

Chapter 709

1973 REPLACEMENT PART

Regulation of Trust Business

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709.010 [Repealed by 1973 c.797 §428]

709.020 [Amended by 1973 c.428 §10; repealed by 1973 c.797 §428]

709.030 Deposit of cash, securities or surety bond with superintendent; amount. (1) Before a trust company or a national bank authorized to conduct a trust business transacts any trust business it shall deposit with the superintendent, as security and as a pledge for the faithful performance of its fiduciary duties:

(a) Cash or interest-bearing securities, which securities shall have a ready market value;

(b) A surety bond issued by a surety company authorized to transact business in this state and in a form approved by the superintendent, under which the principal and surety indemnify the several owners of the fund held in trust against loss due to the failure of the trust company or the national bank; or

(c) Any combination of cash, interest-bearing securities and surety bond.

(2) If the cash and securities held in trust amount to less than \$1,000,000, the deposit, bond, or combination thereof shall be \$50,000. If the cash and securities held in trust amount to \$1,000,000 but do not exceed \$1,500,000, the deposit, bond or combination thereof shall be \$100,000. For each \$500,000 or fraction thereof in excess of \$1,500,000 held in trust, the deposit, bond or combination thereof shall be increased an additional \$25,000; except a trust company or national bank shall not be required to increase the deposit, bond, or combination thereof to an amount in excess of \$500,000, and a trust company or national bank shall not be required to increase the deposit, bond, or combination thereof to an amount in excess of its capital.

(3) The securities shall be registered in the name of the superintendent as trustee for the beneficiaries of the trust funds held by the trust company or the national bank. [Amended by 1957 c.82 §1; 1967 c.139 §1; 1973 c.797 §183a]

709.040 Securities eligible for deposit. The securities mentioned in ORS 709.030 may only be of the following classes:

(1) Interest-bearing bonds, notes or obligations of the United States including those of its agencies and instrumentalities, or bonds, notes or obligations for which the faith of the United States is pledged for the payment of the principal and interest.

(2) Bonds or other obligations of the State of Oregon, any county of this state or any incorporated city, town or school or port district of this state having a population of not less than 2,000 as shown by the last federal census, or bonds of any other state, any county, incorporated city, town or school or port district therein having a population of not less than 25,000, as shown by the last federal census, if:

(a) The bonds or obligations are issued in compliance with the constitution and laws of the applicable state;

(b) The bonds or obligations are a general obligation of the state, city, town or school or port district issuing the bonds; and

(c) There has been no default in payment of either principal or interest on any of the general obligations of the state, county, incorporated city, town or school or port district for a period of five years preceding the date of the deposit.

(3) Notes or bonds secured by first lien upon improved real estate in any of the States of Oregon, Washington, Idaho or California if the obligation, plus taxes not due and bonded indebtedness for public improvements not due, do not exceed 50 percent of the reasonable market value of the real estate. The trust company or national bank shall file in support of a real estate obligation, such appraisal, evidence of merchantable title and insurance as may be required by the superintendent.

[Amended by 1973 c.797 §184]

709.050 Trust companies depositing securities guaranteed by mortgage insurance and mortgage participation certificates. A trust company or a national bank authorized to do a trust business in this state which is required to make any deposit of securities with any public official in order to do business in this state may deposit:

(1) Notes or bonds secured by mortgage or deed of trust, payment of which is guaranteed by a policy of mortgage insurance; and

(2) Mortgage participation certificates issued by a mortgage insurance company authorized to do business in this state in accordance with ORS 743.702 to 743.708.

[Amended by 1967 c.359 §703; 1973 c.797 §185]

709.060 Primary liability of deposit. The deposit mentioned in ORS 709.030 is primarily liable for the malfeasance of a trust company or a national bank as a fiduciary

and is not liable for any debt or other obligation of the company until such malfeasance liability has been discharged.

[Amended by 1973 c.797 §186]

709.070 Right of action against deposit.

A person who suffers loss or damage because of the breach of any trust committed to a trust company or a national bank may recover the amount of the loss or damage out of the moneys or securities deposited under ORS 709.030 with the superintendent by the trust company or national bank.

