Chapter 711

1981 REPLACEMENT PART

Merger and Conversion; Reorganization; Liquidation; Insolvency

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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) "Converting bank" means a bank converting from a state to a national bank, or from a national bank to a state bank.

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

(3) "Merger" includes consolidation.

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

(5) "Resulting bank" means the bank resulting from a merger or conversion. [Amended by 1973 c 797 §218]

711.010 Merger with or conversion into national bank by state bank. (1) A bank may merge with or convert into a resulting national bank. The merger or conversion shall be governed by federal law in effect at the time of the merger or conversion.

(2) Upon completion of the merger or conversion, the charter of a merging or converting bank shall terminate, except for the purposes specified in ORS 711.040. [Amended by 1973 c 797 §219]

711.015 Merger to form state banks; conversion of national banks into state banks. Upon approval by the superintendent, 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 and the rights of its dissenting stockholders are subject to the requirements imposed by federal law. [Amended by 1973 c 797 §220]

711.020 Merger agreement. (1) The merger agreement shall be approved by a majority of the entire board of directors of each merging bank. The merger agreement shall contain:

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

(b) The terms and conditions of the proposed merger.

(c) The manner and basis of converting the shares of each merging bank into shares, obligations and other securities of the resulting bank or a holding company of the resulting bank or, in whole or part, into cash or other property.

(d) A statement of any changes in the articles of incorporation of the resulting bank to be put into effect by the merger agreement.

(e) Any other provisions with respect to the proposed merger that the superintendent finds necessary.

(2) After approval by the board of directors of each merging state bank, the merger agreement shall be submitted to the superintendent for approval, with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board. Evidence of proper action by the board of directors of any merging national bank shall also be included. The applicants shall submit with any request for approval of a merger a nonrefundable application fee of $3,000. [Amended by 1973 c 797 §221, 1977 c 135 §24; 1981 c 192 §15]

711.022 Approval of merger agreement. (1) Within 90 days after receiving the papers specified in ORS 711.020 (2), unless the time has been further extended by the Superintendent of Banks in concurrence with the applicants, the superintendent shall approve or disapprove the merger agreement. The superintendent shall approve the agreement if the superintendent finds that:

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

(b) The agreement provides an adequate capital structure, including surplus.

(c) The agreement is fair to the merging banks and to their stockholders.

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

(2) If the superintendent disapproves an agreement, the superintendent shall state any objections in writing and give the boards of the merging banks an opportunity to amend the merger agreement to obviate the objections. The amended merger agreement shall be submitted to the superintendent for approval as if it were the original merger agreement.

(3) The merging banks may appeal the decision of the superintendent as provided in ORS 183.415 to 183.430, 183.440 to 183.460, 183.470 to 183.485 and 183.490 to 183.500. [1973 c 797 §222, 1975 c 544 §29a, 1981 c 192 §16]

711.025 Stockholders to approve of merger; notice of meeting. (1) To be effective, a merger shall be approved by the stockholders of each merging bank by a vote of two-thirds of the outstanding stock of each class of voting shares at a meeting called to consider the merger. Approval of the merger by the stockholders constitutes the adoption of the articles of incorporation of the resulting bank, including any amendments to the articles in the merger agreement. If the merger agreement adopts any provision enumerated in ORS 57.365 affecting the rights of nonvoting stockholders, the nonvoting stockholders may vote as a class on the merger.

(2) Unless waived in writing by all holders of shares entitled to vote on the merger, each merging bank shall give notice of the meeting to vote on the proposed merger to each stockholder of record entitled to vote on the merger at the address of the stockholder in the books of the bank of the stockholder at least 15 days before the date of the meeting. The notice shall be accompanied by a copy of ORS 711.042, 711.045 and 711.047, and shall explain that the sections establish the rights of dissenting stockholders. The notice shall also include any other information that the superintendent may require. [Amended by 1973 c 797 §223, 1981 c 192 §17]

711.030 Effect of merger to form state bank; certificate of merger. (1) A merger shall, unless a later date is specified in the agreement, become effective upon the filing with the superintendent of the approved merger agreement, copies of the resolutions of the stockholders of each merging bank approving the merger and a list of owners of shares who voted against the merger, certified by an officer of the bank. The charters of the merging banks, other than the resulting bank, shall terminate when the merger becomes effective.

(2) The superintendent 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. The certificate shall be prima facie evidence of the merger and of the correctness of all proceedings 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. [Amended by 1973 c 797 §224]

711.032 Stock of merging bank not capital. Stock of a merging bank acquired by the resulting bank in the process of a merger is not capital. [1973 c 797 §225]

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 if he finds that the bank meets the standards as to location of offices, capital structure and qualification of officers and directors as apply for the incorporation of a state bank.

(2) The national bank may apply for a charter by filing with the superintendent:

(a) A certificate signed by its president, cashier and a majority of the entire board of directors, specifying 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

(b) The articles of incorporation, approved by the stockholders, for the operation of the bank as a state bank. [Amended by 1973 c 797 §226]

711.040 Effect of merger; rights, powers and duties of resulting banks. (1) When a merger becomes effective:

(a) The separate existence of all banks participating in the plan of merger, except the existence of the resulting bank, ends; and

(b) The resulting bank is a corporate entity with all the property, rights, powers and duties of each merging bank or the converting bank, except as affected by state law in the case of a resulting state bank or federal law in the case of a resulting national bank, and by the charter, articles of incorporation and bylaws of the resulting bank.

(2) All property, all debts, all choses in action and every other interest of each merging or converting bank is transferred to and vested in the resulting bank without any further act or deed of any party to the merger or conversion. The title to or any interest in any real estate vested in any merging or converting bank may not revert or be impaired because of the merger or conversion.

(3) When a merger or conversion becomes effective, the resulting bank shall be liable for all liabilities and obligations of each of the

merging or converting banks. Any existing or pending claim, action or proceeding by or against any merging or converting bank may be prosecuted as if the merger or conversion had not taken place, or the resulting bank may be substituted in its place. A merger or conversion may not impair the rights of creditors or depositors of a merging or converting bank or any liens upon the property of a merging or converting bank.

(4) A resulting bank may use the name of the merging bank or the converting bank whenever it can do any act under the name more conveniently.

