Chapter 707

1979 REPLACEMENT PART

Organization of Institutions; General Powers; Stockholders, Directors and Officers

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ORGANIZATION OF INSTITUTIONS

707.005 Institutions required to incorporate. It is unlawful for any person to engage in or transact a banking or trust business within this state except by means of a corporation duly organized for the purpose. [1973 c.797 §50]

707.010 Necessity of organizing under Bank Act to advertise or operate as institution. A person who has not received a certificate to do a banking or trust business from the superintendent, except a national bank, shall not:

(1) Advertise that it is receiving or accepting money and issuing notes or certificates of deposit therefor.

(2) Use a sign at its place of business containing words indicating that the place is a place of business:

(a) Of an institution;

(b) Where deposits are received or payments made on check; or

(c) Where any other form of banking business is transacted.

(3) Make use of or circulate any letterheads, blank notes, blank receipts, certificates, circulars or any written or printed paper containing words indicating that the business is the business of an institution.

(4) Transact business under any name which leads the public to believe that its business is that of an institution.

(5) Solicit or receive deposits or transact business in the manner of an institution or in such a manner as to lead the public to believe that its business is that of an institution. [Amended by 1973 c.797 §51]

707.020 Violation of ORS 707.010; investigation; injunction. (1) The superintendent may examine the accounts, books and papers of every person the superintendent has reasonable cause to believe is violating any provision of ORS 707.010.

(2) When the superintendent believes, from evidence satisfactory to him, that any person is violating the provisions of ORS 707.010, the superintendent may cause a complaint to be filed in the circuit court of the county in which the person conducts his business to enjoin and restrain the person from continuing the violation. The court shall have jurisdiction of the proceeding and may make and enter an order or judgment awarding such preliminary or final injunctive relief as in its judgment is proper. [Amended by 1973 c.797 §52]

707.025 Organization for purpose of merger; procedure; conditions. (1) An institution may be organized under this section solely for the purpose of merging with one or more existing state banks or national banks pursuant to ORS chapter 711, and not with authority to engage in or transact banking or trust business.

(2) The institution may be organized under this section by one or more persons or a corporation.

(3) Notwithstanding ORS 707.050 to 707.120, 707.140 to 707.150, 707.170, 707.200 and subsection (1) of 707.210 and such other sections as may specifically be inconsistent with this section, an institution described in subsection (1) of this section shall be organized as follows:

(a) The incorporator shall file articles of incorporation executed in duplicate, signed by the prospective incorporator or incorporators and verified and filed in the office of the superintendent together with the organization fee required under ORS 707.130 plus an additional organizational fee of $2,500.

(b) Such articles of incorporation shall specify:

(A) The name and address of each incorporator.

(B) The information required under paragraphs (a), (b), (c) and (h) of subsection (2) of ORS 707.110.

(C) The term of its existence, which may be perpetual.

(D) The purpose of the corporation which shall be limited to the purposes set forth in subsection (1) of this section. However, if the corporation is to be the resulting bank in such merger, the articles may also contain all purposes allowed an institution under the Bank Act, provided the implementation of such purposes are conditioned upon consummation of such merger.

(E) The name and address of each director of the board of directors, which shall be composed of not less than three directors.

(4) If the superintendent finds the articles conform to subsection (3) of this section, the superintendent shall file the articles and issue a certificate of incorporation in accordance with ORS 707.120.

(5) Upon issuance of the certificate of incorporation, the corporate existence of the institution shall begin and the institution may issue stock.

(6) (a) After the issuance of the certificate of incorporation, the new institution shall file a certified copy of its bylaws with the superintendent within 90 days. If the superintendent finds such bylaws to be consistent with the requirements of the Bank Act, the superintendent shall issue a provisional charter to such bank.

(b) The provisional charter shall expire one year after its date of issuance. However, the superintendent may extend such expiration period. If a merger is not consummated before the provisional charter expires, the interim bank shall cease to exist and its articles of incorporation and charter shall be void. For purposes of ORS chapter 711, a provisional charter issued under this section shall be deemed a charter, where appropriate.

(7) An institution in the process of organization solely for the purposes set forth in subsection (1) of this section at the time this section becomes law may choose to comply with this section rather than the other sections in this chapter, if a charter has not been issued. If such election is made, any fees paid under ORS 707.070 and 707.130 shall be applied against the organization fees required under this section.