[Amended by 1973 c.797 §187]

709.080 Charges for handling securities; collection procedure. (1) The superintendent may charge a reasonable amount for any expenses incurred and services rendered in connection with deposits of securities.

(2) If a trust company or a national bank does not, after due notice, pay to the superintendent any charge assessed against it under this section, the superintendent may:

(a) Apply in payment of the charges, with interest at the legal rate, as much as necessary of the interest accruing on any securities deposited with him; or

(b) Report the facts to the Attorney General, who shall, in the name of the superintendent, institute appropriate action against the trust company or national bank.

[Amended by 1973 c.797 §188]

709.090 [Repealed by 1973 c.797 §428]

709.100 [Repealed by 1973 c.797 §428]

709.110 Deposit of documents with notes or bonds. All mortgages or deeds of trust and all insurance policies, abstracts of title, certificates of title or title insurance policies and appraisements required by the superintendent under subsection (3) of ORS 709.040 shall be deposited with the notes or bonds. When less than the whole of a bond issue is deposited, the superintendent shall not require the deposit of the abstract of title, certificates of title or title insurance policies and appraisements, but may require a certificate from the trustee of the mortgage or bond issue that the documents have been deposited with the trustee.

[Amended by 1973 c.797 §189]

709.120 Substitution of deposit securities; income of securities deposited. (1) The superintendent may require the immediate substitution of other securities when he has reason to believe that the market value of

securities which have been deposited under ORS 709.030 have depreciated below the amount required under ORS 709.030. Substitution of securities with the superintendent at the request of the depositing trust company or national bank may be permitted if approved by the superintendent.

(2) All interest, income or dividends from all securities deposited with the superintendent belong to the depositing trust company or national bank, and if the trust company or national bank is solvent, it may receive and retain the interest, income or dividends.

[Amended by 1973 c.797 §190]

709.130 Indemnity bond when cash and securities of one trust exceed capital and surplus of the trust company. If the cash and securities belonging to any single fiduciary account exceed the amount of the trust company's capital and surplus, the court appointing the trust company to the position of trust, may require an indemnity bond from the trust company for the amount of cash and securities exceeding capital and surplus.

[Amended by 1973 c.797 §191]

709.140 Return of deposit; liability of state. The State of Oregon is liable for the return of any funds or securities deposited in accordance with ORS 709.030.

[Amended by 1973 c.797 §192]

709.145 Investment of capital. The capital of a trust company may be invested in the securities specified in ORS 709.040.

[1973 c.797 §193]

709.150 General powers of trust companies. In addition to the powers conferred by the general corporation laws, every trust company shall have the following powers, subject to the restrictions and limitations contained in the Bank Act:

(1) To act as fiscal or transfer agent of the United States or of any state, municipality, body politic or corporation, and in such capacity to receive and disburse money; to transfer, register and countersign certificates of stock, bonds or other evidence of indebtedness; to authenticate and certify any such bonds and certificates of indebtedness, and to act as attorney in fact or agent of any person or corporation, foreign or domestic, for any lawful purpose.

(2) To lease, hold, purchase and convey any real property necessary or convenient

in the transaction of its business, or which the purposes of the corporation may require, or which it anywhere acquires in settlement or partial settlement of indebtedness due to the trust company by any of its debtors or to secure the indebtedness, or through sales under any judgment, decree or mortgage held by it.

(3) To receive deposits of moneys, securities and other personal property in trust from any person or corporation and to loan trust funds on real or personal securities under the Bank Act.

(4) To act as trustee under any mortgage or bonds issued by any person, firm, copartnership, municipality, body politic or corporation, foreign or domestic, and accept and execute any other municipal or corporate trusts not prohibited by the laws of this state.

(5) To accept trusts from and execute trusts for married women in respect to their separate property and to be their agent in the management of the property, or to transact any business in relation thereto.

(6) To be appointed and to act under the order of appointment of any court of competent jurisdiction as conservator of the estate for any person for whom a conservator of the estate may by law be appointed; or as trustee, receiver or committee of the property or estate of any person, corporation or company, in insolvency or bankruptcy proceedings, or as depository of any moneys paid into court, whether for the benefit of any minor, or any person, corporation or party, and in any other fiduciary capacity.