(5) Any reference to a merging or converting bank in any writing, whether executed or taking effect before or after the merger or conversion, is a reference to the resulting bank if consistent with the other provisions of the writing, and if the resulting bank is authorized to exercise the powers conferred or required by the writing. [Amended by 1973 c 797 §227, 1981 c 192 §18]

711.042 Dissenting stockholder splitting vote prohibited. A stockholder shall not dissent as to less than all the shares registered in his name; except a stockholder holding, as a fiduciary, shares registered in his name for the benefit of more than one beneficiary, may dissent as to less than all of the shares registered in the fiduciary's name if any dissent as to the shares held for a beneficiary is made as to all the shares held by the fiduciary for that beneficiary. The fiduciary's rights shall be determined as if the shares to which he has dissented and his other shares are registered in the names of different stockholders. [1973 c 797 §228]

711.045 Rights of stockholders dissenting to merger; demand required. (1) A dissenting stockholder of a merging bank shall receive the value in cash of those shares which were voted against a merger upon written demand made to the dissenting stockholder's bank or to the resulting bank and accompanied by the surrender of the share certificates if the dissenting stockholder makes the demand within 30 days after the stockholders' meeting at which the vote to approve the merger was taken.

(2) The value of the shares of the dissenting stockholders making written demand under subsection (1) of this section shall be ascertained, as of the effective date of the merger, by three appraisers. One appraiser shall be selected by a vote of the owners of two-thirds of the shares involved at a meeting called by the superintendent on 10 days' notice, one selected by the board of directors of the resulting bank and the third selected by the two so chosen. The valuation agreed upon by any two appraisers shall govern, and all the dissenting stockholders involved shall be bound by the amount so fixed. 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 shall cause an appraisal to be made. The expenses of appraisal shall be paid by the resulting bank.

(3) The amount due under the appraisal shall constitute a debt of the resulting bank.

(4) The superintendent may require as a condition of approving the plan of merger the replacement of all or a portion of the capital of the resulting bank expended in payment to dissenting stockholders under this section. [Amended by 1973 c.797 §229, 1975 c 544 §30; 1977 c 135 §25, 1981 c 192 §19]

711.047 Withdrawal by stockholder of demand for value of shares under ORS 711.045. A dissenting stockholder making a demand under ORS 711.045 may not withdraw the demand unless the merging bank consents to the withdrawal. When a dissenting stockholder withdraws the demand, the stockholder's right to be paid the value of the shares shall end and the stockholder's status as a stockholder shall be restored, without prejudice to any corporate proceedings taking place in the interim:

(1) If the demand is withdrawn upon consent;

(2) If the board of directors abandons or rescinds the proposed corporate action or the stockholders revoke the authority to take the action;

(3) If no demand or petition for the determination of value by the parties is made or filed within the time provided in ORS 711.045 (2); or

(4) If a court of competent jurisdiction determines that the dissenting stockholder is not entitled to relief under ORS 711.045. [1981 c 192 §21]

711.050 Successor fiduciaries to merging or converting banks. If a merger or conversion involves a trust company, the superintendent shall not approve the merger

or conversion until satisfied that adequate provision has been made for successor fiduciaries. [Amended by 1973 c.797 §230]

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 bank or carries on business activities which are not permitted for the resulting bank, the superintendent may permit a reasonable time to conform with state law. [Amended by 1973 c 797 §231]

711.060 Valuation of assets on books of resulting banks. Without approval by the superintendent, an asset shall not be carried on the books of the resulting bank at a valuation higher than that on the books of the merging or converting bank at the time of its last examination prior to the effective date of the merger or conversion. [Amended by 1973 c 797 §232]

REORGANIZATION OF INSTITUTIONS

711.105 [Repealed by 1973 c 797 §428]

711.110 Preparation of plan of reorganization. (1) If the board of directors of an institution determines that a reorganization of the institution is advisable, the board shall prepare a plan of reorganization.

(2) Upon request of the board of directors of an institution, the superintendent may prepare and submit to the board a plan of reorganization. [Amended by 1973 c 797 §233]

711.112 Approval of plan of reorganization. (1) A plan of reorganization approved by the board of directors of an institution shall be submitted to the superintendent for approval. The superintendent shall approve the plan if he finds that:

(a) The reorganized institution meets the requirements of law as to the formation of a new institution;

(b) The plan provides an adequate capital structure, including surplus;

(c) The plan is fair to stockholders, depositors and creditors of the institution; and

(d) The reorganization is in the public interest.

(2) If the superintendent disapproves a plan, he shall state his objections in writing and give the board an opportunity to amend the plan to obviate the objections. The amended plan may be submitted to the superintendent for approval as if it were the original plan.

(3) The institution may appeal the decision of the superintendent as a contested case under ORS 183.415 to 183.430, 183.440 to 183.460, 183.470 to 183.485 and 183.490 to 183.500. [1973 c.797 §234]

711.115 Binding effect of reorganization plan. A plan of reorganization approved by the board of directors of an institution and the superintendent is binding on all depositors, other creditors and stockholders of the institution, if the plan has been approved in writing by:

(1) The stockholders of the institution owning at least two-thirds of the capital stock; and

(2) The 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. [Amended by 1973 c 797 §235]

711.120 [Repealed by 1973 c 797 §428]

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) Subject to the prior written approval of the superintendent, the board of directors of an institution may sell all or any substantial part of the assets or transfer or sell the deposit liabilities of the institution or any department of the institution. The amount of the sale and the time and manner of payments may be agreed to by the board of directors.

(2) In addition to the requirements in subsection (1) of this section, if the sale is of all or any substantial part of the assets of the institution, the institution may sell only to another institution or national bank and notice of the proposed sale and all the terms of the sale shall be mailed to all the stockholders of the selling institution within 20 days after the board of directors' meeting at which the sale and its terms were proposed. If the sale is of any department or substantially all the assets of a department, the institution may

sell to anyone qualified to transact the business of the department.

(3) If all, or any part, of the sales price is paid by the purchaser assuming all or a part of the deposit and preferred liabilities of the selling institution, the deposit and preferred liabilities so assumed are payable by the purchaser on the same terms as the selling institution was obligated to pay the liabilities.

(4) If the sale is of all or a substantial part of the assets, but less than all deposit and preferred obligations of the selling institution are assumed by the purchaser or sufficient cash is not paid by the purchaser to care for all such obligations, then, upon the completion of the sale, the institution is insolvent and the remaining assets of the selling institution shall pass into the possession and control of the superintendent.

(5) The superintendent shall approve the sale of the assets or the sale or transfer of the deposit liabilities if he finds that the transaction:

(a) Involves a qualified purchaser or transferee;

(b) Is fair; and

(c) Is in the public interest. [Amended by 1973 c 797 §236]

711.207 Rights of dissenting stockholder in sale of all or substantially all of assets. (1) A stockholder who objects to the action of the institution in selling all or substantially all of the assets of the institution pursuant to ORS 711.205 shall receive the value in cash for his shares upon written demand made to the institution at any time within 30 days after notice of the proposed sale has been mailed to him and upon the surrender of the stock certificates.

