.455 Definitions for ORS 708A.455 to 708A.515.** As used in ORS 708A.455 to 708A.515, unless the context requires otherwise:

(1) "Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit and share account.

(2) "Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

(3) "Joint account" means an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship.

(4) "Multiple-party account" means a joint account, a P.O.D. account or a trust account. "Multiple-party account" does not include accounts established for deposit of funds of a partnership, joint venture or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization or a regular fiduciary or trust account where the relationship is established other than by deposit agreement.

(5) "Net contribution" of a party to a joint account as of any given time means the sum of all deposits thereto made by or for the party, less all withdrawals made by or for the party that have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of deposit life insurance added to the account by reason



of the death of the party whose net contribution is in question.

(6) “Party” means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A P.O.D. payee or beneficiary of a trust account is a party only after the account becomes payable to the payee or beneficiary by reason of the payee’s or beneficiary’s surviving the original party or trustee. Unless the context requires otherwise, “party” includes a guardian, conservator, personal representative or assignee, including an attaching creditor, of a party. “Party” also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include any named beneficiary unless the named beneficiary has a present right of withdrawal.

(7) “Payment” of sums on deposit includes withdrawal, payment on check or other directive of a party, and any pledge of sums on deposit by a party and any setoff, reduction or other disposition of all or part of an account pursuant to a pledge.

(8) “P.O.D. account” means an account payable on request to one person during the lifetime of the person and on the death of the person to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees.

(9) “P.O.D. payee” means a person designated on a P.O.D. account as one to whom the account is payable on request after the death of one or more persons.

(10) “Request” means a proper request for withdrawal, or a check or order for payment, that complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution. If the financial institution conditions withdrawal or payment on advance notice, for purposes of ORS 708A.455 to 708A.515, the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

(11) “Sums on deposit” means the balance payable on a multiple-party account including interest, dividends and, in addition, any deposit life insurance proceeds added to the account by reason of the death of a party.

(12) “Trust account” means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution, and there is no subject of the trust other than the sums on deposit in the account. It is not essential that pay-

ment to the beneficiary be mentioned in the deposit agreement. A trust account does not include a regular trust account under a testamentary trust or a trust agreement that has significance apart from the account, or a fiduciary account arising from a fiduciary relationship such as attorney-client.

(13) “Withdrawal” includes payment to a third person pursuant to check or other directive of a party. [1997 c.631 §172]

**708A.460 Application of ORS 708A.465 to 708A.475; liability and setoff rights of financial institutions.** The provisions of ORS 708A.465 to 708A.475 concerning beneficial ownership as between parties, or as between parties and P.O.D. payees or beneficiaries of multiple-party accounts, are relevant only to controversies between those persons and their creditors and other successors, and have no bearing on the power of withdrawal of those persons as determined by the terms of account contracts. The provisions of ORS 708A.485 to 708A.510 govern the liability of financial institutions that make payments pursuant thereto, and their setoff rights. [1997 c.631 §173]

**708A.465 Ownership of multiple-party accounts.** (1) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

(2) A P.O.D. account belongs to the original party during the lifetime of the party and not to the P.O.D. payee or payees. If two or more persons are named as original parties, during their lifetimes, rights as between them are governed by subsection (1) of this section.

(3) Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is other clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during the lifetime of the trustee. If two or more parties are named as trustees on the account, during their lifetimes beneficial rights as between them are governed by subsection (1) of this section. If there is an irrevocable trust, the account belongs beneficially to the beneficiary. [1997 c.631 §174]

**708A.470 Multiple-party accounts; disposition of deposit upon death of party or trustee; effect of will.** (1) Sums remaining on deposit in a bank at the death of a party to a joint account are rebuttably presumed to belong to the surviving party or parties as against the estate of the decedent. If there are two or more surviving parties, their respective ownerships during their lifetimes shall be in proportion to their previous

ownership interests under ORS 708A.465 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before death. The right of survivorship continues between the surviving parties.

(2) If the account is a P.O.D. account:

(a) On the death of one of two or more original parties, the rights to any sums remaining on deposit are governed by subsection (1) of this section.

(b) On the death of the sole original party or the survivor of two or more original parties, any sums remaining on deposit belong to the P.O.D. payee or payees, if surviving, or to the survivor of them if one or more die before the original party. If two or more P.O.D. payees survive, there is no right of survivorship in the event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(3) If the account is a trust account:

(a) On the death of one of two or more trustees, the rights to any sums remaining on deposit are governed by subsection (1) of this section.