(7) To be appointed and to accept appointment as executor or trustee under the last will and testament, or administrator, with or without the will annexed, of the estate of any deceased person. Whenever a person is joined with the trust company in any appointment as conservator, trustee, administrator, with or without the will annexed, his appointment may be under such limitation of powers and upon such terms and conditions as to deposit of assets by such person with the trust company, or otherwise, and upon such reduced bond or security to be given by him, as the court or judge making the appointment shall prescribe.

(8) To take, accept and execute any such legal trusts, duties and powers in regard to the holdings, management and disposition of any estate, real or personal, wherever situated, and the rents and profits thereof, or

the sale thereof, as may be granted or confided to it by any court of competent jurisdiction, or by any person, corporation, municipality or other authority.

(9) To take, accept and execute any and all trusts and powers of whatever nature or description that may be conferred upon, entrusted or submitted to it by any person, firm, company or any body politic, corporation, foreign or domestic, or other authority, by grant, assignment, transfer, devise, bequest or otherwise, or which may be entrusted or committed or transferred to it or vested in it by order of any court of competent jurisdiction; and to receive, take, manage, hold and dispose of, according to the terms of the trust or power, any property or estate, real or personal, which may be subject to the trust or power.

(10) To receive, upon terms and conditions to be prescribed by the trust company, upon deposit for safekeeping, bonds, mortgages, jewelry, plate, stock, securities and valuable papers of any kind, and other personal property for hire, and to let out receptacles for safe deposits of personal property.

(11) To purchase, invest in and sell bills of exchange, bonds and mortgages, and other evidences of indebtedness.

(12) To execute the powers and possess the privileges conferred on banks by the banking laws of this state. No corporation organized and existing prior to May 28, 1925, which is authorized by its articles to transact a trust business, as defined by ORS 709.010, or which has not received a charter to transact a banking business prior to May 28, 1925, shall be permitted to receive deposits or engage in the business of banking until it has received a charter or a certificate of authority from the Superintendent of Banks to receive deposits and engage in the banking business.

(13) To purchase and hold, for the purpose of becoming a member of a Federal Reserve Bank, so much of the capital stock thereof as will qualify it for membership in such bank; to become a member of the Federal Reserve Bank, and to have and exercise all powers not in conflict with the laws of this state which are conferred upon any member by the Federal Reserve Act. The trust company and its directors, officers and stockholders shall continue to be subject, however, to all liabilities and duties imposed upon them by any law of this state and to all provisions of the Bank Act relating to trust companies.

(14) To discount and negotiate promissory notes, drafts, bills of exchange and other evidences of debt; buy and sell coin and bullion, and loan money upon real estate or personal property, and upon collateral or personal security, at a rate of interest not exceeding that allowed by law.

(15) To accept for payment at a future date drafts drawn upon it by customers and to issue letters of credit authorizing the holders thereof to draw drafts upon it or its correspondents at sight or on time, not exceeding one year.

(16) Every trust company which, on May 28, 1925, lawfully possessed the power, for hire, to examine titles to real estate, to procure and furnish information in relation thereto, and to guarantee or insure the title to real estate to persons interested in such real estate or in mortgages thereon, against loss, by reason of defective title or other encumbrances of or upon such real estate, shall continue to possess such power, including the maintaining of branches and the establishment of additional branches for such purposes, but such trust company shall not do any banking or trust business at any branch.

(17) Generally to execute trusts of every description not inconsistent with the laws of this state or of the United States.

[Amended by 1961 c.344 §106; 1973 c.797 §194; 1973 c.823 §141]

709.160 Solicitation and performance of legal business prohibited. (1) A trust company shall not advertise to furnish or furnish to the public legal advice or hold itself out as practicing law.

(2) A trust company that violates subsection (1) of this section is ineligible for one year thereafter to be judicially appointed as personal representative of an estate or guardian.

[Amended by 1973 c.797 §195]

709.170 Fiduciaries; establishment and investment in common trust funds; accounting. (1) "Common trust fund," as used in this section, means any fund maintained by a bank or trust company exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or trust company as a fiduciary and includes common trust funds for the investment of small amounts, common trust funds for general investment and common trust funds composed principally of mortgages (mortgage investment funds).