(8) An institution organized solely for the purposes set forth in subsection (1) of this section for which a charter has been issued may, with the superintendent's approval, reduce its capital stock and guaranty and surplus funds below those required under ORS 707.050 and 707.200 prior to consummation of a proposed merger and, in applying ORS 707.350 to such institution, the requirements of ORS 707.050 shall be disregarded. [1979 c.88 §8]

707.030 [Repealed by 1973 c.797 §428]

707.040 [Repealed by 1973 c.797 §428]

707.050 Paid-up cash capital stock requirement. Every institution organized after January 1, 1974, shall have a paid-up, in cash, capital stock not less than $200,000. [Amended by 1963 c.195 §3; 1973 c.797 §53]

707.060 [Repealed by 1973 c.797 §428]

707.070 Application for authority to organize; fee; contents. Any number of persons, not less than five, citizens of the United States and residents of this state, desiring to organize an institution shall, as prospective incorporators, first file an application with the superintendent for a permit to organize an institution or to circulate a stock subscription list for the organization of an institution. The applicants shall pay to the superintendent at the time of their application a fee of $2,500, no part of which shall be refunded. The application shall be in duplicate on forms provided by the superintendent and certified by one of the applicants. The application shall include information with regard to:

(1) The proposed location.

(2) The amount of the capital stock and the class or classes of capital stock proposed to be issued.

(3) The corporate name.

(4) The names of the persons who in the aggregate propose to subscribe for, to own or to control more than 25 percent of the capital stock and the amount of stock for which each proposes to subscribe.

(5) The names of the proposed active managers and directors.

(6) Evidence of the character, financial responsibility and ability of the incorporators, directors and manager.

(7) Evidence of the need and advisability of granting the authority.

(8) Any other information which the superintendent may require. [Amended by 1971 c.68 §3; 1973 c.797 §54; 1977 c.135 §13; 1979 c.88 §9]

707.080 Investigation and ruling on application; conditional approval; appeal. (1) When the application mentioned in ORS 707.070 has been filed, the superintendent shall determine whether:

(a) The proposed institution is being formed for legitimate objects as contemplated by the Bank Act;

(b) The character, financial responsibility and general fitness of the persons named in the application are such as to command the confidence of the community in which the proposed institution is to be located and to warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted;

(c) The proposed directors and officers are competent to manage successfully an institution;

(d) The suggested capitalization is adequate for the proposed institution's anticipat-

ed development and growth within a reasonable period of time;

(e) There is reasonable assurance of sufficient volume of business;

(f) The organization of the proposed institution is justified; and

(g) The public convenience and advantage will be promoted by the opening of the proposed institution.

(2) If the superintendent is satisfied that the applicant meets the standards prescribed in subsection (1) of this section he shall note his approval and the date on each copy of the application. If the superintendent is not satisfied or believes that the public interest will be endangered he shall note his disapproval and the date on each copy of the application.

(3) One of the duplicate original applications shall be filed in the office of the superintendent and the other returned by mail to the applicants.

(4) The superintendent shall act to approve or disapprove an application within 60 days from the filing of the application, unless a majority of the applicants and the superintendent agree to extend the time an additional 30 days.

(5) The superintendent may grant conditional approval of any application and require the applicants to make additional showing or changes in the proposed institution as he considers advisable.

(6) The applicants may appeal the decision of the superintendent to any court of appropriate jurisdiction. [Amended by 1973 c.797 §55; 1975 c.544 §8a]

707.090 Refusal of charter after approval of application. If, after approving the application for authority to organize, it appears to the superintendent that the articles of incorporation, the organization or manner of conducting business do not comply with the terms of the application, the requirements of his approval or the requirements of law, he may refuse to approve the articles of incorporation or to grant a charter. [Amended by 1973 c.797 §56]

707.100 Time of filing articles of incorporation and paying fees. Within 30 days after authority to organize has been finally granted, the prospective incorporators shall file articles of incorporation and pay to the superintendent the organization and filing fees required in ORS 707.130. If articles of incorporation are not filed within the specified time, the authority to organize is void. [Amended by 1973 c.797 §57]

707.110 Execution and filing of articles of incorporation; contents. (1) Any number of persons, not less than five, citizens of the United States and residents of this state, may associate themselves by articles of incorporation to establish an institution. The articles of incorporation shall be executed in duplicate, signed by the prospective incorporators, verified and filed in the office of the superintendent.

(2) The articles of incorporation shall specify:

(a) The name by which the institution is to be known.

(b) The place where its business is to be transacted, designated by legal description or street and number in the city or town.

(c) The amount of its capital stock and the par value of each share.

(d) The names, occupations and places of residence of the prospective incorporators and the number of shares subscribed for by each.

(e) The term of its existence, which may be perpetual.

(f) The purpose for which the corporation is formed.

