Chapter 711

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Merger and Conversion; Reorganization; Liquidation; Insolvency

MERGER AND CONVERSION OF NATIONAL AND STATE BANKS AND TRUST COMPANIES

711.005 Definitions for ORS 711.005 to 711.060
711.010 Merger with or conversion into national bank by state bank
711.015 Merger to form state banks; conversion of national banks into state banks
711.020 Merger agreement; approval by directors and superintendent
711.025 Approval of merger to form state bank by stockholders; notice of approval
711.030 When merger to form state bank becomes effective; certificate of merger
711.035 Charter of conversion of national bank into state bank; application for charter
711.040 Rights, powers and duties of resulting banks
711.045 Rights of stockholder dissenting to merger to form state bank
711.050 Successor fiduciaries to merging or converting banks when resulting state bank is not to exercise trust powers
711.055 Period for resulting state bank to conform with state law
711.060 Valuation of assets on books of resulting state banks

REORGANIZATION OF BANKS AND TRUST COMPANIES

711.105 Authority to reorganize
711.110 Preparation of plan of reorganization
711.115 Binding effect of reorganization plan
711.120 Participation by municipal corporations in reorganization plan

TRANSFER OF ASSETS, LIABILITIES AND BUSINESS; VOLUNTARY LIQUIDATION; DISSOLUTION

711.205 Sale of assets; assumption by purchaser of deposit and preferred liabilities of vendor; passing of assets to superintendent
711.210 Transfer of assets, liabilities and business of departments
711.215 Voluntary liquidation on approval of stockholders and superintendent
711.220 Notice of voluntary liquidation; presentation of claims
711.225 Report of unclaimed deposits
711.230 Claims; time within which presented; extension of time
711.235 Report of liquidation to superintendent; disposition of remaining assets
711.240 Supervision and control by superintendent
711.245 Transfer of deposit liabilities; consent and certificate of superintendent
711.250 Engaging in banking business prohibited after liquidation, transfer of deposit liabilities or ceasing to do business for one year; dissolution

IMPAIRMENT OF CAPITAL

711.305 When capital deemed impaired
711.310 Notice to make good impairment; stockholders' meeting; assessment or capital reduction; resumption of business
711.315 Notice of assessment; sale of stock upon failure to pay
711.320 Sale of assets to another bank or trust company when capital impaired one-half or more; certificate

INSOLVENCY; LIQUIDATION BY SUPERINTENDENT

711.405 When bank deemed insolvent
711.410 Transfer of assets after commission of act of insolvency or in contemplation of insolvency is void
711.415 Receiving deposits while insolvent
711.420 Participation in fraudulent insolvency
711.425 Possession and administration of bank assets by superintendent
711.430 Placing business in hands of superintendent; notice
711.435 Resumption of business of bank placed in hands of superintendent
711.440 Receivers and assignments for benefit of creditors; notice to and action by superintendent
711.445 Notice of taking possession of bank; liens subsequent to insolvency prohibited
711.450 Injunction against superintendent taking possession
711.455 Deputy superintendents as liquidating agents; appointment and removal
711.460 Bond and oath of deputy superintendents
711.465 Transfer of liquidation functions to Federal Deposit Insurance Corporation
711.470 Subrogation rights of Federal Deposit Insurance Corporation
711.475 Inventory of assets; filing notice of taking possession
711.480 Preservation of business; collection and compounding of debts; sale of assets
711.485 Borrowing funds to pay closed bank expenditures
711.490 Capital stock requirements of new corporation purchasing assets and assuming liabilities of insolvent bank
711.495 Action by superintendent to collect balance due on stock
711.500 Liability of transferor of stock made in contemplation of insolvency; proceedings to relieve a stockholder of liability prohibited
711.505 Liability of executor, administrator, guardian, trustee or pledgee as stockholders; liability of estate and funds
711.510 Deposit of money collected; payments of claims out of assets; security for deposit
711.515 "Depositor" defined; preferences among depositors

711.520 Priority of depositors against bank assets
711.525 Interest on deposits after bank closes
711.530 Notice to creditors to present claims
711.535 Verification and filing of claims; demand for preference
711.540 Approval or rejection of claims
711.545 Objection to and appeal from approval of claims
711.550 Objection to and appeal from rejection of claims
711.555 Claim procedure exclusive
711.560 Claim procedure filing fees and costs
711.565 Claims presented after time expired
711.570 Lists of claims
711.575 Dividends to depositors; death of depositor
711.580 Safety deposit boxes, disposition of contents
711.585 Selection of agents to wind up affairs of bank; bond; duties
711.590 Escheat of unclaimed deposits; recovery by claimant; interest
711.595 Destruction of liquidation records in possession of superintendent
711.600 Liquidation expenses; payment
711.605 Petitions relating to insolvent banks; ruling by superintendent; court review
711.610 Attachment, injunction or execution before final judgment
711.615 Court filing fees; recording fees

PENALTIES

711.990 Penalties

CROSS REFERENCES

Administrative procedures governing state agencies, 183.310 to 183.510

"Bank Act" defined, 706.030

Foreign banks, discontinuance of business in state, 713.100

Merger and consolidation of private corporations, 57.455 to 57.490, 57.796

Merger or consolidation of mutual savings bank into capital stock state bank, 716.920

Sale or liquidation of trust business, 709.330 to 709.460

Stockholder's liability, Const. Art. XI, § 3

711.105

Reorganization of corporations generally, 59.220

711.225

Disposition of abandoned bank deposits, 98.306, 98.302 to 98.436

711.405

Failure of examiner to report insolvency, 706.610

Suspension or restriction by State Banking Board of payment of bank's liabilities is not evidence of insolvency, 708.655

711.520

Lien of depositors of insured deposit banks and foreign banks, 708.055

711.615

Filing fees not to be exacted for papers relating to creditors of closed banks, 711.560

711.990

Penalty for violation of ORS 711.225, 98.991

MERGER AND CONVERSION OF NATIONAL AND STATE BANKS AND TRUST COMPANIES

711.005 Definitions for ORS 711.005 to 711.060. As used in ORS 711.005 to 711.060:

(1) "Bank" means a state or a national bank, other than a mutual savings bank.

(2) "Converting bank" means a bank converting from a state to a national bank, or the reverse.

(3) "Dissenting stockholder" means a stockholder dissenting and voting his dissent as provided in ORS 711.005 to 711.060.

(4) "Merger" includes consolidation.

(5) "Merging bank" means a party to a merger.

(6) "Resulting bank" means the bank resulting from a merger or conversion.

(7) "State bank" means a bank or trust company chartered by the Superintendent of Banks of the State of Oregon.

711.010 Merger with or conversion into national bank by state bank. (1) Nothing in the law of this state restricts the right of a state bank to merge with or convert into a resulting national bank. The action to be taken by such merging or converting state bank and its rights and liabilities and those of its stockholders shall be the same as those prescribed for national banks at the time of the action by the law of the United States and not by the law of this state.

(2) Upon the completion of the merger or conversion, the charter of any merging or converting state bank shall automatically terminate, except for the purposes specified in ORS 711.040.

711.015 Merger to form state banks; conversion of national banks into state banks. Upon approval by the Superintendent of Banks, banks may be merged to result in a state bank or a national bank may convert into a state bank as prescribed in ORS 711.020 to 711.060, except that the action by a national bank shall be taken in the manner prescribed by and shall be subject to limitations and requirements imposed by the law of the United States which shall also govern the rights of its dissenting stockholders.

711.020 Merger agreement; approval by directors and superintendent. (1) The board of directors of each merging state bank shall, by a majority of the entire board, approve a merger agreement which shall contain:

(a) The name of each merging bank and location of each office and branch.

(b) With respect to the resulting bank: The name and location of the principal and other offices; the name and residence of each director to serve until the next annual meeting of the stockholders; the name and residence of each officer; the amount of capital, the number of shares and the par value of each share; whether preferred stock is to be issued and the amount, terms and preferences, and the amendments to its articles of incorporation and bylaws.

(c) Provisions governing the manner of converting the shares of the merging banks into shares of the resulting state bank.

(d) A statement that the agreement is subject to approval by the Superintendent of Banks and by the stockholders of each merging bank.