(2) Any bank or trust company qualified to act as fiduciary in this state may establish common trust funds for the purpose of furnishing investments to itself as fiduciary, or to itself and others, as cofiduciaries. The bank or trust company may, as fiduciary or cofiduciary, whether as administrator, executor, conservator, trustee by court appointment, trustee by contractual or testamentary appointment, or in other like fiduciary relationships, invest funds which it lawfully holds for investment, in interests in the common trust fund, if the investment is not prohibited by the instrument, judgment, decree or order creating the fiduciary relationship, and if, in the case of cofiduciaries, the bank or trust company procures the consent of its cofiduciary or cofiduciaries to the investment.

(3) Any bank or trust company qualified to act as fiduciary in this state other than national banks which are qualified to act as fiduciaries pursuant to the laws of the United States and rules and regulations promulgated pursuant thereto shall, in the operation of the common trust fund, comply with rules and regulations as may, from time to time, be promulgated by the Banking Division, which may issue and promulgate rules and regulations controlling the establishment and operation of common trust funds as it deems necessary and appropriate.

(4) Unless ordered by a court of competent jurisdiction, the bank or trust company operating common trust funds is not required to render a court accounting with respect to the funds, but it may, upon application to the circuit court of the county in which it has its principal office, obtain a settlement of its common trust fund accounts on such conditions as the court may specify. When application for the settlement is presented to a circuit court for approval, the circuit court shall assign a time and place for hearing and order notice thereof by:

(a) Publication once a week for three successive weeks, the first publication to be not less than 20 days prior to the date of hearing, of a notice in a newspaper having a general circulation in the county in which the bank or trust company operating the common trust fund has its principal office;

(b) Mailing, not less than 14 days prior to the date of the hearing, a copy of the notice to all beneficiaries of the trusts participating in the common trust fund whose

names are known to the bank or trust company from the records kept by it in the regular course of business in the administration of the trust, directed to them at the addresses shown by the records; and

(c) Such further notice, if any, as the court may order.

(5) This section applies to fiduciary relationships in existence on August 2, 1951, or thereafter established; and subsection (1) of this section is expository and declaratory of the meaning of "common trust fund" as used in this section since August 2, 1951. [Amended by 1953 c.258 §2; 1959 c.91 §1; 1963 c.56 §1; 1973 c.797 §196; 1973 c.823 §142]

709.180 [Repealed by 1973 c.797 §428]

709.190 Trust department kept separate; records of securities. (1) A financial institution authorized to transact a trust business shall establish and maintain in its office a trust department, in which separate books and accounts shall be maintained. All moneys, funds, investments and property of the trust department shall be segregated from and unmingled with other funds, moneys, investments and property.

(2) The books and accounts of the trust department shall show the ownership of all moneys, funds, investments and property held by the trust department. Securities may be kept by the trust department in either of the following ways:

(a) All certificates representing the securities of an account may be held separate from those of all other accounts; or

(b) Certificates representing securities of the same class of the same issuer held for particular accounts may be held in bulk without certification as to ownership attached and, to the extent feasible, certificates of small denomination may be merged into one or more certificates of larger denomination. A trust department, if operating under the method of safekeeping security certificates described in this paragraph, is subject to the rules as, in the case of state chartered institutions, the division and, in the case of national banking associations, the Comptroller of the Currency may issue. Upon demand by any person to whom it has a duty to account, a trust department shall certify in writing the securities held by it for an account.

[Amended by 1971 c.263 §1; 1973 c.797 §197]

709.200 Acquisition or investment of trust property in own name or name of nominee. (1) In the acquisition or investment of trust property, a trust company or trust department of a national bank may take in its own name, or in the name of its nominee, any assets in which it may be authorized to invest or hold trust property.

(2) Upon the satisfaction, conveyance or investment of trust property, whether the trust property is held in the name of the trust company or national bank, individually, or in its name as trustee or in a specified fiduciary capacity or otherwise, the instrument of satisfaction or transfer may be executed by the trust company or national bank in its own name.