(2) The value of such shares shall be determined as of the date of the board of directors' meeting at which the sale and its terms are proposed.

(3) Within 10 days after receipt of the written demand as provided in subsection (1) of this section, the institution shall make a written offer to the stockholder to pay for the shares at a specified price. If such stockholder and the institution cannot agree as to the value of the stock within 30 days after receipt of the written demand from the stockholder, three appraisers shall be selected to determine the value of the shares of the stockholder and all other stockholders who have made written demand and who cannot agree with the institution as to the value of their shares. One appraiser shall be selected by the vote of the owners of two-thirds of the shares involved at a meeting called by the superintendent on 10 days' notice, one selected by the board of directors of the institution and one selected by the two so chosen. The valuation agreed upon by any two appraisers governs, and all stockholders involved are bound by the agreed upon value. If any necessary appraiser is not appointed within 60 days after the receipt of the written demand for payment or if the appraisal is not completed within 90 days after receipt of the written demand for payment, the superintendent shall cause an appraisal to be made. The expenses of appraisal shall be paid by the institution. [1973 c 797 §237]

711.210 [Repealed by 1973 c 797 §428]

711.215 Voluntary liquidation on approval of stockholders and superintendent. An institution may go into voluntary liquidation by vote of its stockholders owning at least two-thirds of its capital stock. The institution shall first obtain the written consent of the superintendent. Before consenting to the liquidation the superintendent may require a special examination of the condition and affairs of the institution. The fees provided in ORS 706.530 shall be collected for the examination. [Amended by 1973 c 797 §238]

711.217 Transactions exempt from ORS 711.220 to 711.235. In a transaction where a purchasing institution assumes or agrees to pay all the liabilities of the liquidating institution ORS 711.205 applies, but ORS 711.220 to 711.235 do not apply. [1973 c 797 §239]

711.220 Notice of voluntary liquidation; presentation of claims. (1) If a vote is taken authorizing the voluntary liquidation of an institution, the board of directors shall cause to be published in a newspaper of general circulation in the city, town or county in which the principal office of the institution is located, at least once a week for four consecutive weeks, notice of the liquidation notifying depositors, other creditors or claimants to present their claims for payment.

(2) Claims of depositors shall be paid upon the presentation of a check, passbook, certificate of deposit or other instrument required for payment before the institution went into voluntary liquidation. Disputed claims shall be presented in writing for allowance or rejec-

tion 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, an institution in voluntary liquidation shall mail a written notice of its intention to liquidate to the last-known address of all depositors and other creditors who have not yet claimed the full amount shown to be due them according to the records of the institution. [Amended by 1973 c 797 §240]

711.225 Report and transfer of unclaimed deposits. (1) All deposits which remain unclaimed after six months from the date of the written notice mentioned in ORS 711.220 (3), shall be reported and transferred by the institution to the Division of State Lands as abandoned property under ORS 98.302 to 98.436.

(2) A copy of the report of unclaimed deposits filed with the Division of State Lands shall be filed with the superintendent. [Amended by 1957 c 670 §33, 1959 c 138 §1, 1973 c 797 §241]

711.230 Claims; time within which presented; extension of time. (1) Claims of all persons, other than depositors, against the institution shall be presented in writing to the institution within one year after the date of first publication provided for in ORS 711.220, unless barred by an earlier period of limitation. Claims arising out of the expense of liquidation may be filed at any time prior to the closing of the liquidation.

(2) The board of directors shall, within 30 days after the presentment of a claim, allow or reject the claim, in whole or in part, noting the same in their minutes. The board shall notify the claimants in writing of its action, either by personal service or by mail. Any claim rejected or disallowed is barred unless action to adjudicate the claim is commenced within 60 days after the date of service or mailing of notice of disallowance or rejection.

(3) The board of directors may extend the time within which to receive claims and continue the liquidation after the expiration of the time allowed in this section for the filing of claims. Any new claims filed after the time shall be allowed and paid or rejected in the same manner as provided for other claims. If the liquidation is continued, the transfer of unclaimed deposits to the Division of State Lands may be delayed to such time as designated by the superintendent. [Amended by 1959 c 138 §2, 1973 c 797 §242]

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 Division of State Lands, the board of directors shall make a complete report of the liquidation to the superintendent and shall certify to him that all claims have been paid or finally determined.

(2) Any claims received and approved after the report has been filed with the superintendent shall be paid if the remaining assets are sufficient.

(3) When the report has been approved by the superintendent the board of directors may proceed to liquidate the remaining assets and distribute them to the stockholders or other persons entitled to receive them according to their respective rights and interests without further report to the superintendent. [Amended by 1959 c 138 §3, 1973 c 797 §243]

711.240 Supervision and control by superintendent. The superintendent shall supervise and control an institution in voluntary liquidation until the final report is filed to the same extent he supervises and controls any other institution. [Amended by 1973 c 797 §244]

711.245 [Repealed by 1973 c 797 §428]

711.250 Engaging in banking business prohibited after liquidation, transfer of deposit liabilities or ceasing to do business for one year; dissolution. (1) An institution may not engage in the banking or trust business if the institution goes into voluntary liquidation, is closed because of insolvency, sells all or substantially all of its assets to another institution which takes over and assumes its deposit liabilities or does not engage in the banking or trust business for a period of one year.

(2) An institution shall, within one year after it ceases to do a banking or trust business, amend its articles of incorporation by eliminating the power to engage in a banking or trust business or it is dissolved and shall not 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 stops

doing 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 shall be substituted for the Corporation Commissioner. [Amended by 1959 c 54 §1; 1973 c 797 §245]

IMPAIRMENT OF CAPITAL

711.305 When capital deemed impaired. The capital of an institution is impaired when the sound value of the assets of the institution is insufficient to pay its liabilities plus the amount of its paid-up capital stock. In determining the liabilities, the liability on capital debentures shall not be included. In determining the value of the assets any bonds held by the institution shall be valued according to rules promulgated by the superintendent pursuant to ORS 183.310, 183.315, 183.330, 183.335 and 183.341 to 183.410. [Amended by 1973 c 797 §246]

711.310 Notice to make good impairment; stockholders' meeting; assessment or capital reduction; resumption of business. (1) If it appears to the superintendent that the capital of an institution is impaired, the superintendent shall notify the institution to restore the capital.