(e) Provisions governing the manner of disposing of the shares of the resulting state bank not taken by dissenting stockholders of merging banks.

(f) Such other provisions as the Superintendent of Banks requires to enable him to discharge his duties with respect to the merger.

(2) After approval by the board of directors of each merging state bank, the merger agreement shall be submitted to the Superintendent of Banks for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board and evidence of proper action by the board of directors of any merging national bank.

(3) Within 30 days after receipt by the Superintendent of Banks of the papers specified in subsection (1) of this section, the Superintendent of Banks shall approve or disapprove the merger agreement. The Superintendent of Banks shall approve the agreement if he finds that:

(a) The resulting state bank meets the requirements of state law as to the formation of a new state bank.

(b) The agreement provides an adequate capital structure including surplus in relation to the deposit liabilities of the resulting state bank and its other activities which are to continue or are to be undertaken.

(c) The agreement is fair.

(d) The merger is not contrary to the public interest.

(4) If the Superintendent of Banks disapproves an agreement, he shall state his objections in writing and give an opportunity to the merging banks to amend the merger agreement to obviate such objections.

711.025 Approval of merger to form state bank by stockholders; notice of approval. (1) To be effective, a merger which is to result in a state bank must be approved by the stockholders of each merging state bank by a vote of two-thirds of the outstanding voting stock of each class at a meeting called to consider such action. This vote shall constitute the adoption of the articles of incorporation and bylaws of the resulting state bank, including the amendments in the merger agreement.

(2) Unless waived in writing, notice of the meeting of stockholders of each state bank shall be given by publication in a newspaper of general circulation in the place where the principal office is located, at least once a week for four successive weeks, and by mail, at least 15 days before the date of the meeting, to each stockholder of record of each merging bank at his address on the books of his bank. Notice by publication need not be given if written waivers are received from the holders of two-thirds of the outstanding shares of each class of stock. The notice shall be accompanied by a copy of ORS 711.045, and shall state that such section sets forth the exclusive rights and remedies of dissenting stockholders.

711.030 When merger to form state bank becomes effective; certificate of merger. (1) A merger which is to result in a state bank shall, unless a later date is specified in the agreement, become effective upon the filing with the Superintendent of Banks of the executed agreements together with copies of the resolutions of the stockholders of each merging bank approving it and a list of owners of shares voted against the merger, certified by the bank's president or a vice president and a secretary or cashier. The charters of the merging banks, other than the resulting bank, shall thereupon automatically terminate.

(2) The Superintendent of Banks shall promptly issue to the resulting bank a certificate of merger specifying the name of each merging bank and the name of the resulting state bank. Such certificate shall be prima facie evidence of the merger and of the correctness of all proceedings therefor in all courts and places, and shall be recorded in any office for the recording of deeds to evidence the new name in which the property of the merging banks is held.

711.035 Charter of conversion of national bank into state bank; application for charter. (1) Except as provided in ORS 711.050, a national bank located in this state which follows the procedure prescribed by the laws of the United States to convert into a state bank shall be granted a charter to do a banking business by the Superintendent of Banks if he finds that the bank meets the standards as to location of offices, capital structure, and business experience and character of officers and directors for the incorporation of a state bank.

(2) The national bank may apply for such charter by filing with the Superintendent of Banks a certificate signed by its president and cashier and by a majority of the entire board of directors, setting forth the corporate action taken in compliance with the provisions of the laws of the United States governing the conversion of the national to a state bank, and the articles of incorporation, approved by the stockholders, for the government of the bank as a state bank.

711.040 Rights, powers and duties of resulting banks. (1) A resulting state or national bank shall be considered the same business and corporate entity as each merging bank or as the converting bank with all the property, rights, powers and duties of each merging bank or the converting bank, except as affected by the state law in the case of a resulting state bank or the federal law in the case of a resulting national bank, and by the charter, articles of incorporation and bylaws of the resulting bank.

(2) A resulting bank shall have the right to use the name of any merging bank or of the converting bank whenever it can do any act under such name more conveniently.

(3) Any reference to a merging or converting bank in any writing, whether executed or taking effect before or after the merger or conversion, shall be deemed a reference to the resulting bank if not inconsistent with the other provisions of such

writing, and except when the resulting bank is not authorized to or has not qualified to exercise the powers conferred or required by the writing.

711.045 Rights of stockholder dissenting to merger to form state bank. (1) A dissenting stockholder of a state bank shall be entitled to receive the value in cash of only those shares which were voted against a merger to result in a state bank, if and when the merger becomes effective, upon written demand made to the resulting state bank at any time within 30 days after the effective date of the merger accompanied by the surrender of the stock certificates.

(2) The value of such shares shall be determined, as of the date of the stockholders' meeting approving the merger, by the merger agreement or by three appraisers, at the option of the dissenting stockholder.

(3) If the value fixed by the merger agreement is not accepted, appraisers shall be selected as follows: One to be selected by the vote of the owners of two-thirds of the shares involved at a meeting called by the Superintendent of Banks on 10 days' notice, one by the board of directors of the resulting state bank and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If any necessary appraiser is not appointed within 60 days after the effective date of the merger or if the appraisal is not completed within 90 days after the merger becomes effective, the Superintendent of Banks shall cause an appraisal to be made. The expenses of appraisal shall be paid by the resulting state bank.

(4) The amount due under such merger agreement or under the appraisal shall constitute a debt of the resulting state bank.

711.050 Successor fiduciaries to merging or converting banks when resulting state bank is not to exercise trust powers. Where a resulting state bank is not to exercise trust powers, the Superintendent of Banks shall not approve a merger or conversion until satisfied that adequate provision has been made for successors to fiduciary positions held by the merging banks or the converting bank.

711.055 Period for resulting state bank to conform with state law. If a merging or converting bank has assets which do not conform to the requirements of state law for the resulting state bank or carries on business activities which are not permitted for the resulting state bank, the Superintendent of Banks may permit a reasonable time to conform with state law.

711.060 Valuation of assets on books of resulting state banks. Without approval by the Superintendent of Banks, no asset shall be carried on the books of the resulting state bank at a valuation higher than that on the books of the merging or converting bank at the time of its last examination by a state or national bank examiner before the effective date of the merger or conversion.

REORGANIZATION OF BANKS AND TRUST COMPANIES

711.105 Authority to reorganize. Any bank or trust company may reorganize as provided in ORS 711.110 and 711.115.

711.110 Preparation of plan of reorganization. Whenever the board of directors of any bank or trust company determines that a reorganization of the bank or trust company is advisable, the board shall, with the advice and cooperation of the Superintendent of Banks, prepare a plan of reorganization. The Superintendent of Banks may, when requested so to do by the board of directors of any bank or trust company, prepare and submit to the board a plan of reorganization that will meet with his approval.

711.115 Binding effect of reorganization plan. Any plan of reorganization approved by the board of directors of any bank or trust company and the Superintendent of Banks shall be binding on all depositors and other creditors and all the stockholders of the bank or trust company, whether or not such depositors and creditors or stockholders have approved the same or consented thereto, when the plan has been approved in writing by stockholders of the bank or trust company owning at least two-thirds of the capital stock thereof, and by depositors representing at least 75 percent of the deposits which will not be paid in full or the payment of which in whole or in part is deferred under the plan.

711.120 Participation by municipal corporations in reorganization plan. (1) Any city, school district or other municipal

corporation, the funds of which are on unsecured deposit in any bank or trust company to the credit of such city, school district or other municipal corporation or to the credit of the official custodian of such funds, may, through its officers, become a party to or authorize or direct the official custodian of such funds on its behalf to become a party to any plan or agreement for the reorganization of such bank or trust company. In connection with and as a part of such reorganization plan or agreement, any such city, school district or other municipal corporation may waive and release or authorize the official custodian of its funds to waive and release all or any part of the unsecured deposit liability of the bank or trust company to the city, school district or other municipal corporation or to the official custodian of such funds.

(2) All agreements entered into prior to February 25, 1935, by any such city, school district or other municipal corporation or by the official custodian of its funds, in connection with the reorganization of such bank or trust company, and all waivers and releases executed prior to February 25, 1935, by any such city, school district or other municipal corporation or official custodian in connection with any such reorganization, are ratified and approved and made binding upon any such city, school district or other municipal corporation.