[Amended by 1973 c.797 §198]

709.210 Disclosure of fiduciary character or terms of trust instrument. In acquiring, holding, satisfying and conveying trust property, a trust company is not required to disclose that it is acting in a fiduciary capacity, the terms or conditions of the instrument under which it acts, the nature or extent of its authority or the application of the proceeds of the transaction. A person dealing with a trust company may not inquire into the matters, except to the extent specified in ORS 709.270.

[Amended by 1973 c.797 §199]

709.220 Separation of funds awaiting investment or distribution. (1) Funds deposited or held in trust by a trust company awaiting investment or distribution shall be carried in a separate account and shall not be used by the trust company in the conduct of its business unless it first obtains and sets aside in its trust department:

(a) Bonds or other securities eligible for the investment of trust funds;

(b) A surety bond; or

(c) Both the securities and surety bond.

(2) The surety bond shall be issued by a surety company authorized to transact business in this state and approved by the superintendent, and shall provide that the principal and surety shall indemnify the several owners of the funds held in trust against

loss due to the failure of the trust company.

(3) Notwithstanding the provisions of ORS 708.230, the securities, the surety bond or the securities and the surety bond together shall be in an amount equal to the portion of the trust funds not insured by the Federal Deposit Insurance Corporation.

(4) If the trust company fails, the owners of the funds held in trust for investment or distribution have a lien on the bonds or other securities set apart, or a right of action on the surety bond, in addition to their claim against the estate of the trust company.

[Amended by 1957 c.82 §2; 1973 c.797 §200]

709.230 [Amended by 1961 c.344 §107; repealed by 1973 c.797 §428; amended by 1973 c.823 §143; (see 709.231)]

709.231 Appointment as fiduciary; deposit of moneys brought into court. (1) When any trust company mentioned in ORS 709.020 is appointed executor in any last will and testament, the court or officer authorized to grant letters testamentary in this state shall, upon proper application, grant letters testamentary thereon to the corporation or its successors by merger.

(2) When application is made to any court or officer having authority to grant letters of administration, with or without the will annexed, upon the estate of any deceased person, the court or officer may, at the request of any party interested in the estate, in its discretion, grant letters of administration, with or without the will annexed, to the corporation.

(3) Any court having authority to grant letters of conservatorship may appoint the corporation as a conservator of the estate of any person for whom or for whose estate a conservator may by law be appointed.

(4) Any court having jurisdiction to appoint a trustee or receiver of the estate of any person, or to make any fiduciary appointment, may appoint any such corporation to be such trustee or receiver or to act in any other fiduciary capacity.

(5) Any court having jurisdiction to appoint an executor of any estate may appoint any such trust company coexecutor of the estate upon the petition of the executor.

(6) All money brought into court by order or judgment of any court of record may be deposited with any corporation that has received a certificate of authority from the Superintendent of Banks to do a trust business as provided in the Bank Act.

[See 709.230]

709.240 Oath and bond on appointment as fiduciary. Neither at the time of the appointment of any trust company, which has deposited cash or securities with the Superintendent of Banks as required or allowed by ORS 709.030, as executor, administrator, conservator, trustee, receiver, assignee, depository or in any other fiduciary capacity, nor during the administration of any trust, shall any official oath or indemnity bond or other security be required other than as required by ORS 709.030, 709.130 and 709.231.

[Amended by 1973 c.797 §201; 1973 c.823 §144]

709.250 [Repealed by 1973 c.797 §428; amended by 1973 c.823 §145 (see 709.251)]

709.251 Fiduciaries; deposit of estate assets in trust company; reduction of bond. Whenever, in the judgment of any court having jurisdiction of any estate in process of administration by any assignee, receiver, executor, administrator, conservator or other trustee, the bond required by law of such officer seems burdensome or excessive, upon application of such officer or trustee, and after such notice to the parties in interest as the court may direct and a hearing on the application, the court may order the officer or trustee to deposit with any trust company, which has deposited cash or bonds with the Superintendent of Banks, as provided in ORS 709.030, for safekeeping, the portion of all the personal assets of the estate that it deems proper. Thereupon the court shall, by order of record, reduce the bond to be given, or theretofore given, by the officer or trustee, to an amount appropriate for only the estate remaining in the hands of the officer or trustee. The property so deposited shall thereupon be held by the trust company under the orders and directions of the court.