(g) The proposed board of directors of the institution, composed of not less than three of the prospective incorporators.

(h) Whether the stockholders are given preemptive rights.

(3) The articles of incorporation also may contain any lawful provisions regulating the business or conducting the affairs of the institution or defining, limiting and regulating the powers of the directors. [Amended by 1973 c.797 §58]

707.120 Issuance of certificate of incorporation when filings conform to law. (1) If the superintendent finds that the articles of incorporation conform to law, he shall within 60 days after receiving the articles of incorporation and when all fees have been paid:

(a) Indorse on each of the duplicate originals the word "Filed," and the month, day and year of the filing.

(b) File one of the duplicate originals in his office.

(c) Issue a certificate of incorporation to which he shall affix the other duplicate original.

(2) The certificate of incorporation, with one of the duplicate originals affixed thereto shall be returned to the incorporators or their representative.

(3) Upon issuance of the certificate of incorporation the corporate existence of an institution begins. [Amended by 1973 c.797 §59]

707.130 Organization and annual license fees. (1) An organization fee shall be paid by the incorporators in an amount equal to that payable under ORS 57.761.

(2) An institution shall pay an annual license fee as paid under ORS 57.767.

(3) The organization fee and the annual license fee shall be paid to the superintendent. [Amended by 1973 c.797 §60]

707.140 Filing organization papers; issuance of charter. (1) The superintendent shall examine into the condition of an institution when the institution files with the superintendent:

(a) A copy of its articles of incorporation, as required by ORS 707.110.

(b) A list of stockholders, showing name, address, number of shares and amount paid, sworn to by the president or cashier.

(c) The sworn statement of an officer of the institution that all requirements of law have been complied with.

(d) A list of the directors and officers elected.

(e) The oaths of office of the directors and officers of the institution.

(f) A copy of its bylaws certified to by its president or cashier.

(2) If, upon examination, the superintendent determines that the institution has complied with the requirements of ORS 707.070 to 707.130 and that the amount of its authorized capital has been paid in, the superintendent shall issue to the institution, under his hand and official seal, a charter to do a banking or trust business. [Amended by 1973 c.797 §61]

707.145 Refusal of authority to organize; order of removal. (1) The superintendent may disapprove an application for a permit to organize or he may refuse to approve the articles of incorporation or to grant a charter under ORS 707.080, 707.090 or 707.140, if he finds that any person named in the application submitted under ORS 707.080 or in the documents submitted under ORS 707.140:

(a) Is insolvent, either in the sense that his liabilities exceed his assets or that he cannot meet his obligations as they mature, or is in such financial condition that he cannot continue in business with safety to his customers;

(b) Has engaged in dishonest, fraudulent or illegal practices or conduct in any business or profession;

(c) Has wilfully or repeatedly violated or failed to comply with any provisions of the Oregon Bank Act or any rule or order of the superintendent;

(d) Has been convicted of a felony or of a misdemeanor, an essential element of either of which is fraud;

(e) Is not qualified to conduct a banking business on the basis of such factors as training, experience and knowledge of the business;

(f) Is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the banking business;

(g) Is the subject of an order of the superintendent or of the Savings and Loan Supervisor subjecting him to a fine or a civil penalty, or removing him from an office in a financial institution or savings association; or

(h) Is the subject of an order entered within the past five years, subjecting him to a fine or other civil penalty, or removing him from an office in a financial institution, issued by the banking superintendent of another state or by the Comptroller of the Currency, the Board of Governors of the Federal Reserve System or by any other agency of the Federal Government or another state with regulatory authority over financial institutions.

(2) The superintendent may issue an order of removal under ORS 707.710 directing the removal of any officer or director of an institution, or the removal of a resident officer, manager or agency of any foreign or extranational institution, for any of the reasons stated by subsection (1) of this section. [1977 c.135 §19]

707.150 Review of refusal of authority to organize; appeal. Notwithstanding the provisions of ORS 183.310 to 183.500, the superintendent may, without prior hearing or

opportunity therefor, refuse to grant authority to organize an institution. In case authority to organize is refused by the superintendent, the applicants may within 30 days after the refusal appeal the decision to any court of appropriate jurisdiction. [Amended by 1971 c.734 §172; 1973 c.797 §62; 1975 c.544 §8b]

707.160 Transaction of business prior to organization; failure to complete organization. (1) An institution shall not transact any business, except as is incidental or necessary to its organization, until it has received its charter from the superintendent.