(b) On the death of the sole trustee or the survivor of two or more trustees, any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear and convincing evidence of a contrary intent. If two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(4) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account, other than to transfer the rights of the decedent as part of the estate of the decedent.

(5) A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a trust account, or a P.O.D. payee designation, cannot be changed by will.

(6) The rebuttable presumption under subsection (1) of this section may be overcome by evidence establishing that:

(a) The deceased party intended a different result; or

(b) The deceased party lacked capacity when the joint account was established.

(7) A bank is not liable for distributing sums remaining on deposit at the death of a party to a joint account to a surviving party

or parties in accordance with the account agreement unless, prior to distributing sums to a surviving party or parties:

(a) The bank has received notice of an adverse claim under ORS 708A.435; and

(b) The adverse claimant proceeds as required under ORS 708A.435. [1997 c.631 §175; 2003 c.256 §1]

**708A.475 Rights of survivorship based on form of account; alteration of form of account.** The provisions of ORS 708A.470 as to rights of survivorship are determined by the form of the account at the death of a party. Subject to satisfaction of the requirements of the financial institution, the form of an account may be altered by written order given by a party to the financial institution. The order must be signed by a party, received by the financial institution during the party's lifetime, and not countermanded by other written order of the same party during the lifetime of the party. [1997 c.631 §176]

**708A.480 Transfer of moneys upon death of depositor or trustee is not testamentary disposition.** Any transfers resulting from the application of ORS 708A.470 are effective by reason of the account contracts involved and ORS 708A.470, and are not to be considered as testamentary or subject to administration in the estate of a deceased party. [1997 c.631 §177]

**708A.485 Payment of deposit in multiple-party account to one or more parties; institution not required to determine source or use of funds in account.** Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. Any multiple-party account may be paid, on request, to any one or more of the parties. A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions. [1997 c.631 §178]

**708A.490 Joint account; payment to any party to account; payment to others.** Any sums in a joint account may be paid, on request, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded. Payment may not be made to the personal representative or heirs of a deceased party unless proofs of death are presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under ORS 708A.470. [1997 c.631 §179]

**708A.495 P.O.D. account; payment to any original party; payment to others.** Any P.O.D. account may be paid, on request, to any original party to the account. Payment may be made, on request, to the P.O.D. payee or to the personal representative or heirs of a deceased P.O.D. payee upon presentation to the financial institution of proof of death showing that the P.O.D. payee survived all persons named as original parties. Payment may be made to the personal representative or heirs of a deceased original party if proof of death is presented to the financial institution showing that the decedent was the survivor of all other persons named on the account either as an original party or as P.O.D. payee. [1997 c.631 §180]

**708A.500 Trust account; payment to any trustee; payment to others.** Any trust account may be paid, on request, to any trustee. Unless the financial institution has received written notice that the beneficiary has a vested interest not dependent upon the beneficiary's surviving the trustee, payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the financial institution showing that the decedent was the survivor of all other persons named on the account either as trustee or beneficiary. Payment may be made, on request, to the beneficiary upon presentation to the financial institution of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees. [1997 c.631 §181]

**708A.505 Discharge of institution from liability for payments made; conditions.** Payment made pursuant to ORS 708A.485, 708A.490, 708A.495 or 708A.500 discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, P.O.D. payees or beneficiaries, or their successors. The protection given by this section does not extend to payments made after a financial institution has received written notice from any party able to request present payment to the effect that withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is withdrawn by the person giving it, the successor of any deceased party must concur in any demand for withdrawal if the financial institution is to be protected under this section. No other notice or any other information shown to have been available to a financial institution shall affect its right to the protection provided by this section. The protection provided by this section shall have no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or

withdrawn from, multiple-party accounts. [1997 c.631 §182]

**708A.510 Right of institution to setoff; amount.** Without qualifying any other statutory or common law right to setoff or lien and subject to any contractual provision, if a party to a multiple-party account is indebted to a financial institution, the financial institution has a right to setoff against the account in which the party has or had immediately before the death of the party a present right of withdrawal. The amount of the account subject to setoff is that proportion to which the debtor is, or was immediately before the death of the debtor, beneficially entitled and, in the absence of proof of net contributions, to an equal share with all parties having present rights of withdrawal. [1997 c.631 §183]

**708A.515 Designation of agent for account; powers of agent.** Nothing in ORS 708A.455 to 708A.465, 716.024, 723.426 or 723.432 shall preclude a party to an account from adding the name of another person to such an account with the designation "agent." Such agent shall have no present or future interest in the sums on deposit in such account, but the financial institution may honor requests for payment from such account by such agent, unless the principal is deceased at the time the payment is requested and the financial institution has actual knowledge of such death. Payments from such account by such financial institution at the request of such agent shall discharge such financial institution from all claims for amounts so paid. [1997 c.631 §184]

## GRANTING SECURITY INTERESTS IN INSTITUTION ASSETS

**708A.535 Granting security interests in institution assets.** (1) An institution may only grant security interests in its assets:

(a) To secure its indebtedness to a Federal Reserve Bank or Federal Home Loan Bank.