TRANSFER OF ASSETS, LIABILITIES AND BUSINESS; VOLUNTARY LIQUIDATION; DISSOLUTION

711.205 Sale of assets; assumption by purchaser of deposit and preferred liabilities of vendor; passing of assets to superintendent. (1) The board of directors of any bank or trust company, with or without the approval, action or authority of the stockholders, may sell all or any substantial part of the assets of such bank or trust company, or of any department thereof, to any other bank or trust company for such amounts and on such terms as to price, time and manner of payments as may be agreed to by such board of directors, but no such sale may be made until the same, and all the terms thereof, shall have been approved in writing by the Superintendent of Banks.

(2) Without in any wise limiting the generality of subsection (1) of this section, such board of directors, with the approval in writing of the Superintendent of Banks, is specifically given the right and authority to provide and agree that all, or a part, of the sales price may be paid by the purchasing bank or trust company assuming and agreeing to pay all or a part of the deposit and preferred liabilities of the vendor bank or trust company. Such deposit and preferred liabilities so assumed by the purchasing bank or trust company shall be payable by the purchasing bank or trust company on substantially the same terms as the vendor bank or trust company was, immediately prior to such sale, obligated to pay the same.

(3) In cases where less than all deposit and preferred obligations of the vendor bank or trust company are assumed by the purchasing bank or trust company or sufficient cash is not paid by the purchasing bank or trust company to care for all such obligations, then, immediately upon the completion of the sale, the remaining assets of the vendor bank or trust company shall pass into the possession and control of the Superintendent of Banks, who shall, in respect thereto, have the same rights, power, title and authority as are given to him by law with relation to the assets of an insolvent bank or trust company, and all laws relating to the liquidation of insolvent banks and trust companies, including the enforcement of statutory and constitutional obligations of stockholders, shall be applicable to the liquidation of the assets not sold to the purchasing bank or trust company.

711.210 Transfer of assets, liabilities and business of departments. (1) Any bank or trust company may sell or transfer to any other bank or trust company doing business under the laws of this state or under the laws of the United States all the assets, liabilities and business of any one or more of its departments. Any such sale first must be authorized by the stockholders, and the Superintendent of Banks shall first approve in writing the sale and all the terms thereof.

(2) Any bank doing business under the laws of the United States and authorized to transact trust business in this state may sell or transfer to any other bank or trust company doing business under the laws of this

state or under the laws of the United States all the assets, liabilities and business of its trust department.

(3) The purchasing corporation to which any trust or fiduciary business is transferred must have at the time of the transfer authority from the Superintendent of Banks to do a trust business. Any trust or fiduciary business sold and transferred shall pass into the purchasing bank or trust company subject to all the provisions of ORS 709.330, and all the terms thereof shall apply whenever such transfer is made.

(4) When the Superintendent of Banks is satisfied that the sale or transfer of any or all of the assets and liabilities and business of any one or more of the departments of any bank or trust company or of the trust department of any national banking association has been completed and is effective, he shall furnish the purchasing corporation with a certificate bearing the seal of the Banking Division to the effect that such sale or transfer has taken place and is effective. Such certificate shall be filed for record and shall be recorded in the records of deeds in any county of this state with the recording officer and shall be prima facie evidence that such sale or transfer has been made and is effective.

711.215 Voluntary liquidation on approval of stockholders and superintendent. Any bank or trust company doing business under the Bank Act may go into voluntary liquidation by vote of its stockholders owning at least two-thirds of its capital stock. Such bank or trust company shall first obtain the written consent of the Superintendent of Banks, and he may, if he deems it advisable, before granting such request, make or cause to be made, a special examination of the condition and affairs of the bank or trust company, for which examination the fees provided in the Bank Act for examination shall be collected.

711.220 Notice of voluntary liquidation; presentation of claims. (1) Whenever a vote is taken authorizing the voluntary liquidation of any bank or trust company, the board of directors shall cause to be published in a newspaper of general circulation in the city, town or county in which such bank or trust company is located, at least once a week for four consecutive weeks, notice of such fact notifying depositors and other creditors or claimants to present their claims against the bank or trust company for payment.

(2) Claims of depositors shall be paid upon the presentation of a check, passbook, certificate of deposit or other instrument which would have been required for payment before the bank or trust company went into voluntary liquidation, but any claim which is disputed shall be presented in writing for allowance or rejection in the manner provided in ORS 711.230 for claims of other creditors.

(3) Within 60 days after the last publication of the notice provided for in this section, any bank or trust company in voluntary liquidation under ORS 711.215 to 711.240 shall mail a written notice of its intention to liquidate to the last-known address of all depositors and other creditors of such bank or trust company who have not yet claimed the full amount shown to be due them according to the records of the bank or trust company.

711.225 Report of unclaimed deposits. (1) All deposits which remain unclaimed after six months from the date of the written notice mentioned in subsection (3) of ORS 711.220, shall be reported by the managing officer of the bank or trust company to the Division of State Lands, which report shall give the name and last-known address of the depositor, the amount of the deposit and shall state whether such depositor has died, if known. The bank or trust company shall cause the aggregate of such unclaimed deposits to be deposited with the Division of State Lands. Such funds shall thereupon escheat to and become the property of the State of Oregon and shall be paid into and become a part of the Common School Fund. The owner or his heirs or personal representatives may reclaim any funds so deposited within the time and in the manner as provided for estates which have escheated to the state.

(2) Such managing officer shall also file a copy of such statement of unclaimed deposits with the Superintendent of Banks. [Amended by 1957 c.670 §33; 1959 c.138 §1]

Note: See notes for ORS 98.302 and 98.991.

711.230 Claims; time within which presented; extension of time. (1) Claims of all persons, other than depositors, against the bank or trust company must be presented in writing to the bank or trust company on or before one year from the date of first publication provided for in ORS 711.220 (unless barred by an earlier period of limitation, in

which case the earlier limitation shall govern). The board of directors shall thereupon and within 30 days following the presentment of any such claims allow or reject, in whole or in part, every such claim, noting the same in their minutes, and shall notify the claimants in writing of its action, either by personal service or by mail. Claims arising out of the expense of the liquidation may be filed at any time prior to the closing of the liquidation. Any claim rejected or disallowed shall be forever barred unless suit or action to adjudicate the same is commenced within 60 days from the date of service or mailing of notice of disallowance or rejection.

(2) The board of directors may, in its discretion, extend the time within which to receive claims and continue the liquidation of any such bank or trust company after the expiration of the time allowed in this section for the filing of claims. Any new claims filed after such time shall be allowed and paid or rejected in the same manner as provided for other claims. If the liquidation is so continued, the transfer of unclaimed deposits to the Division of State Lands may be delayed to such time as may be designated by the Superintendent of Banks.

[Amended by 1959 c.138 §2]

711.235 Report of liquidation to superintendent; disposition of remaining assets. (1) After the expiration of the time provided in ORS 711.230 for the filing of claims or if the board of directors has extended the time of liquidation then after the time set by them and after payment of unclaimed deposits to the State Land Board, the board of directors shall make a complete report of the liquidation to the Superintendent of Banks and shall certify to him that all claims have been paid or finally determined.

(2) When such report has been approved by the Superintendent of Banks the board of directors may proceed to liquidate the remaining assets and distribute them to the stockholders or other persons entitled to receive them in the same manner as any other corporation and without further report to the Superintendent of Banks. Any claims received and approved after such report shall be paid if the remaining assets are sufficient.

[Amended by 1959 c.138 §3]

711.240 Supervision and control by superintendent. The Superintendent of Banks shall continue to have supervision and control of any bank or trust company in voluntary liquidation until the time of the final report in the same manner and to the same extent as he has supervision and control of any other bank or trust company.

711.245 Transfer of deposit liabilities; consent and certificate of superintendent. (1) Any bank or trust company in the process of voluntary liquidation may sell or transfer its deposit liabilities or the deposit liabilities of any one of its departments or its trust and fiduciary business, as provided in ORS 709.330, to some other bank or trust company by resolution duly adopted by its board of directors authorizing such sale or transfer and surrender its certificate of authority to the Superintendent of Banks, but no such sale or transfer shall be made without first having obtained the written approval and consent of the Superintendent of Banks, and then only upon such terms and conditions as he shall require. The purchasing corporation to which any trust or fiduciary business is transferred must have at the time of transfer authority from the Superintendent of Banks to do a trust business.

