

## **CHAPTER 6-07**

### **DISSOLUTION, INSOLVENCY, SUSPENSION, AND LIQUIDATION**

**6-07-01. Application to court for voluntary dissolution - Stockholder or officer cannot withdraw or transfer stock.** Any association or corporation organized under the provisions of this title, except the Bank of North Dakota, may be dissolved upon its voluntary application by the district court of the county where its office or principal place of business is situated. The application must be in writing and must set forth that at a meeting of the stockholders, shareholders, or members called for that purpose, the dissolution was resolved upon by a two-thirds vote of the capital stock outstanding, and that all claims and demands against the association or corporation have been satisfied and discharged. The application must be signed by a majority of the board of directors, or other officers having the management of the affairs of the association or corporation, and must be verified in the same manner as a complaint in a civil action. No stockholder or officer of such association or corporation may be permitted to withdraw from the association or corporation, nor to dispose of or surrender the person's shares of stock in the same, after the making or filing of the application for dissolution and prior to the final determination of the proceedings thereon.

**6-07-02. Procedure on application for voluntary dissolution - Appeal - Notice to secretary of state and commissioner.** If the court is satisfied that the application is in conformity with section 6-07-01, it must order that the application be filed, and that the clerk give not less than thirty nor more than sixty days' notice of the application by publication in some newspaper published in the county, and if there is none such, then by advertisement posted in five of the principal public places in the county. A certified copy of the application must be filed with the commissioner within ten days after the filing of the application with the court. At any time before the expiration of the time of publication, any person may file that person's objections to the application. Before the final hearing and determination on the application, the commissioner shall make a thorough examination of the affairs of such association or corporation, and shall file a certified statement of such examination with the clerk of court of the county where such application is made, and such statement must be a part of the record in the case. After the time of publication has expired, the court, upon five days' notice to the persons who have filed objections, or without further notice if no objections have been filed, may proceed to hear and determine the application, and if all the statements therein made are shown to be true, the court shall declare the association or corporation dissolved. The application, notices and proof of publication thereof, objections, if any, and the order of dissolution constitute the judgment roll, and an appeal may be taken in the same manner as in other actions. Upon the dissolution by the court, the clerk of said court forthwith shall send a copy of the order of dissolution to the secretary of state, who shall file such order with the original organization certificate, and immediately shall certify the dissolution to the commissioner.

**6-07-03. Banks deemed insolvent.** A bank is deemed insolvent when:

1. The actual value of its assets is insufficient to pay its liabilities;
2. It is unable to meet the demands of its creditors in the usual and customary manner;
3. It fails to make good its reserve as required by law; or
4. It fails to comply with any lawful order of the state banking board within any time specified therein.

**6-07-04. Property of insolvent bank exempt from attachment and execution - Appointment of receiver postponed.** The property of an insolvent bank is not subject to attachment or execution. A receiver may not be appointed for any bank during such reasonable time as the commissioner may require for examination. If the commissioner finds a bank to be insolvent upon examination, the commissioner shall take possession of its books, records, and other property and shall certify the fact of such insolvency to the state banking board. The

commissioner may collect moneys due to any bank of which the commissioner takes possession and may do such other acts as are necessary to conserve its assets and business.

**6-07-04.1. Insolvent bank - Order to show cause hearing - Exception.** Upon a determination by the commissioner that any bank is insolvent, the commissioner may order the bank to inject capital in an amount determined by the commissioner to be sufficient to permit the bank to operate in a safe and sound condition or show cause why it should not be declared insolvent by the state banking board. The commissioner's order must include the basis for the commissioner's determination, with reasonable specificity, and identify and attach the pages or portions of the examination report or other documents supporting that determination. The order to show cause hearing must be heard by the state banking board. The minimum notice for the hearing is three business days. In the commissioner's order to inject capital or show cause why it should not be declared insolvent by the state banking board, the commissioner shall indicate whether a purchase and assumption transaction is contemplated if the banking board declares the bank insolvent. If the state banking board determines that the bank is insolvent, the board shall appoint a receiver. The receiver shall exercise its powers as set forth in this chapter.