(2) An institution which fails to pay in its capital and complete its organization and receive from the superintendent a charter, within one year after the date of approval of its articles of incorporation, ceases to exist and the articles of incorporation are void. [Amended by 1969 c.44 §1; 1973 c.797 §63]

707.170 Effective date of charter; commencement of business; effect of failure to commence business. (1) A charter shall specify the date on which it becomes effective, which shall not be more than 30 days after the date of issuance of the charter, unless an extension of time is granted by the superintendent.

(2) An institution shall commence business on the effective date specified in its charter. If an institution fails to commence business on the effective date specified in the charter or according to any extension of time granted by the superintendent, it ceases to exist and its articles of incorporation and charter are void. [Amended by 1973 c.797 §64]

707.180 Location of principal place of business; change upon approval by superintendent. (1) The principal place of business of an institution shall be specified in its articles of incorporation. The principal place of business may be changed upon application of the institution to the superintendent. The superintendent shall determine whether the change in location is advisable or justified and whether the public convenience and advantage will be promoted and shall approve or disapprove the change of location. An appeal from the decision of the superintendent may be taken to any court of appropriate jurisdiction.

(2) Except as provided in subsection (3) of this section, the change of location approved by the superintendent shall not take effect until articles of amendment are approved and filed.

(3) If the principal place of business specified in the articles of incorporation is damaged to the extent that the institution cannot conduct its normal business, the superintendent may approve an immediate change of place of business. [Amended by 1973 c.797 §65; 1975 c.544 §8c]

707.190 [Repealed by 1973 c.797 §428]

707.200 Guaranty and surplus funds. (1) The subscribers to the capital stock of an institution shall pay in, in cash, at the time of the payment of stock subscriptions, an amount equal to not less than 50 percent of the respective stock subscriptions in addition to the par value thereof.

(2) One-half of the amount paid under subsection (1) of this section shall constitute a guaranty or expense fund to be used in liquidation of the cost of organization and for the general expenses of the institution. When the gross operating revenues are sufficient to pay the operating expenses any remaining balance in the guaranty or expense fund shall be transferred to the undivided profits account.

(3) One-half of the amount paid under subsection (1) of this section shall be placed in a surplus account. [Amended by 1973 c.797 §66]

707.210 Stock issuance after obtaining charter and making guaranty and surplus fund payments; form of stock certificate. (1) An institution shall not issue any share of stock until its charter has been issued and ORS 707.200 has been complied with.

(2) Each certificate representing shares of the stock of an institution shall comply with the requirements of ORS 57.121 except, a certificate need not contain a statement of the par value of the shares represented thereby if the certificate contains a statement identifying the records of the institution in which the par value is recorded and stating the location of the records. [Amended by 1959 c.108 §1; 1965 c.189 §1; 1973 c.797 §67]

707.215 Cancellation of redeemed stock. Notwithstanding subsection (1) of ORS 57.395, stock of an institution redeemed by the institution, except stock acquired as the result of the reorganization or merger of the institution, is canceled and cannot be reissued. [1973 c.797 §68]

707.220 Stock record; contents; inspection. An institution shall keep a stock ledger or register which shall at all times during the usual hours for the transaction of business be subject to the inspection of any stockholder of the institution. The ledger or register shall show:

(1) The name and residence of and the number of shares held by each stockholder; and

(2) All transfers of stock, stating the time when made, the number of shares transferred and to whom transferred. [Amended by 1973 c.797 §69]

707.230 Transfer of stock. The shares of stock of an institution shall be transferred on the books of the institution in such manner as the bylaws may provide and as required in ORS 707.220. A transfer of stock is not valid while an institution is under notice from the superintendent to make good any impairment of its capital stock, until the impairment has been made good. [Amended by 1973 c.797 §70]

707.240 Employe stock option plans. (1) Upon approval of the superintendent and stockholders holding two-thirds of the stock of an institution, an institution may adopt and perform employe stock option or employe stock purchase plans. Applications for approval by the superintendent shall include:

(a) A description of all material provisions of the plan;

(b) A proposed notice of stockholders meeting, proxy and proxy statement;

(c) The number of shares authorized but unissued to be allocated to the plan;

(d) The proposed amendments to articles of incorporation creating authorized but unissued stock with respect to which no prescriptive rights shall attach;

(e) A provision in the plan that an employe who applies for or is granted a stock option shall not participate in the administration of the plan;

(f) Data demonstrating that the number of shares allocable to any person under the plan is reasonable in relation to the purpose of the plan and the needs of the institution; and

(g) In the case of a stock option plan, data demonstrating that the number of shares subject to the plan is not unreasonable in relation to the capital structure and anticipated growth of the institution.