[See 709.250]

709.260 [Repealed by 1973 c.797 §428]

709.270 Disclosure of communications and writings prohibited; exceptions. A trust company shall, except as otherwise provided in this section, keep inviolate all communications and writings made to or by the trustees touching the existence, condition, management and administration of any private trust confided to it. A creditor or stockholder is not entitled to disclosure or knowledge of the communication or writing. However, the officers, manager, trust officer, secretary or regularly employed attorney of the trust company may know of the

communication or writing. In any suit or proceeding touching the existence, condition, management or administration of the trust, the court in which the matter is pending may require disclosure of the communication or writing.

[Amended by 1973 c.797 §202]

709.280 Loans to directors, officers or employes prohibited; loans to affiliates or subsidiaries prohibited. (1) A trust company shall not make any loan to any director, officer or employe of the company or to any affiliate or subsidiary corporation or any director, officer or employe of an affiliate or subsidiary corporation from its trust funds, and shall not permit any director, officer, employe, affiliate or subsidiary corporation to become indebted to it in any way out of its trust funds, unless specifically authorized to do so by the terms of the trust.

(2) An officer, director or employe of a trust company shall not knowingly violate any provision of this section, or aid or abet any other person in a violation.

[Amended by 1973 c.797 §203]

709.290 Closing of trust unduly delayed.

If, as a result of an examination, the superintendent finds that the closing of any trust by a trust company has been unreasonably delayed, the superintendent may initiate proceedings in a court of competent jurisdiction to require the trust company to perform its duties in closing the trust.

[Amended by 1973 c.797 §204]

709.300 National bank as fiduciary.

(1) If a national banking association is domiciled within this state or if it had a lawfully established branch office in this state on December 31, 1964, it may act in fiduciary capacities in all respects, as provided by applicable laws of the United States and rules and regulations promulgated pursuant thereto. All acts provided in the Bank Act to be performed by the State Treasurer, the superintendent or other public officials for or in respect to trust companies, shall be performed for national banking associations equally with trust companies.

(2) Every national banking association which is authorized to exercise fiduciary powers and which has qualified by making the deposit of securities required under ORS 709.030, may:

(a) Act or be appointed by any court to act in any fiduciary capacity to the same extent as any trust company;

(b) Use the word "trust" in its corporate name; and

(c) Advertise its authority to act in fiduciary capacities.

[Amended by 1963 c.55 §1; 1965 c.170 §1; 1973 c.797 §205]

709.310 [Amended by 1963 c.55 §2; repealed by 1973 c.797 §428]

709.320 [Repealed by 1973 c.797 §428]

709.330 Sale or transfer of assets or liabilities; effect on fiduciary relations. (1) When a sale or transfer of assets or liabilities becomes effective, as provided in ORS 711.205, the purchasing corporation shall succeed to all the rights, obligations and relations of the selling corporation to or in respect to any person, estate, creditor, depositor, trustee or beneficiary of any trust and in respect to any fiduciary relation, and the rights, obligations and relations shall remain unencumbered.

(2) The sale or transfer of assets shall not effect a renunciation or revocation of any letters of administration, letters testamentary, letters of guardianship or any other fiduciary relationship.

(3) If any trust requires the approval of the court to a change of the fiduciary, within 90 days after the change becomes effective the successor fiduciary shall file notice of the change with the court having jurisdiction and serve notice of the change upon each beneficiary. The notice may be served in the manner provided in ORS 16.760 to 16.820 or, if the residence of a beneficiary is not known, notice may be published in the manner provided by law for the publication of summons.

(4) A beneficiary or other person interested in the trust or estate may, within 90 days after the service of the notice, apply to the appropriate court for a change of fiduciary or such other relief as may be proper.

[Amended by 1973 c.797 §206]

709.340 Trust company quitting business; examination. A trust company quitting business shall furnish to the superintendent satisfactory evidence of its release and discharge from all obligations and trusts provided for in the Bank Act. The superintendent shall examine the trust company, and, if he is satisfied after the examination that the trust company has discharged all its obligations and trusts, he shall revoke its certificate of authority and deliver up all securities on deposit with him under ORS 709.030.