(2) When the Superintendent of Banks is satisfied that the sale or transfer of the deposit liabilities of any bank or trust company or the deposit liabilities of any one of the departments or the trust and fiduciary business of any bank or trust company has been completed and is effective, he shall furnish the purchasing corporation with a certificate bearing the seal of the Banking Division to the effect that such sale or transfer has taken place and is effective. Such certificate may be filed for record and shall be recorded in the records of deeds in any county of this state with the county clerk or recorder of conveyances, as the case may be, and shall be prima facie evidence that such sale or transfer has been made and is effective.

711.250 Engaging in banking business prohibited after liquidation, transfer of deposit liabilities or ceasing to do business for one year; dissolution. (1) If any bank or trust company goes into voluntary liquidation after June 3, 1929, or on or after such date is closed because of insolvency, or if any bank or trust company sells any of its assets to another bank or trust company which takes over and assumes its deposit liabilities, or does not engage in the banking

or trust business for a period of one year, such corporation may not engage thereafter in the banking or trust business.

(2) Such corporation shall, within one year after it ceases to do a banking or trust business, amend its articles of incorporation by eliminating therefrom the power to engage in a banking or trust business or it shall be and is dissolved and shall not thereafter be reinstated and shall surrender its charter. For the purpose of winding up its affairs, it may continue as a body corporate for a period of five years from the date it ceases to do a banking or trust business, with the same powers and liabilities as any other corporation, as provided in ORS 57.630, except that in all cases under this section the Superintendent of Banks shall be substituted for the Corporation Commissioner, with like powers and duties, which shall be in addition to his other powers and duties provided by law.
[Amended by 1959 c.54 §1]

IMPAIRMENT OF CAPITAL

711.305 When capital deemed impaired. The capital of a bank or trust company is deemed impaired within the meaning of the Bank Act when the sound value of the assets of such bank or trust company is insufficient to pay its liabilities plus the amount of its paid-up capital stock, not, however, including in such liabilities, liability on capital debentures or capital borrowings where the rights of the lenders are in all respects subordinate to the rights of depositors. In determining the value of the assets of any bank or trust company any bonds held by such bank or trust company shall be valued in accordance with regulations promulgated by the Superintendent of Banks.

711.310 Notice to make good impairment; stockholders' meeting; assessment or capital reduction; resumption of business. (1) Whenever it appears to the Superintendent of Banks, either from an examination by him or any duly appointed bank examiner or from any report made by any bank or trust company to the Superintendent of Banks, that the capital of such bank or trust company is impaired, the Superintendent of Banks shall notify the bank or trust company to make good such impairment.

(2) The directors of any bank or trust company receiving such notice shall call immediately a meeting of the stockholders of the bank or trust company, to be held within 30 days of the receipt of such notice, for the purpose of making an assessment on the stock of such bank or trust company sufficient to cover the impairment of the capital. The stockholders at such meeting shall make an assessment on the stock of the bank or trust company sufficient to cover the impairment of the capital or reduce the capital of the bank or trust company to the extent of the impairment, if such reduction will not place such capital below the amount required by law.

(3) The failure to call or hold the meeting of the stockholders, as provided in subsection (2) of this section, or to either levy the assessment or reduce the capital, as provided in subsection (2) of this section, entitles the Superintendent of Banks to close immediately such bank or trust company, take possession of its assets and proceed with the liquidation of such bank or trust company, as provided in the Bank Act.

(4) Such bank or trust company may, with the consent of the Superintendent of Banks, resume business upon such conditions as may be approved by him.

711.315 Notice of assessment; sale of stock upon failure to pay. (1) The directors of any bank or trust company receiving notice from the Superintendent of Banks to make good any impairment of capital stock shall fix the time when the assessment made at the stockholders' meeting shall become due and payable, which time shall be not less than 15 days nor more than 30 days after such assessment is levied. Notice of the assessment shall be mailed to each stockholder at his post-office address as shown by the stock books of the bank or trust company.

(2) If any stockholder fails to pay in cash the amount of the assessment against his stock for a period of 30 days after the same becomes due and payable, the directors of the bank or trust company shall sell the same at public sale upon 10 days' notice, to be given by posting copies of the notice of sale in three public places in the city, town or community where the bank or trust company is located, or at private sale, after giving the stockholder 10 days' written notice by registered mail addressed to his post-office address as shown by the stock books of the bank or trust company.

(3) Upon sale of any stock as provided in this section, the purchaser shall forthwith become liable for and shall pay in cash the amount of the assessment thereon.

(4) The amount received from the sale of such stock shall be paid into the bank or trust company and shall be first applied toward the cost and expenses of the sale. Any balance remaining shall be paid to the party owning such stock at the time the assessment was made.

(5) The sale of stock as provided in this section shall effect an absolute cancellation of the outstanding certificates evidencing the stock so sold and shall make the same null and void. A new certificate shall be issued by the bank or trust company to the purchaser thereof.

711.320 Sale of assets to another bank or trust company when capital impaired one-half or more; certificate. (1) Whenever the capital of a bank or trust company is impaired to the extent of one-half thereof or more and the Superintendent of Banks determines such fact, either from his own examination or the examination of any duly authorized bank examiner or from the report made by any such bank or trust company, then the bank or trust company, by authority of its board of directors and with the approval of the Superintendent of Banks and upon such terms as shall be authorized by the Superintendent of Banks, may sell all or any of its assets to any other bank or trust company which will take over and assume its liabilities, or may sell any or all of the assets of one or more of its departments such as the commercial, savings or trust department, to any other bank or trust company which will take over and assume all of the liabilities of such department.

(2) The purchasing corporation to which any trust or fiduciary business is transferred must have at the time of the transfer authority from the Superintendent of Banks to do a trust business. Any trust or fiduciary business sold and transferred shall pass into the purchasing bank or trust company subject to all the provisions of ORS 709.330.

(3) When the Superintendent of Banks is satisfied that the sale of any or all of the assets of a bank or trust company under the provisions of this section has been completed and is effective he shall furnish the purchasing corporation with a certificate bearing the seal of the Banking Division to the effect that such sale has taken place and is effective. Such certificate may be filed for record and shall be recorded in the records of deeds in any county of this state with the county clerk or recorder of conveyances, as the case may be, and shall be prima facie evidence that such sale has been made and is effective.

INSOLVENCY; LIQUIDATION BY SUPERINTENDENT

711.405 When bank deemed insolvent. A state bank or trust company shall be deemed insolvent when either of the following conditions exist:

(1) When the sound value of its assets is insufficient to pay its liabilities, other than liability on account of capital debentures, capital borrowings or capital stock. In determining the value of its assets, bonds held by any bank or trust company shall be valued in accordance with regulations promulgated by the Superintendent of Banks.

(2) When it fails to make good its reserve, as required by the Bank Act.

711.410 Transfer of assets after commission of act of insolvency or in contemplation of insolvency is void. All transfers of notes, bonds, bills of exchange or other evidence of debt owing to any state bank or trust company or of deposits to its credit, all assignments of mortgages, securities or real estate or of judgments or decrees in its favor, all deposits of money, bullion or other valuable thing for its use or for the use of any of its shareholders or creditors, and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by the Bank Act, or with a view to the preference of one creditor to another, shall be utterly null and void.

711.415 Receiving deposits while insolvent. No owner, director or officer of any bank or trust company shall receive or permit to be received any deposit, knowing such bank or trust company to be insolvent.

711.420 Participation in fraudulent insolvency. No officer or director of a bank or trust company in this state shall participate in the fraudulent insolvency of such bank or trust company. The insolvency of a bank or trust company is deemed fraudulent unless

its affairs appear, upon investigation, to have been administered legally and with the same care and diligence that agents receiving a compensation for their services are bound by law to observe.