(2) The directors of the institution shall, within three days after receipt of the notice from the superintendent, call a meeting of the stockholders of the institution. The stockholders' meeting shall be held within 15 days after notice of the meeting has been mailed to the stockholders. At the meeting the stockholders shall:

(a) Make an assessment on the stock of the institution in an amount sufficient to cover the impairment of the capital or in an amount determined by the superintendent to be necessary for the safety of the institution; or

(b) Reduce the capital of the institution to the extent of the impairment, if the reduction will not place the capital below an amount determined by the superintendent to be necessary for the safety of the institution.

(3) If the directors fail to call or hold the meeting of the stockholders or the stockholders fail to levy the assessment or reduce the capital, as provided in subsection (2) of this section, the superintendent may close the institution, take possession of its assets and proceed with the liquidation of the institution.

(4) The institution may resume business with the consent of the superintendent upon conditions approved by him. [Amended by 1973 c 797 §247, 1975 c 544 §31]

711.315 Notice of assessment; sale of stock upon failure to pay. (1) The directors shall fix the time when the assessment made at the stockholders' meeting is due, which shall be at least 15 days but not more than 30 days after the 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 institution.

(2) If any stockholder fails to pay in cash the amount of the assessment against his shares when due, the directors of the institution shall sell the shares:

(a) At public sale upon 10 days' notice, given by posting copies of the notice of sale in three public places in the city, town or community where the institution is located; or

(b) 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 institution.

(3) Upon sale of any shares as provided in this section:

(a) The purchaser shall pay in cash the amount of the assessment;

(b) The outstanding certificates evidencing the shares so sold are void; and

(c) The institution shall issue a new certificate to the purchaser.

(4) The amount received from the sale of the shares shall be paid to the institution to be applied toward the cost and expenses of the sale. Any balance remaining shall be paid to the party owning the shares at the time the assessment was made.

(5) If the shares do not sell, the remaining shareholders may purchase the unsold shares and restore the capital. If they fail to do so, the capital remains impaired, and the superintendent may take possession of the property and affairs of the institution and proceed as if the institution were insolvent. [Amended by 1973 c 797 §248, 1975 c 544 §32]

711.320 Sale of assets to another bank or trust company when capital impaired one-half. If one-half of the capital of an institution is impaired the institution, by authority of its board of directors and with the approval of and upon terms prescribed by the superintendent, may sell all or any of its

assets as provided in ORS 711.205. [Amended by 1973 c 797 §249]

INSOLVENCY; LIQUIDATION BY SUPERINTENDENT

711.400 Supervision of liquidation by circuit court; called "supervising court." The circuit court of the county in which the principal office of an institution is located:

(1) Shall, as directed in ORS 711.400 to 711.615, supervise the liquidation of an institution; and

(2) Is referred to in ORS 711.400 to 711.615 as the supervising court. [1973 c 797 §250]

711.405 When bank deemed insolvent. Insolvency occurs when:

(1) The sound value of the assets of an institution is insufficient to pay its liabilities, other than liability on account of capital debentures or capital stock. In determining the value of its assets, bonds held by the institution shall be valued in accordance with rules promulgated by the superintendent pursuant to ORS 183.310, 183.315, 183.330, 183.335 and 183.341 to 183.410.

(2) A bank fails to make good its reserve, as required under ORS 708.136, within 30 days after receipt of notice from the superintendent that its reserves are below the required level.

(3) A bank cannot meet its obligations or the demands upon it. [Amended by 1973 c 797 §251; 1975 c 544 §35]

711.410 Transfer of assets after commission of act of insolvency or in contemplation of insolvency is void. All transfers of assets made after the commission of an act of insolvency or in contemplation of insolvency, to prevent the application of the assets in the manner prescribed by the Bank Act or to the preference of one creditor to another are void. [Amended by 1973 c 797 §252]

711.415 Receiving deposits while insolvent. A director, officer or employe of any bank shall not receive or permit to be received any deposit, knowing the bank is insolvent. [Amended by 1973 c 797 §253]

711.419 Taking possession of institution by superintendent. After the commission of an act of insolvency, the superintendent may take possession of the property and affairs of the bank and proceed to liquidate it as provided under ORS 711.400 to 711.615. [1975 c 544 §34]

711.420 [Repealed by 1973 c 797 §428]

711.425 [Repealed by 1973 c 797 §428]

711.430 Placing business in control of superintendent; notice. (1) An institution may place its property and affairs under the control of the superintendent to be liquidated by notifying the superintendent of its proposed action and by posting a notice on its doors as follows: "This Bank (or Trust Company) Is in the Hands of the Superintendent of Banks."

(2) The posting of the notice or the taking possession of an institution by the superintendent is sufficient to place all its property and affairs of whatever nature in the possession of the superintendent and operates as a bar and dissolution to any attachment proceedings. [Amended by 1973 c 797 §254, 1975 c 544 §36]

711.435 Resumption of business of bank placed in control of superintendent. (1) If the superintendent discovers, upon taking charge of an institution that it is only temporarily short of available funds, and that its assets are sufficient to pay its liabilities, leaving its capital unimpaired, or the stockholders will arrange to make good its capital, if impaired, he may permit the officers and directors of the institution to arrange with its depositors and creditors for an extension of time for payment of the depositors and creditors.

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

(3) The institution shall pay, at the actual per diem cost, for the service of the superintendent and his employes in taking charge of and looking after the affairs of the institution during the time it was under his control. The money so received shall be deposited with the State Treasurer to be credited to the State Banking Fund. [Amended by 1973 c.797 §255]

711.440 Receivers and assignments for benefit of creditors; notice to and action by superintendent. (1) Notice shall be given to the superintendent before a receiver is appointed by any court or a deed of assignment for the benefit of creditors is filed in any court for an institution unless it is necessary so to do in order to preserve the assets of the institution.

(2) The superintendent may, within five days after the service of the notice upon him, take possession of the institution, in which case no further proceedings shall be had upon the application for the appointment of receiver or under the deed of assignment. If a receiver has been appointed or the assignee has entered upon the administration of his trust, the appointment shall be vacated or the assignee shall be removed upon application of the superintendent to the court.

(3) The superintendent shall proceed to administer the assets of the institution as provided in ORS 711.475 to 711.510. [Amended by 1973 c 797 §256]

711.445 Notice of taking possession of institution; liens subsequent to insolvency prohibited. (1) Upon taking possession of the property and business of an institution, the superintendent shall give written notice of the fact to all persons holding or in possession of any assets of the institution.

(2) A person knowing that the superintendent has taken possession of an institution shall not 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 institution. [Amended by 1973 c 797 §257]

711.450 Injunction against superintendent taking possession. (1) At any time within 10 days after the superintendent takes possession and control of the property and affairs of an institution, the institution may apply to the supervising court for an order requiring the superintendent to show cause why he should not be enjoined from continuing possession.