The hearing provided for in this section is not required when the bank is in violation of an existing final capital order and the state banking board has determined that an emergency exists which may result in serious losses to the depositors. In such a case, the state banking board may declare the bank insolvent without a hearing and appoint a receiver. The receiver shall exercise all powers as set forth in this chapter.

Recourse may be taken from actions taken under this section only in accordance with the provisions of section 6-07-14.

**6-07-04.2. Acquisition of an institution.** The receiver of an insolvent institution or the state banking board, when it has acquired possession of the institution for the purpose of acquisition pursuant to section 6-07-10, may permit the acquisition of the financial institution. The state banking board may grant approval under this chapter for applications for the organization of a state bank or establishment of facilities. The receiver of an insolvent institution or board, when acting under the provisions of this section, may reject any and all bids.

The procedures may be modified by the state banking board to the extent the board deems necessary under the circumstances. No notice of application need be given and no public hearing need be held.

**6-07-05. Examiner may relinquish control of insolvent bank.** Whenever, after the examination mentioned in section 6-07-04 and before the appointment of a receiver, the examiner finds that the bank is in such condition that all of its creditors, excluding its stockholders, can be paid in full from its assets, the examiner may relinquish possession of its property to its proper officers, and such bank, with the consent of the examiner, may resume business, or, after payment of its depositors, may liquidate upon such conditions as may be approved by the examiner. Such banks shall pay into the state treasury a fee of ten dollars per day and the hotel and traveling expenses of the examiner or deputy examiner who has been in charge of the bank.

**6-07-06. Insolvent bank or officer receiving deposit - Penalty.** No banking institution may accept or receive on deposit, with or without interest, any coins, notes, bills, drafts, checks, or certificates circulating as money or currency, when such banking institution is insolvent under subsection 1 of section 6-07-03. If any such institution receives or accepts or deposits any such deposits as aforesaid when insolvent, any officer, director, cashier, or manager thereof, knowing of such insolvency, who knowingly receives or accepts, is accessory or permits or connives at receiving or accepting on deposit therein or thereby, any such deposit as aforesaid, is guilty of a class B felony.

**6-07-07. Insolvencies deemed fraudulent.** Every insolvency of a moneyed corporation or association is deemed fraudulent unless, upon investigation, its affairs appear to have been

administered fairly and legally, and generally with the same care and diligence that agents receiving a compensation for their services are bound by law to observe.

**6-07-08. Directors participating in fraudulent insolvency - Penalty.** In every case of a fraudulent insolvency of a moneyed corporation or association, every director thereof who participated in such fraud, if no other punishment is prescribed therefor by this code, is guilty of a class B felony.

**6-07-09. Reopening bank without receivership on agreement of depositors.** Repealed by S.L. 1991, ch. 87, § 7.

**6-07-10. Bank may be placed in possession of board - Notice - Appointment of receiver.** Any bank, by a majority vote of its board of directors, may place its assets and affairs in the possession of the state banking board by notifying the commissioner that it is ceasing business and the reason therefor, and by placing a notice on the front door of its place of business as follows: "This bank is in the hands of the state banking board". Immediately on receipt of such notice, the state banking board shall take possession and assume control of all of the property and assets of such bank until a receiver is appointed. No business may be transacted by such bank after the notification and posting of the notice described in this section. If the bank places its assets and affairs in the possession of the state banking board for the purpose of acquisition pursuant to section 6-07-04.2, the bank shall place a majority of its capital stock in the possession of the state banking board. In such case, the bank may not cease doing business nor may the bank post the public notice.

**6-07-11. Appointment of administrative receiver.** Whenever the state banking board becomes satisfied of the insolvency of a corporation, or association organized under the provisions of this title, after due examination of its affairs, or if the bank has been voluntarily placed in the possession of the state banking board for the purpose of liquidation pursuant to section 6-07-10, the state banking board may appoint a receiver who shall proceed to close up such corporation or association, and who, during the period the receiver is acting as such, has all of the powers and is subject to all of the restrictions prescribed in this chapter.