(b) To secure its borrowings from others with a maturity of 90 days or less, provided the value of the assets pledged shall not be more than 50 percent greater than the amount borrowed. If the value of the assets pledged is more than 25 percent greater than the amount borrowed or if the amount borrowed is greater than the stockholders' equity of the bank, the transaction shall first be approved in writing by the Director of the Department of Consumer and Business Services.

(c) To secure its deposits that are not insured by the Federal Deposit Insurance Corporation provided:

(A) The value of aggregate assets pledged does not exceed 20 percent of its stockholders' equity; and

(B) The prior written approval of the director is obtained.

(d) To secure public funds pursuant to ORS 295.001 to 295.108, trust funds awaiting investment or distribution, or trust funds deposited with it by an institution.

(2) Notwithstanding any other provision of state law, when an institution grants a security interest in assets to secure public funds, the depositor of the public funds and any bailee of pledged securities or other assets shall be entitled to the status of a lien creditor as defined in ORS 79.0102.

(3) An institution shall grant a security interest in its assets only when authorized by a general or specific prior resolution of its board of directors.

(4) As used in this section, "public funds" means deposits belonging to:

(a) The State of Oregon that may be deposited to the official credit of the State Treasurer, and funds that may be deposited in an official capacity by any state officer, board or commission.

(b) Any county within this state deposited to the official credit of the county treasurer, including the funds of any irrigation or drainage district organized under the laws of this state, or any school district within this state where funds of the school district are deposited with the county treasurer, and funds that may be deposited in an official capacity by any county officer.

(c) Any port, port commission, dock or dock commission within this state that may be deposited to the credit of the port, port commission, dock or dock commission, or the treasurer thereof.

(d) Any city within this state deposited to the official credit of the city treasurer, and funds that may be deposited in an official capacity by any officer of any municipal corporation.

(e) Any school district within this state.

(f) Any district organized under the laws of this state with the power to levy taxes.

(g) Any housing authority organized and operating pursuant to ORS 456.055 to 456.235.

(h) The United States and any of its agencies and instrumentalities to be deposited in the manner and under the rules prescribed by the United States Government. [1997 c.631 §185; 2001 c.445 §180; 2007 c.871 §31]

## REGULATORY ACCOUNTING

**708A.555 Generally accepted accounting principles.** Except as otherwise provided in the Bank Act or other applicable law, institutions shall keep books and records in accordance with generally accepted accounting principles consistently applied. [1997 c.631 §186]

**708A.560 Real and personal property used in institution's business.** (1) Real estate, furniture, fixtures, vaults and safe deposit boxes necessary or convenient for the operation of an institution's business shall be carried on the books of the institution in an amount not to exceed 50 percent of its capital, as defined in ORS 708A.290.

(2) Within guidelines established by rules promulgated under ORS 183.310, 183.315, 183.330, 183.335 and 183.341 to 183.410 the Director of the Department of Consumer and Business Services may authorize an institution to exceed the limitations prescribed in this section.

(3) Personal property acquired for lease to others in accordance with ORS 708A.180 is not subject to the limitations of this section. [1997 c.631 §187]

**708A.565 Certain stock.** Investments in stock of a company that engages in activities in which a financial holding company, a bank holding company or a nonbanking subsidiary of a financial holding company or bank holding company could engage under ORS 708A.120 (4) shall be carried on the books of the institution at a value not exceeding 15 percent of the stockholders' equity of the institution. [1997 c.631 §188; 1999 c.59 §217; 2001 c.377 §49]

**708A.570 Community development corporations.** Investments in community development corporations under ORS 708A.150 must be accounted for on an institution's books as "other assets." If the community development corporation is organized under the Oregon Nonprofit Corporation Law, the stock of the corporation purchased by the institution, or the institution's membership in the corporation if it does not issue stock, shall be carried on the books of the institution at a value not exceeding \$1. [1997 c.631 §189]

**708A.575 Market-making corporations.** Investments in a corporation engaged in the business of purchasing the stock of an institution for purposes of holding and making a market for that stock shall be carried on the books of the institution at a value not exceeding \$1. [1997 c.631 §190]

**708A.580 Capital-strengthening corporations.** (1) The aggregate amount of stock of a corporation acquired under ORS 708A.125 for the purpose of strengthening the

institution's capital or eliminating undesirable assets shall not be carried on the books in excess of 20 percent of the institution's capital.