(2) An institution may, by amendment of its articles of incorporation, authorize an increase in its common stock in the category of authorized but unissued stock and it may issue the stock from time to time to employes in the performance of an approved stock option or stock purchase plan.

(3) The increase in capital resulting from performance of stock option or stock purchase plans shall not affect loan limits or other restrictions based on capital or capital and surplus until the institution certifies under oath to the superintendent that the stock has been issued and the amount paid for it is not less than par value at the time the employe became eligible under the plan or less than 90 percent of book value at the time when the employe became eligible under the plan, whichever is the greater. [1969 c.635 §1; 1973 c.797 §71]

GENERAL POWERS

707.310 Powers of institutions. Except as otherwise provided in the Bank Act or the articles of incorporation of an institution, an institution shall have:

(1) The general powers granted to corporations by subsections (1), (2), (3), (8) and (10) to (17) of ORS 57.030;

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

(3) All powers necessary or convenient to effect any or all of the purposes for which the corporation is organized or to perform any or all of the acts expressly or impliedly authorized or required under the Bank Act. [Amended by 1973 c.797 §72; 1973 c.823 §140; 1974 s.s. c.36 §23]

707.320 Membership in Federal Reserve System; member bank, officers, directors and shareholders subject to duties and liabilities imposed by laws of this state. (1) As used in this section:

(a) "Federal Reserve Board" means the Federal Reserve Board created and described in the Federal Reserve Act.

(b) "Federal Reserve Bank" means the Federal Reserve Banks created and organized under authority of the Federal Reserve Act.

(c) "Member bank" means any bank which becomes a member of one of the Federal Reserve Banks.

(2) Any bank may subscribe to the capital stock and become a member of a Federal Reserve Bank.

(3) Any bank which becomes a member of a Federal Reserve Bank, shall have all powers not in conflict with the laws of this state which are conferred upon member banks of the Federal Reserve Banks by the terms of the Federal Reserve Act as if such powers were specifically enumerated and described in the Bank Act. All the powers shall be exercised subject to the restrictions and limitations imposed by the Federal Reserve Act or by regulations of the Federal Reserve Board made pursuant thereto. The right, however, is expressly reserved to revoke or to amend the powers conferred by this section.

(4) A compliance on the part of any member bank with the reserve requirements of the Federal Reserve Act is a full compliance with the laws of this state which require banks to maintain cash balances in their vaults or with other banks, and a member bank shall not be required to carry or maintain reserve other than such as is required under the terms of the Federal Reserve Act.

(5) A member bank is subject to the supervision and examination required by the laws of this state. The Federal Reserve Board may also make examinations. The authorities of this state having supervision over a bank may disclose to the Federal Reserve Board, or to examiners appointed by it, all information in reference to the affairs of any bank which has become, or desires to become, a member of a Federal Reserve Bank.

(6) A member bank and its directors, principal officers and stockholders are subject to all liabilities and duties imposed upon them by the laws of this state. [Amended by 1973 c.797 §73]

707.330 Obtaining benefit of federal banking laws. An institution may perform any act necessary to obtain the benefits of or to comply with any provision of the Act of Congress approved June 16, 1933, (48 Stat. 162) entitled the Banking Act of 1933, and any amendments thereto or any Act substituted therefor, and any rules and regulations promulgated pursuant thereto, in so far as the Act or any Act substituted therefor pertains to institutions. [Amended by 1973 c.797 §74]

707.340 Obtaining benefit of federal laws for relief of institutions. With the approval of the superintendent and subject to any limitations which he may prescribe, an institution may take advantage of any law enacted by the Congress of the United States for the relief or benefit of institutions to the full extent provided by the law, and for this purpose may do any thing required in order to take full advantage of the benefits of the law. [Amended by 1973 c.797 §75]

707.345 [1963 c.500 §2; repealed by 1973 c.797 §428]

707.350 Increase or decrease of capital stock; authorization procedure; conversion of surplus fund into paid-in capital. (1) Subject to the approval of the superintendent, an institution may increase or reduce its capital stock, but not below the minimum provided by ORS 707.050, by filing articles of amendment. The increase or reduction in the capital stock shall become effective upon issuance by the division of the certificate of amendment.