**6-07-12. Commissioner to notify attorney general of insolvencies.** Whenever any bank is closed as insolvent, either by the voluntary action of the officers of said bank or by the action of the state banking board, the commissioner shall certify such fact to the attorney general together with a concise statement showing the time of insolvency, the name of the receiver in charge, the amount of the receiver's bond, the designation of the surety thereon, and such other information as the commissioner believes will be of importance to the attorney general.

**6-07-13. Administrative receiver to furnish bond.** Every receiver appointed by the state banking board except the federal deposit insurance corporation, before entering upon the discharge of the receiver's duties and before proceeding to liquidate the affairs of any bank, may be required by the board to furnish a bond executed by the state bonding fund or by some surety company. Such bond must be approved as to form by the attorney general and must be filed with the commissioner. The cost of such bond must be paid from the assets of the bank being liquidated, and suit may be maintained on the bond by any person injured by a breach of the conditions thereof.

**6-07-14. Recourse of aggrieved bank - Injunction in district court - Appeal to supreme court.** Any bank deeming itself aggrieved by the action of the state banking board in taking possession of its assets, within ten days after such possession has been taken, may apply to the district court of the county in which the bank is located for an order enjoining further proceedings by the state banking board or by the receiver appointed by it. The court, after notifying the commissioner to appear at a specified time and place to show cause why further proceedings should not be enjoined, and after hearing, may dismiss such application or enjoin the state banking board and the receiver appointed by it from further proceedings and may direct them to surrender the business and assets of such bank. The application may be heard at any time after five days' notice to the commissioner, or at any time prior thereto with the consent of the commissioner. Application for an injunction must be made on the verified complaint of the

bank, a copy of which must be served on the commissioner. The commissioner, at least two days before the time set for hearing, shall serve upon counsel for the applicant and file in the court an answer to the complaint. If the state banking board makes no appearance within the time limited, the court shall proceed to hear the proofs of the applicant and may enter judgment as in a default in other civil actions. Such judgment entered either after hearing on the merits or by default is a final judgment from which either party may appeal to the supreme court in the same manner as from a final judgment in a civil action. Notice of such appeal must be filed within ten days after notice of entry of such judgment.

**6-07-15. Powers of receiver.** Upon taking charge of the assets and business of any bank, the receiver appointed by the state banking board, after having qualified in the manner hereinbefore provided, is authorized to collect all moneys due to such bank, and to do such other acts as are necessary to conserve its business and assets, and the receiver shall proceed to liquidate the affairs thereof. The receiver has general and inclusive power and authority, except as otherwise limited by the provisions of this chapter, to do any and all acts and to take any and all steps necessary, or in the receiver's discretion desirable, for the protection of the property and assets of such bank and the speedy and economical liquidation of the assets and affairs thereof, and the payment of its creditors, or for the reopening and resumption of business by said bank, if that is practicable or desirable. The receiver may institute in the receiver's own name, as receiver, or in the name of the insolvent bank, such suits, actions, and other legal proceedings as the receiver deems expedient for such purposes and for the enforcement of stockholders' liability. The receiver may sell, compromise, or compound any bad or doubtful debt or claim and sell and dispose of any or all of the assets of the bank upon receiving an order so to do from the district court having jurisdiction of such matters. Such sale may be made to stockholders, officers, directors, or others interested in the insolvent bank on consent of the court.