(2) The supervising court may, upon good cause shown, direct the superintendent to refrain from further proceedings and to surrender possession. [Amended by 1973 c 797 §258; 1975 c 544 §37]

711.455 [Repealed by 1973 c 797 §428]

711.460 [Repealed by 1973 c 797 §428]

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

(2) Upon being notified in writing of the acceptance of the appointment, the superintendent shall file a certificate evidencing the appointment of the Federal Deposit Insurance Corporation in the office of the superintendent and the office of the Secretary of State. Upon the filing of the certificate the possession of all the assets, business and property of the bank shall be transferred from the bank and the superintendent to the Federal Deposit Insurance Corporation, and without the execution of any instruments of conveyance, assignment, transfer or indorsement the title to all such assets and property shall vest in the Federal Deposit Insurance Corporation. The superintendent shall be relieved from all responsibility and liability in respect to the liquidation of the bank. [Amended by 1973 c 797 §259]

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 the Federal Deposit Insurance Corporation pays or makes available for payment the insured deposit liabilities of the closed insured bank, the Federal Deposit Insurance Corporation is subrogated to all rights against the closed insured bank of the owners of deposits to the extent of any payments made by the corporation to the depositors. [Amended by 1973 c 797 §260]

711.475 Inventory of assets; filing notice of taking possession. Upon taking possession of the property of an institution to liquidate its affairs, the superintendent shall:

(1) Inventory the assets of the institution. The inventory shall be prepared in duplicate with one copy filed in his office and one in the office of the clerk of the county in which the principal office of the institution is located.

(2) Within a reasonable time, file with the clerk of the supervising court a notice that he has taken possession and the time of taking possession.

(3) Proceed to liquidate the affairs of the institution, collect debts due the institution and do what is necessary to preserve the assets and business of the institution. [Amended by 1973 c 797 §261]

711.480 Sale of assets. (1) Upon order of the supervising court, the superintendent may:

(a) Sell or compromise any bad or doubtful debts, including the individual liability of any stockholder of the institution.

(b) Sell all or any of the real estate and personal property of the institution on terms directed by the supervising court.

(2) The superintendent, upon compliance with the terms of the sale of property, shall execute and deliver to the purchaser of the 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 principal office of the institution is located, a certified copy of the order authorizing and ratifying the sale shall be filed in the office of the clerk of the county in which the property is situated. [Amended by 1973 c 797 §262]

711.485 Borrowing funds to pay closed institution expenditures. The superintendent may, after he has obtained the consent of the supervising court, borrow funds from any source available to be used for distribution among depositors or other creditors of the institution in the process of liquidation, or for expense of liquidation or preservation of the assets of the institution. To secure the loan, the superintendent may pledge, on terms fixed by the lender and agreed to by the superintendent, all or any portion of the assets of the institution. The superintendent is not personally obligated to pay the loans. [Amended by 1973 c 797 §263]

711.490 Capital stock requirements of institution purchasing assets and assuming liabilities of insolvent institution. If the assets of an insolvent institution are sold to a new institution and the new institution assumes any or all of the deposit liabilities of the insolvent institution with the approval of the superintendent and the supervising court, the new institution may be organized with a capital stock equal to the capital stock of the insolvent institution without regard to the capital requirements of ORS 707.050. [Amended by 1973 c 797 §264]

711.495 Action by superintendent to collect balance due on stock or stock assessment. If an institution becomes insolvent and is taken in charge by the superintendent for liquidation, the superintendent may maintain an action against any stockholder, whose stock or assessment on the stock has not been fully paid, for the collection of the unpaid balance. The action may be prosecuted against one or more stockholders, singly or collectively. [Amended by 1973 c 797 §265]

711.500 Liability of transferor of stock made in contemplation of insolvency; proceedings to relieve a stockholder of liability prohibited. (1) Stockholders in an institution who have transferred their stock or registered the transfer of their stock within 60 days before the date of the closing of the institution or with the knowledge of the impending closing or failure, are liable, as if the transfer had not been made, to the extent that the subsequent transferee fails to pay the unpaid balance on the stock. This subsection does not affect any recourse which a former stockholder might otherwise have against those in whose name the stock is registered at the time the institution closes.

(2) An action may not be brought by the holder of any stock standing in the name of the stockholder on the books of an institution at the time it closes which will relieve the stockholder of his liability as a stockholder. [Amended by 1973 c.797 §266]

711.505 Liability of fiduciary as stockholder; liability of estate and funds. A person holding stock of an institution as a fiduciary, as collateral security or in pledge, is not personally subject to any liability as a stockholder. The person pledging the stock is liable as a stockholder. The estate and funds in the hands of the fiduciary are liable to the same extent as the testator, intestate, protected person or person interested in the trust fund would be liable if he were able to act and hold the stock in his name. [Amended by 1973 c 797 §267; 1973 c 823 §146; 1974 s s c 36 §27]

711.510 Deposit of money collected; payments of claims out of assets; security for deposit. (1) The moneys collected by the superintendent under ORS 711.495 shall be, from time to time, deposited in one or more banks, subject to his order.

(2) The superintendent shall require any bank in which he deposits money under this section to furnish security therefor satisfactory to him for the safekeeping and prompt payment of the money deposited. [Amended by 1973 c 797 §268]

711.515 "Depositor" defined; preferences among depositors. (1) As used in ORS 711.515 to 711.525, "depositor" includes purchasers or holders in due course of certificates of deposit, cashiers' checks, certified checks, outstanding unpaid drafts drawn or issued by an institution, unsecured letters of credit and unsecured drafts accepted by the institution if the instruments enumerated are issued pursuant to cash or credit actually received or realized by the institution.