(2) An institution shall not issue any certificate of stock under any increase of capital until full payment for the stock has been received. Except as provided by ORS 707.355, the amount of any increased capital stock shall be paid in the same manner as required in the organization of an institution. However, the whole or any part of the surplus fund of an institution, if held as the exclusive property of the stockholders, may, with the approval of the superintendent, but not otherwise, be converted into paid-in capital. If all or any part of the surplus fund is converted into paid-in capital, surplus shall be restored in the manner provided for under ORS 707.400, until the whole amount of the surplus fund shall be not less than 50 percent of the aggregate paid-up capital stock. [Amended by 1969 c.635 §2; 1973 c.797 §76; 1977 c.135 §16]

707.355 Exchange of capital stock for assets and liabilities of another corporation; approval of exchange; increase of capital stock. (1) An institution may adopt and perform a plan to exchange capital stock of the institution for substantially all of the assets and liabilities of another corporation if:

(a) The assets and liabilities are of a kind that the institution is authorized to own; and

(b) The plan has the approval of the superintendent and of the stockholders having two-thirds of the stock of the institution entitled to vote.

(2) An application for approval of a plan by the superintendent shall include:

(a) A description of all material provisions of the plan;

(b) A proposed notice of stockholders meeting, proxy and proxy statement;

(c) The number of shares authorized but unissued to be allocated to the plan;

(d) The proposed amendments to articles of incorporation creating authorized but unissued stock with respect to which no prescriptive rights shall attach;

(e) A provision in the plan that an officer of the institution who has a conflict of interest shall not participate in the administration of the plan; and

(f) A statement of evidence showing the plan is fair to the financial institution, the other corporation and their stockholders, is not contrary to the public interest, and would promote the public convenience and advantage.

(3) An institution may, by amendment of its articles of incorporation, authorize an increase of its capital stock in the category of authorized but unissued stock in the performance of a plan that is approved as required by subsection (1) of this section.

(4) An increase in capital as authorized by this section shall not affect loan limits or other restrictions based on capital or capital and surplus until the institution certifies under oath to the superintendent that the exchange of the stock for the assets and liabilities, as authorized by the plan, has been completed. [1977 c.135 §15]

707.360 [Amended by 1969 c.635 §3; repealed by 1973 c.797 §428]

707.370 Reduction of capital stock; surrender of certificates. If the capital stock of an institution is reduced, as provided in ORS 707.350, every stockholder, owner or holder of any stock certificate shall surrender the certificate for cancellation and shall receive a new certificate for that portion of the stock remaining in force after the reduction has been made. Any stock certificate which is not surrendered for cancellation and reissue, is void as to the amount represented by the decrease. Dividends shall not be paid to any stockholder until the old certificate has been surrendered and canceled. [Amended by 1973 c.797 §78]

707.380 Limitation on dividends. The board of directors of an institution may, at any regular meeting, declare a dividend, but the amount of the dividend shall not be greater than its net undivided profits then on hand, deducting therefrom:

(1) All losses.

(2) All bad debts, unless the same are well secured:

(a) On which interest for a period of one year is past due and unpaid; and

(b) Upon which final judgment has been obtained but for more than one year judgment has been unsatisfied and interest has not been paid.

(3) All assets or depreciation charged off as required by the superintendent or an examiner.

(4) All accrued expenses, interest and taxes of the institution. [Amended by 1973 c.797 §79]

707.390 [Repealed by 1973 c.797 §428]

707.400 Conditions precedent to dividend declaration and payment. (1) Before any dividend is declared or the net profits for the period covered by the dividend are in any way disposed of, not less than one-fifth of the net profits shall be carried to a surplus fund until the surplus fund amounts to 50 percent of the paid-in capital of the institution.

(2) The superintendent may require any institution to suspend the payment of any dividends until the institution complies with all the provisions of the Bank Act. [Amended by 1963 c.580 §82; 1973 c.797 §80]

707.410 Record of dividends declared. At meetings of the board of directors where dividends are declared, a complete record of the proceedings and business transacted by the board of directors shall be entered in the minutes in the manner required by the superintendent. The minutes shall show that a detailed financial statement as of the last day of the month previous to the month during which the meeting is held was the basis of the decision of the board. [Amended by 1963 c.195 §4; 1973 c.797 §81]

707.420 Losses charged to surplus; restoration of surplus before dividend payment. Any loss sustained by any institution in excess of its undivided profits shall be charged to its surplus fund. Its surplus fund shall be reimbursed from the earnings. If the surplus fund at the time of the reduction does not exceed 50 percent of the paid-up capital, dividends shall not be declared or paid in excess of one-half of its net earnings until the surplus fund is restored to at least the amount from which the surplus was originally reduced. [Amended by 1973 c.797 §82]

707.430 Closing banks on Saturdays or regular banking days; emergency closings. (1) As used in this section:

(a) "Bank" includes any state bank, national bank, Federal Reserve Bank, trust company and safe deposit company, doing business in this state.