**6-07-16. Receiver to notify claimants - Publication - Limitation of action on claims.** The receiver shall give notice of insolvency of the bank by causing to be published, in a newspaper of general circulation printed and published in the county in which such bank maintained its office, a notice in substantially the following form: "Notice is hereby given that the \_\_\_\_\_ bank, of \_\_\_\_\_, North Dakota, has been taken over by the department of financial institutions, and that the undersigned has been appointed receiver thereof. Creditors of such bank must file claims with the undersigned within one year from the date of the first publication of this notice". The date of the first publication must be shown, and the name and address of the receiver must be shown thereon. The notice must be published once each week for two successive weeks, and a copy thereof must be mailed by the receiver, within sixty days after the receiver's appointment, to every creditor whose address appears on the records of the bank, or who is known to the receiver. Proof of such publication and mailing must be made by affidavits to be filed in the office of the clerk of the district court having jurisdiction over such matters. Any claim against such bank not presented to the receiver within one year after the first publication of the notice described in this section is barred and cannot thereafter be presented, nor can any action be maintained thereon, and any person bringing such an action must allege in the person's complaint and prove that the action is not barred under section 6-07-17.

**6-07-17. Action on creditors' claims.** The receiver may allow or reject any claim filed with the receiver. Written notice of rejection of any claim must be served on the claimant either personally or by registered or certified mail. The action of the receiver in rejecting a claim, in whole or in part, may be reviewed by the court having jurisdiction of the receivership upon motion of the claimant made within three months after the personal service of notice of rejection or the date of mailing of such notice. If such motion is not made within the time limited, the claim is barred forever.

**6-07-18. Receiver to furnish financial statement to stockholders, depositors, and creditors.** The receiver, within sixty days after the closing of the bank, shall prepare a statement showing the assets and liabilities of such bank as of the date of its closing. A copy of such statement must be filed in the office of the commissioner, a copy must be filed in the office of the clerk of the district court having jurisdiction, and a copy must be furnished by the receiver upon request to any stockholder, depositor, or creditor of such bank whose name appears on the records thereof. The receiver, annually thereafter, shall prepare a statement of the affairs of the

receivership, which must show the amounts collected since the last statement was rendered, the disposition made of the funds collected, and the amount of assets on hand at the time of the rendering of such annual statement, and the receiver shall file a copy thereof in each of the offices in which the original statement is filed, and shall furnish a copy to any stockholder, depositor, or creditor upon request.

**6-07-19. Dividends from receivership.** After the time for presentation of claims has expired, the receiver, with the approval of the district court having jurisdiction, may declare and pay dividends out of funds on hand belonging to the bank in liquidation and at any time thereafter, in the event liquidation of the bank's assets has been completed, may declare and pay a final dividend. Any unclaimed dividends or other recoveries, upon the closing of the receivership, must be deposited by the receiver with the commissioner.

**6-07-20. Salary and expense of receiver - Receiver may have more than one bank.** Any receiver appointed by the state banking board under the provisions of this chapter, shall receive from the assets of the bank for which the person has been designated as receiver, salary and expenses as determined by the district judge having jurisdiction pursuant to section 6-07-33. Nothing in this section prohibits the same receiver from being appointed for more than one bank.

**6-07-21. Foreclosure of pledge when pledgor bank insolvent - Contest of foreclosure order.** Repealed by S.L. 1991, ch. 87, § 7.

**6-07-22. Order of foreclosure - Sale - Report of sale to commissioner.** Repealed by S.L. 1991, ch. 87, § 7.

**6-07-23. Receiver may enjoin foreclosure of pledge by advertisement.** Repealed by S.L. 1991, ch. 87, § 7.

**6-07-24. Sheriff to hold property sold and proceeds of sale during redemption period.** Repealed by S.L. 1991, ch. 87, § 7.

**6-07-25. Redemption by receiver from sale on foreclosure of pledge.** Repealed by S.L. 1991, ch. 87, § 7.

**6-07-26. Redemption by depositors or creditors of insolvent pledgor bank from sale on pledge foreclosure.** Repealed by S.L. 1991, ch. 87, § 7.

**6-07-27. Title of redemptioner.** Repealed by S.L. 1991, ch. 87, § 7.

**6-07-28. Debtor may pay debt during foreclosure or redemption period.** Repealed by S.L. 1991, ch. 87, § 7.

**6-07-29. Report of sale to court - Confirmation of sale - Distribution of proceeds.** Repealed by S.L. 1991, ch. 87, § 7.