(2) A depositor or deposit, including deposits of the State of Oregon or any county, city or political subdivision thereof, shall not have a preference or prior lien on any assets of an insolvent institution over the claims of other depositors or deposits, unless the assets have been pledged as security in compliance with the provisions of law. This subsection does not apply to any claims or demands involving funds held by an institution under an express oral or written trust agreement, where a preference to the trust funds may be established by evidence satisfactory to the superintendent and the supervising court. [Amended by 1973 c 797 §269]

711.520 Priority of claimants against assets of institution that is insolvent or in liquidation. If an institution becomes insolvent or goes into voluntary or involuntary liquidation, the assets of the institution shall be applied in the following order of priority:

(1) First, if the assets have been pledged under ORS 295.015, 708.220, 708.225 and 709.030, to the benefit of those for whom the assets have been pledged;

(2) Second, to pay the expenses of liquidation; and

(3) Third, to satisfy the amount due the depositors. [Amended by 1973 c 797 §270]

711.525 Interest on deposits after bank closes. Interest on unsecured interest-bearing deposits and on secured interest-bearing deposits other than public funds shall stop on the date any bank is placed in the hands of the superintendent for liquidation. Interest on public funds which are secured as provided in ORS chapter 295 and ORS 708.230, shall continue at the rate being paid by the bank prior to the time it closed. [Amended by 1973 c 797 §271]

711.530 Notice to creditors to present claims. The superintendent shall cause notice to be given by advertisement, in a newspaper of his choice, weekly for four consecutive weeks, notifying persons with claims against an institution which the superintendent has taken possession of for the purpose of liquidating its affairs, to present the claim to the superintendent, with legal proof of the claim, at a designated place on or before the expiration of 60 days after the date of the first publication of the notice. The notice shall state the date of the first publication. The superintendent shall mail a similar notice to all persons whose names appear as creditors upon the books of the institution. Failure to mail the notice to any creditor does not give the creditor any right or impose any liability on the superintendent. [Amended by 1973 c 797 §272]

711.535 Verification and filing of claims; demand for preference. (1) All claims shall be verified and filed with the superintendent. If a claimant asserts a preference other than the preference given in ORS 711.520 to depositors, the claim shall include a demand for preference and a statement of the grounds upon which preference is claimed.

(2) Any claim for preference shall be filed with the superintendent and the supervising court, before the expiration of the time fixed under ORS 711.530 in the notice to creditors. If a claim for preference is not filed within the designated time, it is barred. [Amended by 1973 c 797 §273]

711.540 Approval or rejection of claims. (1) Within a reasonable time after the expiration of the time fixed in the notice to creditors the superintendent shall approve or reject, in whole or in part, every claim filed.

(2) Depositors' claims asserting no priority or preference other than the preference given under ORS 711.520 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 or rejected, in whole or in part within a reasonable time after the claims are filed with the superintendent.

(3) The approval or rejection of any claim by the superintendent shall be indorsed in writing upon the claim and the superintendent need not state his reasons for the approval or rejection. The superintendent may at any time alter or amend the previous approval or rejection of any claim. [Amended by 1973 c 797 §274]

711.545 Objection to approval of claims. (1) If a creditor of the closed institution or any interested party objects to the action of the superintendent in allowing in whole or in part any claim filed with the superintendent, he shall, within 10 days after the list of allowed claims has been filed with the clerk of the supervising court, make and file with the clerk of the supervising court a verified statement of his objections. The statement shall state the facts and reasons upon which the objections are based and include a notice that the objecting party appeals to the supervising court. Objections to the approval of any claim may be made at any time but, if not filed within the 10-day period, the objections shall apply only to that portion of the claim which has not yet been paid.

(2) A copy of the objections and notice shall be served upon the superintendent and upon the creditor whose claim is challenged. Proof of the service shall be filed in the supervising court with the statement of objections.

(3) The statement of objection filed in the supervising court shall also have attached to it a copy, certified as correct by the superintendent, of the claim so approved and the approval of the claim indorsed thereon by the superintendent. [Amended by 1973 c 797 §275]

711.550 Objection to rejection of claims. (1) If the superintendent rejects any claim in whole or in part written notice of the rejection 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 the address indicated by the claimant on the proof of claim filed with the superintendent. If no 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 institution. If notice of rejection is given by mail, the notice is considered to have been given by the superintendent on the day when the notice of rejection is properly addressed and deposited in the mails, postage prepaid. Proof of giving of notice of rejection by the superintendent shall be made by affidavit, and the affidavit shall be prima facie evidence of the giving of notice. The affidavit shall be filed in the office of the superintendent.

(2) Within 30 days after the giving of the notice of rejection, the claimant, may appeal the rejection by serving the superintendent with notice of appeal and by filing the notice with the clerk of the supervising court with proof of service of the notice upon the superintendent and a copy, certified as correct by the superintendent, of the rejected claim and the indorsement made thereon by the superintendent. [Amended by 1973 c 797 §276]

711.554 Procedure for determination of claims. (1) After the filing of objections under ORS 711.545 or the filing of the notice and other papers under ORS 711.550 and upon the motion of any of the parties in interest, the supervising court, upon notice to all the parties, shall set the matter for trial.

(2) The trial shall be held in a summary manner upon the documents filed with the court. The person filing the statement of objection or the claimant whose claim was rejected has the burden of proof.

(3) An appeal from the decision of the supervising court to the appellate court may be taken by either party as from any other judgment or decree of the supervising court. [1973 c 797 §277]

711.555 [Repealed by 1973 c 797 §428]

711.560 Costs and disbursements in claim proceedings. A party to the proceedings upon any hearing provided for in ORS 711.554 shall not recover costs or disbursements from any other party. [Amended by 1973 c 797 §278]

711.565 Claims presented after time expired. Depositors' claims presented and allowed after the expiration of the time fixed in the notice to creditors may be paid the amount of all prior dividends therein, if there are sufficient funds, and share in the distribution of the remaining assets in the hands of the superintendent equitably applicable thereto. [Amended by 1973 c 797 §279]

711.567 Supervising court to bar claims to facilitate closing. To facilitate the final closing of the liquidation of the institution, the supervising court may, by order, bar

all claims at any time after one year from the date of the first publication of notice to creditors under ORS 711.530. [1973 c 797 §280]

711.570 Lists of claims. (1) Upon the expiration of the time fixed under ORS 711.530 for the presentation of claims, the superintendent shall make in duplicate a list of the claims presented specifying whether the claims have been approved, rejected or neither approved nor rejected pending further investigation. The list shall also note which claims have been presented to the supervising court for appeal. One copy of the list shall be filed in the office of the superintendent and one in the office of the clerk of the supervising court.

(2) The superintendent shall, in like manner, make and file supplemental lists showing all claims presented subsequent to the filing of the first list.

(3) The lists shall be filed in the supervising court at least 15 days before the payment of any dividend on the claims or the payment of any preferred claims. [Amended by 1973 c 797 §281]

711.572 Liability of directors for distributing assets without payment of known debts. The directors of an institution who vote for or assent to any distribution of assets of the institution to its stockholders during the liquidation of the institution without the payment and discharge of, or making adequate provision for, all known liabilities of the institution shall be jointly and severally liable to the institution for the value of the assets which are distributed, to the extent that the liabilities of the institution are not thereafter paid and discharged. [1973 c 797 §282]

711.575 Dividends to depositors. At any time after the expiration of the date fixed for the presentation of claims under ORS 711.530 the superintendent 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. The dividends shall be paid to the persons, in the amounts and upon the notice as may be directed by the supervising court. [Amended by 1973 c 797 §283]

711.577 Death of depositor, payment of claim. (1) Any person who would be entitled to withdraw a deposit under ORS 708.520 may claim the 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 ORS 708.520.