(2) The book value of the stock shall be amortized by not less than five percent of its original book value each year. [1997 c.631 §191]

**708A.585 Claims and judgments as assets.** Claims against the estates of insolvent persons or deceased or incompetent persons and judgments against any person shall not be carried as an asset upon the books of an institution for more than two years, unless a written extension of time is granted by the Director of the Department of Consumer and Business Services. This section does not apply to loans made to the personal representative, guardian or trustee of any estate. [1997 c.631 §192]

**708A.590 Charging off real estate assets; use of generally accepted accounting principles.** (1) An institution that owns or holds any real estate other than as permitted in the Bank Act shall immediately charge the book value of the real estate to profit and loss or otherwise remove the real estate from the institution's books.

(2) An institution shall at all times value and record on the institution's books and records, in accordance with generally accepted accounting principles, real estate that the institution owns or holds in accordance with ORS 708A.175 (3) or (4). [1997 c.631 §193; 2011 c.478 §1]

**708A.595 Charging off personal property assets.** Goods and chattels owned by an institution on account of the collection of its debts shall not be carried on the books of an institution for more than two years after the property was acquired, unless such period is extended by the Director of the Department of Consumer and Business Services. [1997 c.631 §194]

**708A.600 Charging off bad debts.** An institution shall charge off all debts:

(1) On which interest is past due and unpaid for 12 months, unless the debt is fully secured and in process of collection;

(2) That are classified by an examiner as a bad debt; or

(3) Upon the instruction of the Director of the Department of Consumer and Business Services. [1997 c.631 §195]

**708A.605 Separate accounts for foreign branches.** An institution shall maintain the accounts of each foreign branch independently of the accounts of other foreign branches established by it and of its home office. At the end of each year, the profit or loss accrued at each branch shall

be transferred to the general ledger as a separate item. [1997 c.631 §196]

## MISCELLANEOUS PROVISIONS

**708A.630 Negligent, excessive, dishonest or unlawful loans; civil liability of officer, director or employee.** Any officer, director or employee of an institution who knowingly or negligently loans the funds of the institution in a dishonest or unlawful manner or permits the funds of the institution to be so loaned, is liable for the full amount of the loan and for all damages that the institution, its stockholders or any other person has sustained in consequence thereof. The liability for the loan continues until the loan, with interest, is paid in full without loss to the institution. The amount of the liability may be collected by suit or action without first attempting to collect from the debtor. [1997 c.631 §197a]

**708A.635 Written policies regarding reporting to and obtaining approval of board; duty to report.** Institutions shall develop written policies regarding the types of matters that shall be reported to and approved by the institution's board of directors. An officer, director or employee of an institution shall not conceal from or fail to report to the board of directors of the institution any such matter. [1997 c.631 §198]

**708A.640 Receiving illegal compensation; misapplication of property and credit.** (1) An officer, director, agent or employee of an institution shall not ask for, receive or agree to receive any money, property or thing of value or of personal advantage, for:

(a) Procuring or endeavoring to procure for any person any loan from, or the purchase or discount of any paper, note, draft, check or bill of exchange by, the institution.

(b) Permitting any person to overdraw any account with the institution.

(2) An officer, director, stockholder, employee or agent of an institution shall not abstract or willfully misapply any of the property of the institution, or willfully misapply its credit. [1997 c.631 §199]

**708A.645 Illegal guaranty or indorsement.** An officer, director or employee of an institution shall not make or deliver any guaranty or indorsement on behalf of the institution whereby the institution becomes liable upon any of its discounted notes, bills or obligations, in any sum beyond the amount of loans and discounts that the institution may legally make. [1997 c.631 §200]

**708A.650 Banking days; holidays.** (1) As used in this section:

(a) "Bank" includes any banking institution, out-of-state state bank, national bank or extranational institution doing a banking business in this state.

(b) "Banking day" means any day that is not an optional bank holiday.

(c) "Emergency" means any condition or occurrence which may interfere with the conduct of normal business operations at one or more of the offices of a bank, or which poses an imminent or existing threat to the safety or security of persons or property.