[Amended by 1973 c.797 §207]

709.350 Successor trustee upon liquidation or receivership; appointment and qualification; petition by superintendent. (1) If a trust company or national bank doing a trust business goes into voluntary or involuntary liquidation or receivership, the appointment of a successor trustee for the trust shall be handled by the court hearing the liquidation proceedings upon petition by the superintendent, the trust company, any interested person or, in the case of a national bank, by its receiver or liquidating agent.

(2) Upon the filing of the petition, the court shall order all persons interested in any trust to designate and take all necessary steps to appoint a successor trustee within a time fixed in the order, or to show cause why a successor trustee should not be appointed by the court. The order may be general in its terms and need not designate the trusts involved or the nature, purpose or extent of the trusts, or give the name of any of the beneficiaries or interested persons.

(3) In a trust where those interested in the trust fail to cause a successor trustee to be appointed prior to the time fixed in the order, the court shall appoint a successor trustee.

(4) The successor trustee shall succeed to all the rights, powers, and obligations of the trust company or national bank in liquidation, except claims or liabilities arising out of the management of the trust prior to the date of transfer.

(5) A copy of the order provided for in subsection (2) of this section, shall be published once a week for four successive weeks in a newspaper of general circulation to be designated by the court and published in the county in which the liquidation proceedings of the trust company or national bank are carried on. If there is no newspaper published in the county, publication shall be made in a newspaper of general circulation in the State of Oregon designated by the court. Proof of publication shall be made in the same manner as proof of publication of summons is made.

(6) The filing of the petition and the making and entering of the order and the publishing of a copy of the order, gives the court full jurisdiction of the trusts and all parties interested in the trusts. A court having jurisdiction shall require the superintendent to mail, by registered mail postage prepaid, a copy of the order to each living trustor of all private trusts in which the

trust company or national bank is trustee or to the then directly participating beneficiaries of all private trusts in which there is no living trustor. The notice shall be mailed to the last-known address of each trustor or participating beneficiary as shown by the records of the trust company or national bank. Proof of mailing shall be in such form as the court may require. Failure to mail the notice or the nonreceipt of the notice by any trustor or participating beneficiary shall not affect the jurisdiction of the court or invalidate any order or decree made in the proceedings.

(7) It is unnecessary to require the appearance of minors or other incompetents by guardians ad litem or otherwise.

[Amended by 1973 c.797 §208]

709.360 [Repealed by 1973 c.797 §428]

709.370 [Repealed by 1973 c.797 §428]

709.380 [Repealed by 1973 c.797 §428]

709.390 Discontinuance of trust business; determination of claims against deposit of securities. If a trust company or national bank discontinues its trust business, the superintendent shall file in the circuit court for the county in which the principal place of business of the trust company or national bank is located a verified petition:

(1) Stating that the trust company or national bank is closing, dissolving or transferring its trust business or is in process of voluntary or involuntary liquidation.

(2) Requesting that claims, if any, against the deposit made under ORS 709.030 by the trust company or national bank with the superintendent be determined.

[Amended by 1957 c.115 §1; 1973 c.797 §209]

709.400 Order to bring suit; publication of order; jurisdiction over securities; notice to trustor; appearance of minors and incompetents unnecessary. (1) Upon the filing of the petition under ORS 709.390, the court shall make an order requiring all persons having claims against the deposits to start action in the circuit court hearing the superintendent's petition within six months after the date of the order. Any claim not filed within the six-month period is barred. The petition or the order need not give the names of any beneficiary or the nature of the trusts protected by the deposit.

(2) A copy of the order shall be published in a newspaper designated by the court, having a general circulation in the county of the principal place of business of

the trust company or national bank at least once a week for as many consecutive weeks as the court orders, but not less than four weeks nor more than 12 weeks. If a newspaper is not published in the county, the copy of the order shall be published in a newspaper designated by the court. Proof of publication shall be made in the same manner as proof of publication of summons is made under ORS 15.160 and the proof shall be filed with the clerk of the court.

(3) The filing of the petition, under ORS 709.390, and the making and entering of the order and the publishing of a copy of the order under this section gives the court exclusive jurisdiction of deposited securities and of all parties having an interest in or claim upon the securities.