711.425 Possession and administration of bank assets by superintendent. Whenever in the Bank Act it is provided that the Superintendent of Banks may take possession of the property and business of any bank or trust company doing business under the laws of this state, to liquidate its affairs, the Superintendent of Banks shall take possession of and administer the assets of such bank or trust company as provided in the Bank Act.

711.430 Placing business in hands of superintendent; notice. (1) Any bank or trust company may place its business and assets under the control of the Superintendent of Banks, to be liquidated, as provided in the Bank Act, by posting a notice on its door as follows: "This Bank (or Trust Company) Is in the Hands of the Superintendent of Banks." Immediately upon posting such notice an executive officer of the bank or trust company shall notify the Superintendent of Banks of such action in person or by telegraph and mail.

(2) The posting of the notice or the taking possession of any bank or trust company by the Superintendent of Banks is sufficient to place all its assets and property of whatever nature in the possession of the Superintendent of Banks and operates as a bar and dissolution to any attachment proceedings.

711.435 Resumption of business of bank placed in hands of superintendent. (1) If the Superintendent of Banks discovers, upon taking charge of a bank or trust company, as provided in the Bank Act, that such bank or trust company is only temporarily embarrassed for want of available funds, and that in his opinion such bank's or trust company's assets are sufficient to pay its liabilities, leaving its capital unimpaired, or if the stockholders of such bank or trust company will arrange to make good its capital, if impaired, he may permit the officers and directors of the bank or trust company to arrange with its depositors and creditors for extension of time for payment of such depositors and creditors and the resumption of business by the bank or trust company.

(2) When the Superintendent of Banks is satisfied that the capital of the bank or trust company has been made good and that it is solvent and has funds on hand with which to meet the demands made on it in the ordinary way, and that it has arranged with its depositors and creditors for such extension of time as to enable the bank or trust company to realize on its assets to meet such obligations, he may at any time within 60 days after taking charge of the bank or trust company permit it to resume business.

(3) Such bank or trust company shall pay all the expenses of the Superintendent of Banks and his employes in so taking charge of and looking after the affairs of the bank or trust company during the time it was under his control, including a per diem of $10. The money so received shall be turned into the State Banking Fund.

711.440 Receivers and assignments for benefit of creditors; notice to and action by superintendent. No receiver shall be appointed by any court, nor shall any deed of assignment for the benefit of creditors be filed in any court within this state, for any bank or trust company doing business under the laws of this state, except upon notice to the Superintendent of Banks, unless in case of urgent necessity it becomes, in the judgment of the court, necessary so to do in order to preserve the assets of such bank or trust company. The Superintendent of Banks may, within five days after the service of such notice upon him, take possession of the bank or trust company, in which case no further proceedings shall be had upon the application for the appointment of receiver or under the deed of assignment, or, if a receiver has been appointed or the assignee has entered upon the administration of his trust, such appointment shall be vacated or such assignee shall be removed upon application of the Superintendent of Banks to the proper court therefor. The Superintendent of Banks shall proceed in all such cases to administer the assets of such bank or trust company as provided in the Bank Act.

711.445 Notice of taking possession of bank; liens subsequent to insolvency prohibited. Upon taking possession of the property and business of any bank or trust company mentioned in ORS 711.425, the Superintendent of Banks shall forthwith give written notice of such fact to all banks, trust companies, associations and individuals holding or in possession of any assets of such bank.

No bank, trust company, association or individual knowing that the Superintendent of Banks has taken possession of such bank or trust company shall have a lien or charge for any payment advanced or any clearance thereafter made, or liability thereafter incurred, against any of the assets of the bank or trust company of whose property and business the superintendent has taken possession.

711.450 Injunction against superintendent taking possession. At any time within 10 days after the Superintendent of Banks has taken possession and control of the property and business of any bank or trust company for any cause specified in the Bank Act, such bank or trust company may apply to the circuit court of the county in which the principal office of the bank or trust company is located for an order requiring the superintendent to show cause why he should not be enjoined from continuing such possession. The court may, upon good cause shown, direct the superintendent to refrain from further proceedings and to surrender such possession.

711.455 Deputy superintendents as liquidating agents; appointment and removal. The Superintendent of Banks may, under his hand and official seal, appoint one or more deputy superintendents of banks, as agent or agents, to assist him in the duty of liquidation and distribution of the assets of insolvent banks or assist him in other duties of his office, a certificate of appointment to be filed in the office of the Superintendent of Banks and a certified copy in the office of the Secretary of State. Such appointment shall remain effective during the pleasure of the Superintendent of Banks. Notice of the revocation of such appointment shall be filed in the office of the Superintendent of Banks and in the office of the Secretary of State.

711.460 Bond and oath of deputy superintendents. (1) Each deputy superintendent of banks shall execute to the State of Oregon a bond in the sum of $25,000 or, if the total assets under the control of such deputy superintendent of banks is less than $25,000, in a lesser amount but not less than $10,000. The bond shall be executed by such deputy superintendent of banks as principal, together with a surety company authorized to do business in this state as surety, and shall be approved by the Attorney General. The bond shall be conditioned that the deputy superintendent will faithfully and impartially discharge the duties of the office to which he has been appointed and pay all money coming into his hands by virtue of his office to the persons entitled by law to receive it. The bond shall be conditioned further, for the payment of all moneys, damages and costs that may be adjudged against him under the provisions of the bond or under the Bank Act. The bond may be in the form of a blanket or schedule bond. The cost of such bond shall be paid out of the funds of the insolvent bank or banks as prorated and approved by the Superintendent of Banks or if not employed for an insolvent bank then out of the State Banking Fund.

(2) Before entering upon the duties of the office to which he has been appointed each deputy superintendent of banks shall subscribe to an oath that he will faithfully and impartially discharge the duties of his office.

(3) The oaths of office and bonds provided in this section shall be filed with the Secretary of State.

711.465 Transfer of liquidation functions to Federal Deposit Insurance Corporation. (1) Upon taking possession of the business and property of any insolvent bank, the deposits of which are to any extent insured by the Federal Deposit Insurance Corporation, and it appears to the Superintendent of Banks that the Federal Deposit Insurance Corporation will accept the duty of liquidating such bank, the superintendent may thereupon appoint without bond the Federal Deposit Insurance Corporation to act as receiver for such bank. When so appointed such corporation shall exercise all the powers and perform all the duties of the Superintendent of Banks in connection with the liquidation of banks.

(2) Upon being notified in writing of the acceptance of such an appointment, the Superintendent of Banks shall forthwith file a certificate evidencing the appointment of the Federal Deposit Insurance Corporation in the office of the Superintendent of Banks and the office of the Secretary of State. Upon the filing of such certificate the possession of all the assets, business and property of such bank of every kind and nature wheresoever situated shall be deemed transferred from such bank and the Superintendent of Banks to the Federal Deposit Insurance Corporation, and without the execution

of any instruments of conveyance, assignment, transfer or indorsement vest the title to all such assets and property in the Federal Deposit Insurance Corporation. The Superintendent of Banks shall be forever thereafter relieved from all responsibility and liability in respect to the liquidation of such bank.

711.470 Subrogation rights of Federal Deposit Insurance Corporation. If any bank in which the deposits are to any extent insured by the Federal Deposit Insurance Corporation is closed for the purpose of liquidation without adequate provision being made for the payment of its depositors and if such corporation pays or makes available for payment the insured deposit liabilities of such closed insured bank, such corporation shall be subrogated by operation of law to all rights against the closed insured bank of the owners of deposits to the extent of any payments made by the corporation to such depositors.

711.475 Inventory of assets; filing notice of taking possession. (1) Upon taking possession of the property and assets of a bank or trust company to liquidate its affairs, the Superintendent of Banks shall make an inventory of the assets of the bank or trust company, in duplicate, one to be filed in his office and one in the office of the clerk of the county in which the office of the bank or trust company was located.

(2) Whenever the Superintendent of Banks takes possession of a bank or trust company for the purpose of liquidation he shall, within a reasonable time, file with the clerk of the circuit court of the State of Oregon for the county in which the office of the bank or trust company is located a notice under his hand and the seal of the Banking Division setting forth the fact that he has taken possession and the time of taking possession.

Note: See note for ORS 706.205.