(d) "Open for the general conduct of banking business" means the office or offices of a bank are open to the public for carrying on substantially all business functions of the bank.

(e) "Optional bank holiday" means:

(A) Each Saturday and Sunday.

(B) New Year's Day on January 1.

(C) Martin Luther King, Jr.'s birthday on the third Monday in January.

(D) Presidents Day on the third Monday in February.

(E) Memorial Day on the last Monday in May.

(F) Independence Day on July 4.

(G) Labor Day on the first Monday in September.

(H) Columbus Day on the second Monday in October.

(I) Veterans Day on November 11.

(J) Thanksgiving Day on the fourth Thursday in November.

(K) Christmas Day on December 25.

(2) When an optional bank holiday, other than a Saturday, falls on a Saturday, the bank may observe the holiday either on that day or on the preceding Friday. When an optional bank holiday, other than a Sunday, falls on a Sunday, the bank may observe the holiday either on that day or on the succeeding Monday.

(3) Except as otherwise provided in this section, banks shall be open for the general conduct of banking business on each banking day.

(4) Any bank may remain closed on any optional bank holiday with respect to all or any of its banking and other functions.

(5) Subject to any applicable federal law or regulation, an office of a bank may be closed for any part or all of a banking day if the times or days which the office is open are posted on the premises of the office.

(6) When the Director of the Department of Consumer and Business Services determines that an emergency exists, the director

may authorize the closing of the principal office or branch of any bank which may be affected by the emergency. The office or branch so closed may remain closed until the director determines that the emergency has ended and for such further time thereafter as may reasonably be required to prepare the office or branch to reopen.

(7) When the officers of a bank determine that an emergency exists which affects the principal office or a branch of the bank, they may close the office or branch without the approval of the director for a period not to exceed 48 hours, excluding holidays, during the continuation of the emergency. A bank closing an office or branch under this subsection shall give prompt notice of its action to the director, or in the case of a national bank, to the Comptroller of the Currency.

(8) The principal officers of a bank may close the principal office or any branch of the bank on any day designated, by proclamation of the President of the United States or the Governor of this state, as a day of mourning, rejoicing, or other special observance.

(9) When any obligation payable at, by or through a bank falls due on a day on which the bank remains closed under this section, it shall be due and payable on the next banking day on which the bank is open. Any act authorized, required or permitted to be performed at, by or with respect to any bank on a day on which the bank remains closed may be performed on the next banking day on which the bank is open, and no liability or loss of rights of any kind shall result from the closing. [1997 c.631 §1c; 1999 c.59 §218]

**708A.655 Procedures for opening safe deposit box after death of person who was sole lessee or last surviving lessee of box.** (1) This section applies to the safe deposit box of any person who is the sole lessee or last surviving lessee of the box and who has died.

(2) Subject to ORS 114.537, upon being furnished with a certified copy of the decedent's death record or other evidence of death satisfactory to the Oregon operating institution, the Oregon operating institution within which the box is located shall cause or permit the box to be opened and the contents of the box examined at the request of an individual who furnishes an affidavit stating:

(a) That the individual believes the box may contain the will of the decedent, a trust instrument creating a trust of which the decedent was a trustor or a trustee at the time of the decedent's death, documents pertaining to the disposition of the remains of the decedent, documents pertaining to property

of the estate of the decedent or property of the estate of the decedent; and

(b) That the individual is an interested person and wishes to open the box to conduct a will search or trust instrument search, obtain documents relating to the disposition of the decedent's remains, inventory the contents of the box or remove property of the estate of the decedent pursuant to a small estate affidavit filed under ORS 114.515.

(3) For the purpose of this section, "interested person" means any of the following:

(a) A person named as personal representative of the decedent in a purported will of the decedent;

(b) The surviving spouse or any heir of the decedent;

(c) A person who was serving as the court-appointed guardian or conservator of the decedent or as trustee for the decedent immediately prior to the decedent's death;

(d) A person named as successor trustee in a purported trust instrument creating a trust of which the decedent was a trustor or a trustee at the time of the decedent's death;

(e) A person designated by the decedent in a writing that is acceptable to the Oregon operating institution and is filed with it prior to the decedent's death;

(f) A person who immediately prior to the death of the decedent had the right of access to the box as an agent of the decedent under a durable power of attorney;

(g) If there are no heirs of the decedent, an estate administrator of the Department of State Lands appointed under ORS 113.235; or

(h) A person who is authorized to file an affidavit under ORS 114.515.