(2) If any claim is more than $500, dividends may be paid to the person entitled thereto, as provided in ORS 708.520, if the superintendent is satisfied that the total dividends to be paid after the death of the claimant are less than $100.

(3) The superintendent is 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 release of the superintendent for the amount of the dividends so paid. [1973 c 797 §284]

711.580 Safety deposit boxes; removal of property. (1) If an institution, at the time the superintendent takes possession of its property and business, has in its possession, as bailee, for safekeeping and storage, any valuable personal property, or has rented any vaults, safes or safe deposit boxes or any portion thereof for the storage of property of any kind, the superintendent may mail a notice to the person claiming to be or appearing upon the institution's books to be the owner of the property, or the person in whose name the safe, vault or box stands notifying them to remove the property within a period fixed by the notice but not less than 90 days after the date the notice is mailed. The notice shall be in writing and sent by registered mail directed to the person at the person's post-office address as recorded upon the books of the institution. The superintendent shall allow a person access to the institution so that the person may remove the person's property stored or kept with the institution as described in this subsection. The superintendent may require that the person show identification reasonably identifying the person as the person whose name appears as owner of the property on the institution's books or as the person in whose name the safe, vault or box stands. The superintendent may limit access to normal business hours.

(2) Upon the date fixed by the notice, the contract, if any, between a person and the institution for the storage of the property or for the use of the safe, vault or box is terminated, and the amount of the unearned rent or charges, if any, paid by the person becomes a debt of the institution to the person.

(3) After the date fixed in the notice the safe, vault or box may be opened in the presence of the superintendent, and a witness who

is not an officer or employe of the institution. A list and description of the property shall be made by the person opening the safe, vault or box and shall be attached to the property. The superintendent shall keep the property in one of the general safes or boxes of the institution until it is delivered to the person entitled to receive it or is disposed of as provided in ORS 711.582. [Amended by 1973 c 797 §285, 1981 c 397 §1]

711.582 Disposition of contents of safety deposit boxes. (1) If property is not removed within six months after the time fixed by the notice of the superintendent under ORS 711.580, the superintendent may sell the property under the direction of the supervising court. The proceeds of the sale shall be held for the benefit of the person entitled to the property. Any funds which have not been claimed within two years after the final order closing the liquidation of the institution may be disposed of in the manner prescribed in ORS 711.590 for unclaimed dividends and deposits.

(2) If papers or other articles which have no value and cannot be sold are not removed within six months after the time fixed in the notice of the superintendent, the superintendent shall store the papers and articles with the records of the insolvent institution. One year after the final order closing the liquidation of the institution the papers and articles may be destroyed in the manner prescribed in ORS 711.595 for the records of an insolvent institution. [1973 c 797 §286]

711.585 Selection of agents to wind up affairs of institution; bond; duties of agent. (1) When the superintendent has paid to each depositor and creditor of the institution whose claim as a depositor or creditor has been proved and allowed, the full amount of the 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 institution by giving notice of the meeting for 30 days in one or more newspapers circulated in the county in which the principal office of the institution is located. At the meeting the stockholders shall select, by ballot, one or more agents to administer the assets and wind up the affairs of the institution. A majority of the stock present and voting in person or by proxy is necessary to select an agent.

(2) The agent shall file with the superintendent 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. The 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 the agent files the required bond, the superintendent shall transfer to the agent all the assets of the institution remaining in his hands. Upon the transfer and delivery the superintendent is discharged from all further liability to the institution and its creditors. The agent shall complete the liquidation of the affairs of the institution, and, after paying the expenses of the liquidation, 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 after the advertised date or fail to appoint an agent, or if the agent fails to qualify as required in this section within 30 days after the date of their selection, the superintendent may appoint an agent. This agent shall file a bond and liquidate the affairs of the institution as though he had been selected by the stockholders. Upon the transfer and delivery to the agent appointed by the superintendent of all the remaining assets in his hands, the superintendent is discharged from all further liability to the institution and its creditors. [Amended by 1973 c 797 §287]

711.590 Disposition of unclaimed deposits; interest. (1) Two years after the date of the final order closing the liquidation of an institution, the superintendent 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 division, and pay the funds to the Division of State Lands as abandoned property to be disposed of as provided in ORS 98.302 to 98.436.

(2) The interest earned on the dividend accounts while they remain in the possession of the superintendent shall be paid to the State Treasurer to be credited to the State Banking Fund and the owner, his heirs or personal representative have no claim to the interest. [Amended by 1959 c 138 §4, 1973 c 797 §288]

711.595 Destruction of liquidation records in possession of superintendent. If any files, records, documents, books of account or other papers have been taken over and are in the possession of the superintendent in connection with the liquidation of an insolvent institution, the superintendent may, after one year from the declaration of the final dividend or from the date the liquidation has been closed by order of the supervising court, destroy any of the files, records, documents, books of account or other papers which appear to the superintendent to be unnecessary for future reference as part of the liquidation and files of his office. [Amended by 1973 c 797 §289]

711.600 Liquidation expenses. The expenses incurred by the superintendent in the liquidation of an institution include the expenses of deputies, assistants, clerks and examiners employed in the liquidation, reasonable attorney fees for counsel employed by the superintendent in the course of the liquidation, and stationery, rent, postage, telephone, telegraph and other office and traveling expense. The compensation of counsel, deputies, assistants, clerks and examiners and the expense of supervision and liquidation shall be fixed by the superintendent, subject to the approval of the supervising court. The supervising court shall not increase the compensation or expenses over the amount fixed by the superintendent. [Amended by 1973 c 797 §290]

711.605 Petitions relating to insolvent institutions; ruling by superintendent; court review. Any petition relating to an insolvent institution, except a petition by the superintendent, shall be filed with the supervising court and the superintendent. The superintendent shall, within a reasonable time after the petition is filed, grant or refuse the petition and notify the petitioner in writing of his decision. If a petitioner is dissatisfied with the decision of the superintendent he may, within 30 days after the decision of the superintendent, present the petition, with the decision of the superintendent, to the supervising court. The supervising court shall fix a date for the hearing of the petition, giving reasonable notice of the date to the petitioner and to the superintendent. The supervising court shall determine the matter upon the evidence produced by all the parties, and the burden of proof is upon the petitioner. [Amended by 1973 c 797 §291]

711.610 [Repealed by 1973 c 797 §428]

711.615 Court filing fees; recording fees. (1) Fees shall not be charged for the filing in the supervising court by the superintendent, his deputies or attorneys of any papers relating to the liquidation of an institution or which are necessary or convenient in connection with the collection of assets of an institution.