711.480 Preservation of business; collection and compounding of debts; sale of assets. (1) Upon taking possession of the property and business of a bank or trust company to liquidate its affairs, the Superintendent of Banks may collect money due to the bank or trust company and do such other acts as are necessary to preserve its assets and business and shall proceed to liquidate the affairs thereof.

(2) The Superintendent of Banks shall collect the debts due and claims belonging to it and, upon the order of the circuit court in and for the judicial district in which the office of the bank or trust company was located, may sell or compromise any bad or doubtful debts, including the individual liability of any stockholder of the bank or trust company.

(3) On like order, the superintendent may sell all or any of the real estate and personal property of the bank or trust company on such terms as the court shall direct. The superintendent, upon the terms of sale or compromise directed by the court, shall execute and deliver to the purchaser of such real or personal property the necessary deeds or instruments to evidence the passing of the title. If the real estate is situated outside the county in which the office of the bank or trust company was located, a certified copy of the order authorizing and ratifying the sale shall be filed in the office of the recorder of conveyances of the county in which the property is situated.

711.485 Borrowing funds to pay closed bank expenditures. The Superintendent of Banks may, whenever in his judgment such course is proper, and after he has obtained the consent of the circuit court in the county in which the bank or trust company is located, borrow funds from any source available to be used for distribution among depositors or other creditors of any closed bank or trust company, or for expense of liquidation or preservation of the assets thereof. To secure such borrowings, the superintendent may pledge on such terms as may be fixed by the lender, and agreed to by the superintendent, all or any portion of the assets of the closed bank or trust company. The Superintendent of Banks shall be under no personal obligation to pay any such loans. As used in this section, "closed bank or trust company" means any bank or trust company that has gone into liquidation and the assets and properties of which have come into the possession or control of the Superintendent of Banks for liquidation.

711.490 Capital stock requirements of new corporation purchasing assets and assuming liabilities of insolvent bank. Whenever the assets of any insolvent bank or trust company are sold under this section to any new bank or trust company organized in the same locality and such new bank or trust company assumes any or all of the

deposit liabilities of such insolvent bank or trust company, under such terms and conditions as may be prescribed by the Superintendent of Banks, with the approval of the circuit court of the county wherein the insolvent bank or trust company may be located, the new bank or trust company may be organized with a capital stock equal to the capital stock of the insolvent bank or trust company without regard to the capital requirements otherwise provided or required by the Bank Act.

711.495 Action by superintendent to collect balance due on stock. When any state bank in the State of Oregon becomes insolvent and is taken in charge by the Superintendent of Banks for liquidation, the superintendent may maintain any suit or action against any stockholder, whose stock has not been fully paid, for the collection of the same or any part thereof which then remains unpaid, for the benefit of the bank, its stockholders and creditors. Such suit or action may be prosecuted by the superintendent against one or more stockholders, singly or collectively, as he may determine. It is not necessary to levy any assessment upon such stock prior to instituting the suit or action, but the fact that the same is unpaid beyond the time when the law requires payment thereof shall be sufficient ground for the commencement of such suit or action.

711.500 Liability of transferor of stock made in contemplation of insolvency; proceedings to relieve a stockholder of liability prohibited. (1) Stockholders in any bank or trust company who have transferred their shares or registered the transfer thereof within 60 days next before the date of the closing of the bank or trust company, or with the knowledge of such impending closing or failure, shall be liable to the extent that the subsequent transferee fails to meet such liability as if the transfer had not been made, but this provision shall not be construed to affect in any way any recourse which such shareholders might otherwise have against those in whose name the shares are registered at the time the bank or trust company closes.

(2) No action, suit or proceeding shall be maintained by the holder of any stock standing in the name of such stockholder on the books of any bank or trust company at the time it closes which will relieve such person of his liability as a stockholder.

711.505 Liability of executor, administrator, guardian, trustee or pledgee as stockholders; liability of estate and funds. No person holding stock as executor, administrator, guardian or trustee, or holding it as collateral security or in pledge, shall be personally subject to any liability as a stockholder of the company. The person pledging the stock shall be considered as holding the same and shall be liable as a stockholder. The estate and funds in the hands of the executor, administrator, guardian or trustee shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in the trust fund would have been if he had been living and competent to act and hold the stock in his name.

711.510 Deposit of money collected; payments of claims out of assets; security for deposit. (1) The moneys collected by the Superintendent of Banks shall be, from time to time, deposited in one or more banks under his supervision, subject to his order.

(2) No moneys shall be paid out of the assets of any insolvent bank in his hands for liquidation unless an itemized claim duly verified by the oath of the claimant or petitioner and in a form prescribed by the Superintendent of Banks shall first be filed with him.

(3) The Superintendent of Banks shall require, and any bank in which he shall deposit money shall furnish security therefor satisfactory to him, for the safekeeping and prompt payment of the money so deposited.

711.515 "Depositor" defined; preferences among depositors. (1) "Depositor" includes also purchasers or holders in due course of certificates of deposit, cashiers' checks, certified checks, outstanding unpaid drafts drawn or issued by such bank or trust company, unsecured letters of credit and unsecured drafts accepted by the bank or trust company, provided the instruments enumerated are issued pursuant to cash or credit actually received or realized by the bank or trust company.

(2) No depositor or deposit, expressly including deposits of the State of Oregon or any county, city or political subdivision thereof, shall have a preference or prior lien on any assets of an insolvent bank or trust company over the claims of other depositors or deposits, unless such assets have been pledged as security in compliance with the provisions of law, except that this provision

shall not be construed to apply to any claims or demands involving funds held by any such bank or trust company under an express oral or written trust agreement, where a preference to such trust funds may be established by good and sufficient evidence to the satisfaction of the Superintendent of Banks and the circuit court having jurisdiction within the county where the bank or trust company may be located.

711.520 Priority of depositors against bank assets. In the event of the insolvency or voluntary or involuntary liquidation of any bank or trust company, under the provisions of the Bank Act, the depositors of such bank or trust company shall have a first, prior and exclusive lien upon all the assets of such bank or trust company and, in the distribution of such assets or the proceeds thereof, the same shall be first applied to satisfy the amount due such depositors after the payment of expenses of liquidation of the bank or trust company.

711.525 Interest on deposits after bank closes. Interest on unsecured interest-bearing deposits and on secured interest-bearing deposits other than public funds, either commercial or savings, shall cease on the date any bank or trust company is placed in the hands of the Superintendent of Banks for liquidation. Interest on public funds which are secured as authorized in ORS 708.225 and 708.230, shall continue at the rate being paid by the bank prior to the time it closed.

711.530 Notice to creditors to present claims. The Superintendent of Banks shall cause notice to be given by advertisement, in such newspaper as he may direct, weekly for nine consecutive weeks, calling on all persons who may have claims against a bank or trust company which the superintendent has taken possession of for the purpose of liquidating its affairs, to present the same to the superintendent and to make legal proof thereof at a designated place on or before the expiration of nine weeks from the date of the first publication of such notice. The notice shall state the date of the first publication thereof. The Superintendent of Banks shall mail a similar notice to all persons whose names appear as creditors upon the books of the bank or trust company, but failure to mail such notice to any creditor shall not give to the creditor not receiving the notice any right or impose any liability on the Superintendent of Banks.

711.535 Verification and filing of claims; demand for preference. All claims of any kind or nature must be verified and filed with the Superintendent of Banks. If a claimant asserts a preference other than preference given by law to depositors, the claim must include a demand for preference and a statement of the grounds upon which preference is claimed. Any such claim for preference must be filed with the Superintendent of Banks and the circuit court for the county in which the office of the bank or trust company was located, before the expiration of the time fixed in the notice to creditors, and if not so filed shall forever be barred and shall not be approved or allowed as a preferred claim.

711.540 Approval or rejection of claims. Within a reasonable time after the expiration of the time fixed in the notice to creditors the Superintendent of Banks shall approve, either in whole or in part, or reject in whole or in part, every claim filed. Depositors' claims asserting no priority or preference other than the preference given by law to depositors, which are filed after the expiration of the time fixed in the notice to creditors for the filing of all claims, shall be approved in whole or in part or rejected in whole or in part within a reasonable time after the same are filed with the Superintendent of Banks. No claim asserting a priority or preference filed after the expiration of the date fixed in the notice to creditors shall be approved or allowed as a preferred claim, either in whole or in part, by the Superintendent of Banks. The approval or rejection of any claim by the Superintendent of Banks shall be indorsed in writing upon the claim and it shall not be necessary for the superintendent to state his reasons for such approval or rejection. The superintendent may at any time alter or amend the previous approval or rejection of any claim.