(4) If the box is opened for the purpose of conducting a will search, the Oregon operating institution shall remove any document that appears to be a will, make a true and correct copy of it and deliver the original will to a person designated in the will to serve as the decedent's personal representative, or if no such person is designated or the Oregon operating institution cannot, despite reasonable efforts, determine the whereabouts of such person, the Oregon operating institution shall retain the will or deliver it to a court having jurisdiction of the estate of the decedent. A copy of the will shall be retained in the box. At the request of the interested person, a copy of the will, together with copies of any documents pertaining to the disposition of the remains of the decedent, may be given to the interested person.

(5) If the box is opened for the purpose of conducting a trust instrument search, the

Oregon operating institution shall remove any document that appears to be a trust instrument creating a trust of which the decedent was a trustor or trustee at the time of the decedent's death, make a true and correct copy of it and deliver the original trust instrument to a person designated in the trust instrument to serve as the successor trustee on the death of the decedent. If no such person is designated or the Oregon operating institution cannot, despite reasonable efforts, determine the whereabouts of such person, the Oregon operating institution shall retain the trust instrument. A copy of the trust instrument shall be retained in the box. At the request of any interested person, a copy of the trust instrument may be given to the interested person.

(6) If the box is opened for the purpose of obtaining documents pertaining to the disposition of the decedent's remains, the Oregon operating institution shall comply with subsection (4) or (5) of this section with respect to any will or trust instrument of the decedent found in the box, and may in its discretion either:

(a) Make and retain in the box a copy of any documents pertaining to the disposition of the remains of the decedent and tender the original documents to the interested person; or

(b) Provide a copy of any documents pertaining to the disposition of the remains of the decedent to the interested person and retain the original documents in the box.

(7) If the box is opened for the purpose of making an inventory of its contents, the Oregon operating institution shall comply with subsection (4) or (5) of this section with respect to any will or trust instrument of the decedent that is found in the box, and shall cause the inventory to be made. The inventory must be attested to by a representative of the Oregon operating institution and may be attested to by the interested person, if the interested person is present when the inventory is made. The Oregon operating institution shall retain the original inventory in the box, and shall furnish a copy of the inventory to the interested person upon request.

(8) If the interested person is an affiant of a small estate affidavit filed under ORS 114.515 and delivers a certified copy of the affidavit in the manner provided by ORS 114.535, the Oregon operating institution shall provide to the affiant access to the decedent's property. The Oregon operating institution shall comply with subsection (4) or (5) of this section if a will or trust instrument of the decedent is found in the box. Subject to ORS 114.537, the Oregon operating institution shall allow the affiant to take

possession of the personal property in the box.

(9) The Oregon operating institution may presume the truth of any statement contained in the affidavit required to be furnished under this section or ORS 114.535, and when acting in reliance upon such an affidavit, the Oregon operating institution is discharged as if it had dealt with the personal representative of the decedent. The Oregon operating institution is not responsible for the adequacy of the description of any property included in an inventory of the contents of a box, or for the conversion of the property in connection with actions performed under this section, except for conversion by intentional acts of the Oregon operating institution or its employees, directors, officers or agents. If the Oregon operating institution is not satisfied that the requirements of this section have been satisfied, the Oregon operating institution may decline to open the box.

(10) If the interested person or affiant does not furnish the key needed to open the box, and the Oregon operating institution must incur expense in gaining entry to the box, the Oregon operating institution may require that the interested person or affiant pay the expense of opening the box.

(11) Any examination of the contents of a box under this section shall be conducted in the presence of at least one employee of the Oregon operating institution. [1999 c.506 §2; 2001 c.10 §1; 2003 c.395 §21; 2011 c.422 §4; 2013 c.366 §82]

### PENALTIES

**708A.990 Civil penalties.** (1) An institution that violates:

(a) ORS 708A.560 shall forfeit a civil penalty in an amount determined by the Director of the Department of Consumer and Business Services of not more than \$50,000.

(b) ORS 708A.420 shall forfeit a civil penalty in an amount determined by the director of not more than \$10,000. In addition, the director may revoke the charter of the violating institution.

(2) All money forfeited under subsections (1) and (2) of this section shall be paid to the State Treasurer to be deposited in the Consumer and Business Services Fund.

(3) The civil penalty may be recovered as provided in ORS 706.980. [1997 c.631 §201]

**708A.995 Criminal penalties.** Violation knowingly of any of the provisions of ORS 708A.635 is a Class C felony. [1997 c.631 §202]