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

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

(3) A branch of a bank may remain closed for all or any part of a regular banking day if:

(a) The times at which the branch is open are posted on the premises of the branch; and

(b) The branch is authorized to so close by the superintendent.

(4) When the superintendent determines that an emergency exists, he may authorize the closing of the principal office or branch of any bank which may be affected by the emergency. The office or branch so closed may remain closed until the superintendent determines that the emergency has ended and for such further time thereafter as may reasonably be required to prepare the office or branch to reopen.

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

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

(7) When any obligation payable at, by or through a bank falls due on a day on which the bank remains closed under this section, it shall be due and payable on the next business day on which the bank is required to open. Any act authorized, required or permitted to be performed at, by or with respect to any bank on a day on which the bank remains so closed may be performed on the next business day on which the bank is required to open, and no liability or loss of rights of any kind shall result from the closing. [Amended by 1961 c.57 §1; 1973 c.797 §83; 1975 c.544 §9]

STOCKHOLDERS, DIRECTORS AND OFFICERS

707.610 Annual and special stockholder meetings. (1) A stockholders' meeting for the election of a board of directors and transaction of other business, shall be held within 90 days after the close of the fiscal year of the institution in this state.

(2) A special meeting of stockholders may be called at any time for the purpose of electing directors to fill any vacancy in the board of directors or for the transaction of other business. [Amended by 1957 c.59 §1; 1967 c.170 §1; 1973 c.797 §84]

707.620 Special stockholder meeting at call of superintendent. If the superintendent considers it expedient he may call a meeting of the stockholders of any institution by giving 15 days' notice of the meeting to the stockholders in the manner prescribed in the bylaws of the institution for giving notice to stockholders. All necessary expense incurred in the serving of the notice shall be paid by the institution. [Amended by 1973 c.797 §85]

707.630 [Repealed by 1973 c.797 §428]

707.640 Directors; citizenship and residence requirements. Directors of an institution shall be citizens of the United States, and at least two-thirds of them shall be residents of this state or must reside within 100 miles of the principal place of business of the institution at the time of their election and during their continuance in office. At least one director shall be a resident of the State of Oregon. [Amended by 1973 c.797 §86]

707.650 Directors; par value of holding company stock; stock ownership requirements. (1) A person is not eligible for election as a director unless:

(a) He owns, in his own right, stock of the institution, or if the institution is wholly owned by a holding company, shares of the holding company; or

(b) As personal representative of an estate, he holds stock of the institution, or if the institution is wholly owned by a holding company, shares of the holding company.

(2) If a director ceases to be the owner in his own right of stock or in any way pledges the stock as security for any debt, he shall immediately notify the superintendent in writing of the sale or pledge of the stock, and the superintendent may require that the director be removed from office. [Amended by 1973 c.797 §87; 1975 c.544 §9a; 1977 c.135 §17]

707.660 Oath of directors; oath of resident agents of foreign or extranational institutions. (1) Each director and officer of an institution and each resident officer, manager or agent of any foreign or extranational institution, when initially appointed or elected, shall take an oath that he will, as far as the duty devolves on him, diligently and honestly administer the affairs of the institution or foreign or extranational institution, and that he will not knowingly violate or permit to be violated any of the provisions of law applicable to the institution or the foreign or extranational institution.

(2) The oath shall be subscribed by the director, officer, manager or agent taking it, certified by the officer before whom it is taken and immediately transmitted to the superintendent. [Amended by 1973 c.797 §88; 1975 c.725 §7]

707.670 Regular meetings of directors; quorum. (1) The board of directors of an institution shall hold a regular meeting at least once every month.

(2) A quorum at any meeting of the board of directors shall consist of a majority of the members of the whole board. Less than a quorum may adjourn until the next meeting. [Amended by 1963 c.166 §1; 1973 c.797 §89]

707.675 Report of loans and investments. The board of directors shall designate an officer of the institution to prepare and submit to the board at every monthly meeting or to an executive committee of not less than three members of the board of directors a report, in such detail as the board may direct, of the loans and investments made during the preceding month or since the last report, and the aggregate of the loans to all officers, directors and employes. The board of directors shall examine and pass upon the report and make it a part of the record of the meeting by recording the report in full in the minutes. The record shall show their approval or disapproval of the report and be signed by each director present at the meeting. [1973 c.797 §90]

707.680 Special meetings of directors at call of superintendent; failure to attend. (1) The superintendent may call a meeting of the board of directors of any institution by mailing a notice of the meeting to each director. The notice shall state the purpose of the meeting and designate the time and place where the meeting shall be held.