711.545 Objection to and appeal from approval of claims. (1) If any creditor of the closed bank or any interested party desires to object to and appeal from the action of the Superintendent of Banks in allowing in whole or in part any claim filed with the superintendent, he shall, within 10 days after the list of claims containing the claims so allowed has been filed with the clerk of the circuit court, make and file with the clerk of the circuit court of the county in which the principal office of the closed bank or trust

company is located a verified statement of his objections, which statement shall set forth the facts and reasons upon which such objections are based, and a notice that the objecting party appeals to such circuit court. Objections to and appeal from the approval of any claim may be made at any time but, if not made within the time specified in this subsection, shall apply only to that portion of the claim which has not yet been paid.

(2) A copy of such objections and notice shall be served upon the Superintendent of Banks and upon the creditor whose claim is objected to and proof of such service shall be filed in court with the statement of objections.

(3) The statement of objection filed in the circuit court shall also have attached to it a copy, certified as correct by the Superintendent of Banks, of the claim so approved and the approval of such claim indorsed thereon by the superintendent.

(4) The court, upon the filing of such objections and upon motion of either the creditor or depositor whose claim is objected to, the Superintendent of Banks, or the person or creditor or depositor objecting and upon notice to the other parties, shall set the objections for trial.

(5) The trial shall be held in a summary manner upon the verified statement of claim, the allowance in whole or in part thereof by the Superintendent of Banks, and the verified statement of objections filed as set forth in this section, and no other or additional pleading shall be required of any of the interested parties. Upon such hearing the person filing the statement of objection shall have the burden of proof. Upon such hearing any party has the right to introduce any evidence, affirmative or otherwise, pertinent to the matter. The trial shall be conducted in all respects in the same manner as is provided for by law for the trial of suits in equity.

(6) An appeal from the decision of the circuit court after trial of the objections may be taken either by the party filing the objections, by the Superintendent of Banks or by the creditor or depositor whose claim has been allowed by the superintendent. Such appeal shall be taken in the same manner as from any other judgment or decree of such circuit court.

711.550 Objection to and appeal from rejection of claims. (1) If the Superintendent of Banks rejects any claim in whole or in part notice thereof shall be given to the claimant, either in person or by mail. If notice by mail is given it is sufficient that the notice be sent to such address as may be indicated by the claimant on the proof of claim filed with the Superintendent of Banks and if no such address is given then it is sufficient if the notice is mailed to the last address of the claimant as shown by the books and records of the closed bank. If notice of rejection is given by mail, such notice shall be deemed to have been given by the Superintendent of Banks on the day when the written notice of rejection is deposited in the mails properly addressed and postage prepaid to the claimant at the address indicated for the giving of notice by mail. Proof of giving of notice of rejection by the Superintendent of Banks shall be made by affidavit, which affidavit shall be prima facie evidence thereof, and shall be filed in the office of the Superintendent of Banks.

(2) Within 30 days after the giving of such notice of rejection, the claimant, if he desires to appeal from the rejection, shall serve upon the Superintendent of Banks a notice that he appeals from such rejection and file the same with the clerk of the circuit court for the county having jurisdiction of the liquidation of the closed bank, together with proof of service of such notice upon the superintendent and a copy, certified as correct by the superintendent, of the claim so rejected and the indorsement made thereon by the superintendent rejecting the claim.

(3) After the filing of such papers and upon motion of either the Superintendent of Banks or the claimant, the circuit court, upon notice to the other party, shall set the matter of the appeal from rejection of the claim for trial.

(4) Upon trial no other or additional pleadings shall be filed by either party but the same shall be heard in summary manner upon evidence to be introduced by both parties on the verified claim, the rejection of the superintendent and the notice of appeal from the rejection. All matters set out in the claim shall be deemed to be denied by the Superintendent of Banks. Upon such hearing either party may introduce any evidence, affirmative or otherwise, pertinent to the matter. Upon the trial the claimant shall have the burden of proof. The trial shall be conducted in all respects in the manner provided by law for the trial of a suit in equity.

(5) An appeal from the decision of the circuit court to the Supreme Court may be taken by either party as from any other judgment or decree of the circuit court.

711.555 Claim procedure exclusive. The summary procedure of filing of claims and claims for preference, and the determination thereof by the Superintendent of Banks, appeals to the circuit court and appeals therefrom to the Supreme Court, shall be exclusive of all other legal or equitable remedies, either by action or suit, which prevailed prior to March 3, 1933, under the common law or by statute.

711.560 Claim procedure filing fees and costs. No fees shall be exacted by the clerk of the circuit court for the filing by any claimant or objecting party of any claim, notice or statement under ORS 711.530 to 711.570, nor shall the claimant or objecting party upon the hearing be required to pay any trial fee. No party to the proceedings upon any hearing provided for in ORS 711.545 or 711.550 shall recover costs or disbursements from any other party.

711.565 Claims presented after time expired. Depositors' claims presented and allowed after the expiration of the time fixed in the notice to creditors shall be entitled to be paid the amount of all prior dividends therein, if there be funds sufficient therefor, and share in the distribution of the remaining assets in the hands of the Superintendent of Banks equitably applicable thereto. For the purpose of facilitating the final closing of the liquidation of the bank or trust company, the circuit court of the judicial district in which the office of the bank or trust company was located may, by order, bar all claims at any time after the expiration of one year from the first publication of notice to creditors.

711.570 Lists of claims. Upon the expiration of the time fixed for the presentation of claims, the Superintendent of Banks shall make in duplicate a full and complete list of the claims presented, including and specifying such claims as have been approved, such claims as have been rejected and such claims as have been neither approved nor rejected pending further investigation or which have been presented to the circuit court for appeal. One list shall be filed in the office of the Superintendent of Banks and one in the office of the clerk of the circuit court of the county in which the office of the bank or trust company was located. The Superintendent of Banks shall, in like manner, make and file supplemental lists showing all claims presented subsequent to the filing of the first list. Such lists shall be filed at least 15 days before the payment of any dividend on any claims listed therein or the payment of any preferred claims listed therein.

711.575 Dividends to depositors; death of depositor. (1) At any time after the expiration of the date fixed for the presentation of claims the Superintendent of Banks may, out of the funds remaining in his hands after the payment of expenses, declare one or more dividends. After the expiration of one year from the first publication of notice to creditors he may declare a final dividend. Such dividends shall be paid to such persons, in such amounts and upon such notice as may be directed by the circuit court of the judicial district in which the office of the bank or trust company was located.

(2) The provisions of ORS 708.520 apply to deposits in banks and trust companies in liquidation on or after March 3, 1933. Any person who would be entitled to withdraw a deposit under the terms of said statute shall be entitled to make claim for such a deposit and receive dividends thereon, or if claim has been made it may be amended after the death of the claimant so that future dividends are paid to the person entitled thereto under said statute. If any such claim is greater than the sum of $500, dividends may be paid to the person entitled thereto, as provided in ORS 708.520, if it has been determined to the satisfaction of the Superintendent of Banks that the total dividends to be paid after the death of the claimant amount to less than $100. The Superintendent of Banks shall be under no obligation to determine the relationship of the affiants to the deceased depositor and the payment of dividends made in good faith to parties making the affidavit shall be a full acquittance and release of the superintendent for the amount of the dividends so paid.

711.580 Safety deposit boxes, disposition of contents. (1) Should any bank, at the time the Superintendent of Banks takes possession of its property and business, have in its possession, as bailee, for safekeeping and storage, any jewelry, plate, money, specie, bullion, stocks, bonds, securities, valuable

papers or other valuable personal property, or should it have rented any vaults, safes or safe deposit boxes or any portion thereof for the storage of property of any kind, the Superintendent of Banks may at any time thereafter cause to be mailed to the person claiming to be or appearing upon its books to be the owner of such property, or the person in whose name the safe, vault or box stands, a notice in writing in a securely closed postpaid, registered letter, directed to such person at his post-office address as recorded upon its books, notifying such person to remove, within a period fixed by the notice and not less than 90 days from the date thereof, all such personal property.