(2) A recording fee shall not be charged for recording certified copies of assessments against stockholders or deeds, mortgages or other instruments running in favor of the superintendent. [Amended by 1973 c 797 §292]

711.620 Suspending or restricting payment of liabilities; duration. (1) The superintendent may order a bank to suspend or restrict the payment of its liabilities to depositors and other creditors except as provided in ORS 711.620 to 711.670, if the action is necessary for the protection of the depositors and other creditors of the bank and is in the public interest.

(2) The order of the superintendent is effective upon receipt by the bank of written or telegraphic notice thereof signed by the superintendent and shall continue in effect until released or modified by the written order of the superintendent. The suspension and restriction shall not exceed a period of 90 days, but may be extended for further periods not to exceed 90 days each upon the written order of the superintendent. [1973 c 797 §293]

711.625 Taking possession of bank by superintendent; powers of superintendent; expenses. (1) When the order mentioned in ORS 711.620 takes effect, the superintendent shall immediately take possession of the property and affairs of the bank, and take whatever action is necessary to conserve the assets of the bank pending further disposition of its business.

(2) While the superintendent is in possession of a bank, he shall have all the powers given to the superintendent in connection with insolvent banks, and the rights of interested parties shall, subject to ORS 711.620 to 711.670, be the same as if the superintendent had taken possession of the bank because of insolvency.

(3) All expenses of the superintendent while in possession of the bank shall be paid out of the assets of the bank and shall be a lien on the assets prior to any other lien. [1973 c 797 §294, 1975 c 544 §38]

711.630 Pro rata withdrawals by depositors. While the bank is in the possession of the superintendent under ORS 711.625, he may set aside and make available for withdrawal by depositors on a ratable basis such amounts as in his opinion may safely be used for the purpose. [1973 c 797 §295]

711.635 Receiving new deposits; segregation. (1) While the bank is in the possession of the superintendent under ORS 711.625, the bank may accept deposits but the deposits shall not be subject to any limitation as to payment or withdrawal.

(2) Deposits received after the superintendent takes possession and the amounts released for payment to depositors under ORS 711.630, shall be segregated and held and used solely to meet the deposit liability and the pro rata amount so released. They shall not be used to liquidate any indebtedness of the bank existing at the time the superintendent took possession, or any subsequent indebtedness incurred in liquidating any indebtedness of the bank existing at the time the superintendent took possession.

(3) Deposits received while the bank is in the possession of the superintendent shall be kept on hand in cash, invested in direct obligations of the United States or deposited with an approved reserve depository. [1973 c 797 §296]

711.640 Termination of suspension or restriction on payment of liabilities. (1) The superintendent may, by order, on a date fixed by the order and at least 10 days after the date of the order, terminate the suspension or restriction on payment of liabilities of the bank designated in the order.

(2) Immediately upon the termination of the suspension or restriction on payment of liabilities of the bank designated in the order, the superintendent shall surrender possession of the assets and properties of the bank to the proper officers of the bank. The receipt of the officers operates as a full release of the superintendent. [1973 c 797 §297]

711.645 Notice of termination of suspension or restriction on payment of liabilities. (1) At least 10 days before the date on which the suspension or restriction on the payment of liabilities is terminated, the superintendent shall cause a notice to be published in a newspaper circulated in the city, town or county in which the principal office of the bank is located. Only one publication of the notice is required.

(2) The notice shall specify:

(a) The date on which the suspension or restriction on the payment of liabilities will be removed;

(b) That the provisions of ORS 711.635 pertaining to the segregation of deposits will not be effective after that date; and

(c) That the segregated deposits after the removal of the restriction or suspension will be general deposits.

(3) On or before the date of the publication of the notice, the superintendent shall mail, postage prepaid, to each depositor in the bank whose deposit has been segregated as provided by ORS 711.635 a copy of the notice addressed to the last-known address of each depositor as shown by the records of the bank.

(4) The superintendent shall hand a copy of the notice to every depositor making a deposit in the bank after the date of the newspaper publication and up to the time the suspension or restriction on the payment of liabilities of the bank is removed. [1973 c 797 §298]

711.650 Deposits to remain segregated until termination notice has been given. If the superintendent removes the restrictions or suspensions on the payment of liabilities of any bank and surrenders possession of the assets and properties of the bank to the proper officers of the bank, before the 10 days' notice provided for by ORS 711.645 has been given, the bank shall keep deposits segregated under ORS 711.635 separate and apart from its other assets until the notice has been given by the bank in the manner provided in ORS 711.645. After the notice has been given, the segregated deposits shall become general deposits and may be mingled with the other assets of the bank and the provisions of ORS 711.635 with respect to segregation of deposits shall no longer apply. [1973 c 797 §299]

711.655 Use of suspended deposits to pay indebtedness of depositor. Nothing in ORS 711.620 to 711.670 prevents the assignment of a suspended deposit liability or the application of all or a part of a suspended deposit to payment at maturity of any indebtedness of the depositor to the bank which existed at the time the suspension became effective, but a deposit liability subsequently assigned may not be so applied. [1973 c 797 §300]

711.660 Assignment or transfer of capital stock invalid while payment of liabilities suspended or restricted. While the payment of the liabilities of any bank is suspended or restricted under ORS 711.620, an assignment or transfer of the capital stock of the bank is invalid. [1973 c 797 §301]

711.665 Suspension or restriction of liability payment not evidence of insolvency. An order of the superintendent under ORS 711.620 to 711.670 or the taking possession of the assets and properties of a bank by the superintendent under ORS 711.620 to 711.670 is not an act of insolvency of the bank and does not raise any presumption of insolvency. [1973 c 797 §302]

711.670 Compliance with ORS 711.620 to 711.670 as a defense to depositor's action. Compliance with the terms and conditions of ORS 711.620 to 711.670 and orders and rules promulgated as a result of ORS 711.620 to 711.670 is a complete defense to any suit or action brought by any depositor or creditor against a bank with respect to any deposit or contract liability. [1973 c 797 §303]

PENALTIES

711.980 Civil penalties. Any person who violates ORS 711.415 shall forfeit and pay to the State Treasurer to be deposited in the State Banking Fund a civil penalty in an amount determined by the superintendent of not more than $2,500 for each offense. The civil penalty may be recovered as provided in ORS 706.980. [1975 c 544 §40]

711.990 [Amended by 1973 c 797 §304, repealed by 1975 c 544 §62]

CHAPTER 712
[Reserved for expansion]