(4) A court shall require the superintendent to mail, by registered mail, postage prepaid, a copy of the order to each living trustor of all private trusts in which the trust company or national bank is trustee and which have not been closed or to the directly participating beneficiaries of all private trusts in which there is no living trustor. The notice shall be mailed to the last-known address of each trustor or participating beneficiary as shown by the records of the trust company or national bank. Proof of mailing shall be in the form required by the court. Failure to mail the notice or the nonreceipt of the notice by any trustor or participating beneficiary shall not affect the jurisdiction of the court or invalidate any order or decree made in the proceedings.

(5) The appearance of minors or other incompetents by guardians ad litem or otherwise is not necessary.
[Amended by 1973 c.797 §210]

709.410 Termination of right to do trust business. The filing by the superintendent of the petition provided for in ORS 709.390 terminates the right of the trust company or national bank affected thereby to do a trust business, except as may be necessary to wind up then existing trusts.

[Amended by 1973 c.797 §211]

709.420 Actions or suits on claims; service of summons; preference on calendar.

(1) In all actions to determine claims to the deposits, the superintendent shall be a necessary party defendant.

(2) An action shall not be considered to have begun within the time required by the order unless, in the case of defendants with-

in the state, summons is actually served within 60 days after the time limited in the order.

(3) Actions filed to determine claims to the deposits shall have preference upon the calendar of any trial or appellate court and shall be tried by the courts without unnecessary delay.

[Amended by 1973 c.797 §212]

709.430 Release or payment of deposit pending suit; distribution of deposits upon determination of suit. (1) If any actions on claims against the deposit mentioned in ORS 709.390 are begun within the six-month period, the superintendent shall not release and the court shall not order the payment of any part of the deposit until all actions are determined by final judgment.

(2) When all actions on claims against the deposit are finally determined, so much of the deposit as is necessary shall be paid to the claimants who have established their claims in the sums allowed by the court or, if not sufficient, the deposit shall be distributed pro rata among the claimants establishing their claims.

(3) The court, in the proceeding initiated by the superintendent, shall decree that the balance of the deposit be paid to the trust company or national bank or if the trust company or national bank is in the process of liquidation, to the official in charge of the liquidation.

[Amended by 1973 c.797 §213]

709.440 Superintendent's charges as a prior lien on deposit. All unpaid charges owing to the superintendent for expenses and services rendered under ORS 709.080 in connection with the deposit mentioned in ORS 709.030, and all expenses incurred by the superintendent, including services rendered by him, attorney's fees and necessary court expenses in connection with the determination of claims against the deposit, are a first and prior lien on the deposit, and shall be paid before any part of the deposit is released or paid to any claimant, trust company or national bank.

[Amended by 1973 c.797 §214]

709.450 Sale and disposition of securities to pay expenses, costs and claims. The court hearing the proceedings instituted by the superintendent under ORS 709.390 may, upon terms fixed by the court, order the

superintendent to sell and reduce to cash the deposited securities as necessary to pay:

(1) The unpaid charges and expenses described in ORS 709.440; and

(2) Claims established against the deposit.

[Amended 1973 c.797 §215]

709.460 Application of ORS 709.390 to 709.450; return of security deposit after consolidation or merger. (1) ORS 709.390 to 709.450 do not apply to a merger or consolidation of a trust company or national bank with another trust company or national bank authorized to conduct a trust business whereby the security deposits and the trust business of the retiring trust company or national bank are acquired by the resulting trust company or national bank.

(2) Immediately following the completion of a merger or consolidation described in subsection (1) of this section, the superintendent, upon written application of the resulting trust company or national bank, shall return to the resulting trust company or national bank that portion of the combined security deposits of the trust companies or national banks involved in the merger or consolidation which exceeds the deposit required by ORS 709.030 for the combined cash and securities held in trust by the resulting trust company or national bank following the merger or consolidation.

[Amended by 1957 c.115 §2; 1973 c.797 §216]

709.990 [Repealed by 1973 c.797 §428]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, 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, 1973.

Thomas G. Clifford
Legislative Counsel

CHAPTER 710

[Reserved for expansion]