**6-07-30. Federal deposit insurance corporation may be receiver - Powers - Title to bank assets.** The federal deposit insurance corporation is authorized to act as receiver of any banking institution, the deposits in which to any extent are insured by said corporation, which has been closed voluntarily or on order of the state banking department, or by order of any court of competent jurisdiction, and may act as such receiver without bond. The state banking board or the district court having jurisdiction may tender the appointment as receiver to the corporation, and if the corporation accepts such appointment, it has and possesses all the duties, powers, and privileges provided by this chapter for receivers of banks. The possession of and title to all the assets, business, and property of the insolvent bank passes to and vests in the corporation as receiver without the execution of any instruments of conveyance, assignment, transfer, or endorsement, and upon the order of the district court having jurisdiction, the corporation has the right and power to enforce the individual liability of the stockholders and directors of the bank.

**6-07-31. Right of subrogation of federal deposit insurance corporation.** Whenever any bank has been closed as insolvent and the federal deposit insurance corporation shall pay or make available for payment the insured deposit liabilities of such closed bank, the corporation, whether or not it has become receiver of such bank, is subrogated to all rights of the owners of such deposits against the closed bank to the extent of such payment, and to the extent necessary, under federal law, to enable said corporation to make insurance payments available to depositors of closed insured banks. The rights of depositors and other creditors of such closed banks must be determined in accordance with applicable provisions of the laws of this state.

**6-07-32. Borrowing from federal deposit insurance corporation for liquidation - Pledge or sale of assets.** The receiver of any banking association which has been closed by action of the state banking board, a court, or its board of directors, with the permission of the state banking board, may borrow money from the federal deposit insurance corporation and pledge all or any part of the bank's assets to the corporation as security for the loan. When the corporation is acting as receiver, the order of the district court having jurisdiction also must be obtained approving the loan. The receiver, whether the corporation or otherwise, with the permission of the state banking board and the approval of said district court, may sell all or any part of the bank's assets to said corporation. The provisions of this section do not limit the power of any bank or receiver to pledge or sell assets in accordance with any existing law.

**6-07-33. District judge for administrative bank receiverships.** The district court of the district in which the bank is located shall have jurisdiction in connection with administrative receiverships of insolvent banks, and the judge shall give precedence to such matters. Wherever in this chapter reference is made to the district court having jurisdiction over the matters and proceedings set forth in this chapter, such district court shall be the court referred to. Prior to the filing of an application for relief or for supervisory proceedings under this chapter, a party to the proceedings before the banking board may request that the district judge order the confidentiality of the proceedings in the district court. The request must be by affidavit and is confidential. Upon showing that undue injury may otherwise result to any party, or as determined necessary to preserve the status quo, the judge may order the confidentiality of the court's proceedings until after a purchase and assumption has been completed or until liquidation is commenced.

**6-07-34. Action for appointment of judicial receiver - Complaint - Venue.** Repealed by S.L. 1991, ch. 87, § 7.

**6-07-35. Answer to complaint for appointment of judicial receiver.** Repealed by S.L. 1991, ch. 87, § 7.

**6-07-36. Appointment of judicial receiver by court.** Repealed by S.L. 1991, ch. 87, § 7.

**6-07-37. Judicial receiver supersedes administrative receiver - Appointment of successor - Powers.** Repealed by S.L. 1991, ch. 87, § 7.

**6-07-38. Closing of receiverships - Sale of assets - Notice.** Every receivership must be terminated within ten years of the date of the appointment of the first receiver for said bank. If ninety days prior to the expiration of said ten-year period any assets remain in the hands of the receiver, the receiver shall cause notice of sale thereof at public auction to be given by publishing notice thereof in a newspaper in the county wherein the bank was located once each week for three successive weeks prior to the date set for sale, and such assets may be sold to the highest bidder. Such sale may be had at any earlier time when ordered by the court having jurisdiction. When the receivership of a closed bank is terminated, all books, records, documents, and other property of such bank, and any dividends unclaimed, must be delivered over by such receiver to the commissioner and the commissioner's receipt taken therefor by the receiver. Such receipt must be filed in the district court having jurisdiction, and the discharge of the receiver, whether the receiver be an administrative or judicial receiver, must be approved by such court before it becomes final. The commissioner is custodian of all books, records, documents, and other property of such bank and of the dividends unclaimed upon the winding up of the receivership proceedings, and is vested with title to any assets belonging to such bank and not distributed in