(2) Upon the date fixed by the notice, the contract, if any, between such person and the bank for the storage of the property or for the use of the safe, vault or box shall cease and determine, and the amount of the unearned rent or charges, if any, paid by such person shall become a debt of the bank to such person.

(3) On or after the date fixed in the notice the Superintendent of Banks may cause any safe, vault or box to be opened in his presence, or in the presence of an examiner or deputy superintendent of banks and of a witness who is not an officer of the bank or an employe of the bank or the Superintendent of Banks. A list and description of the property therein shall be made by the person opening such safe, vault or box and shall be attached to such property. The Superintendent of Banks shall keep such property in one of the general safes or boxes of the bank until it is delivered to the person whose name it bears or to whom it may belong or until it is disposed of as provided in this section.

(4) If any such bonds, notes or articles of value are not removed within the time fixed by the notice of the Superintendent of Banks, he shall retain the same for a period of six months thereafter unless removed by the owner prior thereto and thereafter may sell the same under the direction of the circuit court and shall hold the proceeds of such sale for the benefit of the owner of such bonds, securities or articles of value. Two years after the final order closing the liquidation of the bank or trust company any such funds which have not been claimed may be disposed of in the manner prescribed in ORS 711.590 for unclaimed dividends and deposits.

(5) If any papers or other articles which have no value or which cannot be sold, are not removed within the time fixed, the Superintendent of Banks may store such papers and articles with the records of the insolvent bank, and one year after the final order closing the liquidation of the bank such papers and articles may be destroyed in the manner prescribed in ORS 711.595 for the records of an insolvent bank.

711.585 Selection of agents to wind up affairs of bank; bond; duties. (1) Whenever the Superintendent of Banks has paid to each depositor and creditor of the bank or trust company whose claim as such depositor or creditor has been duly proved and allowed, the full amount of such claim and has made proper provision for unclaimed or unpaid deposits or dividends, and has paid all the expenses of the liquidation, the superintendent shall call a meeting of the stockholders of the bank or trust company by giving notice thereof for 30 days in one or more newspapers published in the county wherein the office of the bank or trust company was located. At such meeting the stockholders shall select one or more agents by ballot to administer the assets and wind up the affairs of the bank or trust company, a majority of the stock present and voting in person or by proxy being necessary for a choice.

(2) Such agent shall file with the Superintendent of Banks a bond to the State of Oregon in an amount not less than 20 percent of the book value of the assets to be surrendered to the agent, but in no case shall the bond be less than $1,000. Such bond shall be executed by the agent as principal and by a surety company authorized to do business in this state as surety, and shall be conditioned for the faithful performance of all the duties of his trust.

(3) When such agent has been selected and has filed the bond required, the Superintendent of Banks shall transfer to the agent all the undivided or uncollected or other assets of the bank or trust company then remaining in his hands. Upon such transfer and delivery the superintendent shall be discharged from all further liability to the bank or trust company and its creditors. Such agent shall complete the liquidation of the affairs of the bank or trust company, and, after paying the expenses thereof, shall distribute the proceeds among the

stockholders in proportion to the several holdings of stock.

(4) If the stockholders fail to meet on the date advertised for the stockholders' meeting or within 15 days thereafter or fail to appoint one or more agents, or if such agents fail to qualify as required in this section within 30 days after the date of their selection, the Superintendent of Banks may appoint an agent. This agent shall file a bond and liquidate the affairs of the bank or trust company in the same manner as though he had been selected by the stockholders, and, upon the transfer and delivery to such agent of all the remaining assets in his hands, the Superintendent of Banks shall be discharged from all further liability to the bank or trust company and its creditors.

711.590 Escheat of unclaimed deposits; recovery by claimant; interest. Two years following the date of the final order closing the liquidation of any bank or trust company, the Superintendent of Banks may withdraw any unclaimed deposits or balances remaining to the credit of dividend accounts, representing the aggregate of undelivered checks or unpaid dividend funds in the possession of the Banking Division, and pay the same to the Division of State Lands. Such funds shall thereupon escheat to and become the property of the State of Oregon and shall be paid into and become a part of the Common School Fund. The owner or his heirs or personal representatives may reclaim any funds so deposited within the time and in the manner as provided for estates which have escheated to the state. The interest earned on any such dividend accounts while they remain in the possession of the Superintendent of Banks shall be paid into and become a part of the State Banking Fund and the owner or his heirs or personal representative shall have no claim thereto.
[Amended by 1959 c.138 §4]

711.595 Destruction of liquidation records in possession of superintendent. Where any files, records, documents, books of account or other papers have been taken over and are in the possession of the Superintendent of Banks in connection with the liquidation of any insolvent banks or trust companies under the laws of this state, the superintendent may, in his discretion, at any time after the expiration of one year from the declaration of the final dividend, or from the date when such liquidation has by order of the court been declared closed, destroy any of the files, records, documents, books of account or other papers which may appear to the superintendent to be obsolete or unnecessary for future reference as part of the liquidation and files of his office.

711.600 Liquidation expenses; payment. (1) The expenses incurred by the Superintendent of Banks in the liquidation of any bank or trust company, in accordance with the Bank Act, shall include the expenses of deputies, assistants, clerks and examiners employed in such liquidation, together with reasonable attorney fees for counsel employed by the superintendent in the course of such liquidation, and also stationery, rent, postage, telephone, telegraph and other office and traveling expense. Such compensation of counsel, deputies, assistants, clerks and examiners in the liquidation of any bank or trust company, and all expense of supervision and liquidation, shall be fixed by the Superintendent of Banks, subject to the approval of the circuit court of the judicial district in which the office of such bank or trust company was located, but the court shall not increase such compensation or expenses over the amount fixed by the Superintendent of Banks.

(2) The expenses of such liquidation shall be paid out of the property of the bank or trust company in the hands of the Superintendent of Banks. Such expenses shall be a valid charge against the property in the hands of the superintendent and shall be paid first in the order of priority.

711.605 Petitions relating to insolvent banks; ruling by superintendent; court review. Any petition relating to an insolvent bank, other than a petition by the Superintendent of Banks, must be filed with the court and the Superintendent of Banks. The Superintendent of Banks shall, within a reasonable time thereafter, grant or refuse such petition and notify the petitioner in writing. Any petitioner who is dissatisfied with the decision of the Superintendent of Banks may, within 30 days thereafter, present the petition, together with the decision of the superintendent, to the circuit court of the judicial district in which the office of the bank or trust company was located. The court shall fix a date for the hearing of such petition, giving reasonable notice thereof to the petitioner and to the Superintendent of

Banks, and shall determine the matter upon the evidence produced by all concerned, and the burden of proof in such proceedings shall be upon the petitioner.

711.610 Attachment, injunction or execution before final judgment. No attachment, injunction or execution shall be issued against any bank or trust company or its property before final judgment in any suit, action or proceeding in any court of competent jurisdiction.

711.615 Court filing fees; recording fees. (1) No fees shall be charged for the filing in the circuit court by the Superintendent of Banks, his deputies or attorneys of any papers in the matter of the liquidation of any closed bank, or in any suit or action in any court of this state on matters relating to the liquidation of any such bank or which is necessary or convenient in connection with the collection of assets of any such bank.

(2) No recording fee shall be charged for recording certified copies of assessments against stockholders or deeds, mortgages or other instruments running in favor of the Superintendent of Banks.

PENALTIES

711.990 Penalties. (1) Violation of ORS 711.415 is a felony and is punishable, upon conviction, by a fine of not less than $1,000 nor more than $5,000, or by imprisonment in the state penitentiary not exceeding five years, or by both.

(2) Violation of ORS 711.420 is punishable, upon conviction, by a fine of not less than $100 nor more than $1,000, or by imprisonment in the county jail for not less than one month nor more than one year, or by both.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on November 1, 1959.

Sam R. Haley
Legislative Counsel

CHAPTER 712

[Reserved for expansion]