(2) A director who fails to appear at the meeting without proper cause is subject to a penalty of $100 for each day he fails to appear pursuant to the notice. The penalty shall be collected in the manner prescribed by ORS 706.570. [Amended by 1973 c.797 §91]

707.690 Filling board of director vacancies. Any vacancy in the board of directors may be filled by the board for the unexpired term at the first regular meeting after the vacancy occurs.

707.700 Selection and control of officers by directors. (1) After a charter has been issued to an institution, the board of directors shall elect a president who shall also be a director, and at least one vice president and may appoint a cashier, a treasurer and all necessary officers and employes. The president and cashier shall be residents of this state.

(2) The board of directors may define the duties, fix the compensation, dismiss, fill vacancies and require bonds for the faithful performance of the duties of the employes and officers of the institution. [Amended by 1973 c.797 §92]

707.710 Removal of officers and directors. (1) If the superintendent finds that any officer or director of an institution is dishonest, reckless or incompetent, or refuses to comply with the law, rules of the division or any written requirements or instructions of the superintendent, the superintendent may issue a written order to the board of directors for the removal from office of the officer or director. The order of the superintendent may be issued without a prior administrative hearing. Upon receipt of the order the board of directors shall suspend the officer or director from office.

(2) The officer or director suspended from office may appeal the order of the superintendent as a contested case pursuant to ORS 183.415 to 183.500.

(3) Upon expiration of the period in which to file an appeal under ORS 183.415 to 183.500 or when the order of the superintendent is affirmed on appeal, the board of directors shall, by resolution, remove the officer or director from office and declare the office vacant.

(4) Any officer or director who is suspended or removed under this section shall not act in any official capacity, conduct any of the business of the institution or have access to the books, records or assets of the institution either as an officer, director or stockholder, without receiving permission from the superintendent. [Amended by 1973 c.797 §93]

707.720 Violation of law or omission of duty by officer or director. An officer or director of an institution shall not, as an officer or director, wilfully do any act which is expressly forbidden by the Bank Act or omit to perform any duty imposed upon him by the Bank Act. [Amended by 1973 c.797 §94]

707.730 Official communications from Banking Division; submission to directors. Every official communication directed by the superintendent or any examiner to an institution or to any officer of an institution, relating to an investigation or examination conducted by the division or containing suggestions or recommendations as to the conduct of the business of the institution, shall be submitted by the officer receiving it to the board of directors at the next meeting of the board and duly noted in the minutes of the meeting of the board in the manner prescribed by the superintendent. [Amended by 1973 c.797 §95]

707.735 Officers and directors to notify law enforcement officers of Bank Act violations; investigations; costs. (1) If an officer or director of an institution has reason to believe that a person has violated any provision of the Bank Act for which criminal prosecution is provided, the officer or director shall give the information relative to the violation to the appropriate federal, state or local law enforcement officer having jurisdiction of the violation, and to the superintendent.

(2) If the matter is referred to a district attorney or to the Attorney General, such officer promptly shall investigate the violation and institute such action against the person as the information and investigation requires or justifies. The cost of the investigation and action shall be paid by the county or state in the manner in which other criminal actions are paid. [1979 c.88 §7]

707.740 Examining committee; audit; reports to directors and superintendent. (1) The board of directors of an institution shall annually appoint an examining committee of not less than three stockholders of the institution who are not active officers of the institution or not less than three other persons who are approved by the superintendent. The examining committee shall examine and study the report of each examination made by bank supervising authorities and report to the board of directors within 60 days after receipt of the report relative to criticisms and suggestions contained in the report and comment on any matter relative to the affairs of the institution which in its judgment should be known to the directors. The report shall be recorded in the minute book of the institution, and a certified copy transmitted to the superintendent within five days.

(2) The board of directors of an institution shall employ competent persons approved by the superintendent to make an annual audit of the institution, and the report prepared shall be submitted to the board of directors and made a part of the minutes of the next regular meeting. A copy of the report shall be transmitted to the superintendent.

(3) The superintendent may accept the report of persons appointed with his approval in lieu of the report to be made by the examining committee, under subsection (1) of this section. [Amended by 1973 c.797 §96]

707.750 Determination of general fitness of examining committee and auditors by superintendent. The superintendent may investigate the honesty and general fitness of persons named under ORS 707.740 for the internal audit of an institution or to conduct an annual audit. He may disapprove any such person for any reason, one of which may be a reason stated in subsection (1) of ORS 707.145. [1977 c.135 §20]

707.990 [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,
October 1, 1979.

Thomas G. Clifford
Legislative Counsel