such receivership, and the commissioner has full power and authority to convert such assets into cash. The commissioner has authority to execute all deeds, satisfactions, assignments, or other documents required for the purpose of transferring undistributed assets or for the purpose of correcting public records and quieting title to property in which the insolvent bank has or has had an apparent interest. Any moneys collected by the commissioner after the termination of a receivership must be paid to the commissioner of university and school lands. The commissioner may waive any of the requirements of this section in cases in which the federal deposit insurance corporation is the receiver.

**6-07-39. Reorganization and reopening of bank by depositors - Agreement and plan - Action by state banking board.** Repealed by S.L. 1991, ch. 87, § 7.

**6-07-40. Deposit creditors required to sign reorganization agreement - Rights of nonsigners.** Repealed by S.L. 1991, ch. 87, § 7.

**6-07-41. Reorganization agreement and plan filed in court - Notice of hearing - Hearing - Court order.** Repealed by S.L. 1991, ch. 87, § 7.

**6-07-42. Construction of provisions relating to reorganization by depositors.** Repealed by S.L. 1991, ch. 87, § 7.

**6-07-43. Review of decisions and orders of the district court.** Repealed by S.L. 1991, ch. 87, § 7.

**6-07-44. Expenses of court commissioner or district judge in charge of closed banks.** Repealed by S.L. 1953, ch. 100, § 1.

**6-07-45. Commissioner to take action for termination of individual receiverships.** Repealed by S.L. 1991, ch. 87, § 7.

**6-07-46. Disposition of unclaimed dividends or other moneys delivered to commissioner.** Repealed by S.L. 1989, ch. 116, § 7.

**6-07-47. Disposition of other moneys paid to the commissioner by receivers of insolvent banks.** Repealed by S.L. 1963, ch. 201, § 11.

**6-07-48. Fees and charges that may be made by commissioner.** The commissioner may make such charges and exact such fees as may be reasonable and equitable for the execution of deeds, satisfactions, assignments, or other documents required for the purpose of transferring undistributed assets or for the purpose of correcting public records and quieting title to property in which the insolvent bank has or has had an apparent interest. Such charges and fees must be paid to the state treasurer and by the state treasurer be credited to the general fund of this state.

**6-07-49. Investment of moneys in the hands of the commissioner.** Repealed by S.L. 1963, ch. 201, § 11.

**6-07-50. Additional compensation for commissioner and deputy - Equipment and other expenses.** Repealed by S.L. 1977, ch. 76, § 1.

**6-07-51. Closed bank fund created.** Repealed by S.L. 1959, ch. 214, § 12.

**6-07-52. Priority of expenses and claims.** The order of paying the expenses of and claims against an insolvent bank is:

1. Administrative expenses, including salaries and expenses of receivers pursuant to section 6-07-20, and expenses incurred by the commissioner during possession or in the course of proceedings under this chapter, including the compensation of deputy examiners, agents, and clerks employed by the commissioner and

reasonable fees for counsel, accountants, or consultants employed by the commissioner or on the commissioner's behalf;

2. Unsecured claims for wages, salaries, or commissions earned by an individual within ninety days before the date of the commissioner's possession in an amount not exceeding five thousand dollars for each individual;
3. Claims of depositors, except that notwithstanding sections 6-03-67 and 41-04-31, if a depositor is indebted to an insolvent bank, the insolvent bank has a right to set off against the depositor's account;
4. All other unsecured claims and claims of secured creditors to the extent the amount of their claims exceeds the present fair market value of their collateral;
5. Claims for debts that are subordinated under the provisions of a subordination agreement or other instrument; and
6. Equity capital of shareholders.