

# Chapter 707

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

- ORGANIZATION OF INSTITUTIONS**
- 707.005 Institutions required to incorporate
- 707.010 Necessity of organizing under Bank Act to advertise or operate as institution
- 707.020 Violation of ORS 707.010; investigation; injunction
- 707.023 Branches of out-of-state institution; powers
- 707.025 Organization for purpose of merger; procedure; conditions
- 707.029 Organization to facilitate acquisition by out-of-state institution; procedure; provisional charter
- 707.050 Paid-up capital stock requirement
- 707.070 Application for authority to organize; fee; contents
- 707.075 Corporate name
- 707.080 Investigation and ruling on application; conditional approval; appeal
- 707.090 Refusal of charter after approval of application
- 707.100 Time of filing articles of incorporation and paying fees
- 707.110 Execution and filing of articles of incorporation; contents
- 707.120 Issuance of certificate of incorporation when filings conform to law
- 707.130 Organization and annual license fees
- 707.140 Filing organization papers; issuance of charter
- 707.145 Refusal of authority to organize
- 707.150 Review of refusal of authority to organize; appeal
- 707.155 Authority to require additional investigatory information; fingerprinting
- 707.160 Transaction of business prior to organization; failure to complete organization; liability
- 707.170 Effective date of charter; commencement of business; effect of failure to commence business
- 707.180 Location of principal place of business; change upon approval
- 707.200 Payments by subscribers of capital stock for guaranty and surplus funds
- 707.210 Stock issuance after obtaining charter and making guaranty and surplus fund payments; form of stock certificate
- 707.215 Cancellation of redeemed stock
- 707.220 Stock record; contents; inspection
- 707.230 Transfer of stock
- 707.240 Employee stock option plans
- 707.242 Bylaws
- 707.244 Amendment of articles of incorporation; purposes for amendment
- 707.246 Manner of amending articles of incorporation
- 707.248 Shareholders authorized to vote on amendment to articles of incorporation
- 707.250 Execution of amendments to articles of incorporation
- 707.252 Filing of amended articles of incorporation; certificate of amendment
- 707.254 Effective date of amended articles of incorporation; effect on existing cause of action
- 707.256 Restated articles of incorporation
- (Shares)
- 707.258 Terms of class of shares or series within class determined by board of directors
- 707.260 Fractional shares
- 707.262 Share options
- 707.264 Stated capital; capital surplus
- 707.266 Expenses of organization or issue of shares
- 707.268 Restrictions on redemption of shares
- 707.270 Effect of redemption of shares
- 707.272 Capital surplus; use
- GENERAL POWERS**
- 707.310 Powers of institutions; insurance transactions
- 707.320 Membership in Federal Reserve System; member bank, officers, directors and shareholders subject to duties and liabilities imposed by laws of this state
- 707.330 Obtaining benefit of federal banking laws
- 707.340 Obtaining benefit of federal laws for relief of institutions
- 707.350 Increase or decrease of capital stock; authorization procedure; conversion of surplus fund into paid-in capital
- 707.355 Exchange of capital stock for assets and liabilities of another corporation; approval of exchange; increase of capital stock
- 707.370 Reduction of capital stock; surrender of certificates
- 707.380 Limitation on dividends
- 707.400 Conditions precedent to dividend declaration and payment
- 707.410 Record of dividends declared
- 707.420 Losses charged to surplus; restoration of surplus before dividend payment
- 707.430 Closing banks on holidays, Saturdays, regular banking days; emergency closings
- 707.440 Challenge to validity of institution action; prohibition; exceptions
- 707.450 Authority to act as insurer
- (Amendment of Articles of Incorporation)

## FINANCIAL INSTITUTIONS

### STOCKHOLDERS, DIRECTORS AND OFFICERS

#### (Stockholder Meetings)

- 707.610 Annual and special stockholder meetings; notice of orders
- 707.611 Notice of meeting
- 707.612 Action without meeting
- 707.613 Shareholder waiver of notice
- 707.615 Record date
- 707.617 Shareholders list for meeting
- 707.619 Voting entitlement of shares
- 707.620 Special stockholder meeting
- 707.621 Quorum
- 707.623 Modification of voting requirements
- 707.625 Exemption from personal liability for good faith acts or omissions in compliance with rule or order

#### (Directors and Officers)

- 707.640 Directors; citizenship and residence requirements
- 707.642 Organizational meeting of directors
- 707.644 Board of directors executive committee
- 707.646 Staggered terms for directors
- 707.648 Removal of directors by shareholders
- 707.660 Oath of directors; oath of resident agents of foreign or extranational institutions
- 707.670 Regular meetings of directors; quorum; meetings by telephone
- 707.675 Report of loans and investments
- 707.680 Special meetings of directors; failure to attend
- 707.690 Filling director vacancy
- 707.700 Selection and control of officers by directors; effect of removal of officers or chief executive
- 707.705 Investigation of new director, president and chief executive officer; fingerprinting; disapproval of election or appointment
- 707.710 Removal of officer, director, resident manager, agent
- 707.720 Violation of law or omission of duty by officer or director
- 707.730 Official communications from Department of Consumer and Business Services; submission to directors

- 707.735 Officers and directors to notify law enforcement officers of Bank Act violations; investigations; costs

- 707.740 Examining committee; reports

#### (Indemnification of Directors, Officers, Employees and Agents)

- 707.744 Definitions for ORS 707.744 to 707.764
- 707.746 Authority to indemnify directors
- 707.748 Mandatory indemnification
- 707.752 Advance for expenses
- 707.754 Court-ordered indemnification
- 707.756 Determination and authorization of indemnification
- 707.758 Indemnification of officers, employees and agents
- 707.762 Insurance
- 707.764 Application of ORS 707.744 to 707.762

### OPERATIONAL AUDITS AND REVIEW OF FINANCIAL STATEMENTS

- 707.849 Operational audit
- 707.855 Review of financial statement
- 707.860 Adoption of rules governing operational audits and reviews of financial statements; investigation of auditors; waiver of audit; single audit report

### CROSS REFERENCES

- "Bank Act" defined, 706.005
- Banks, authority of Legislative Assembly to incorporate, Const. Art. XI, §1
- Commodity transactions, regulations, exemptions, 645.015
- Insurers, investing excess funds, 733.650
- Trust deed, trustee not required to comply with provisions of this chapter, 86.790
- 707.310
- Actions against corporations, 30.510, 30.570, 30.580
- 707.380
- Dividends, reports, 706.660, 706.670
- 707.430
- Bank business hours, legal holidays, 187.010, 187.020

**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 director, 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 director may examine the accounts, books and papers of every person the director has reasonable cause to believe is violating any provision of ORS 707.010.

(2) When the director believes, from evidence satisfactory to the director, that any person is violating the provisions of ORS 707.010, the director may cause a complaint to be filed in the circuit court of the county in which the person conducts 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]

**707.023 Branches of out-of-state institution; powers.** Notwithstanding any provision contained in ORS chapter 713, an out-of-state banking institution that opens,

occupies or maintains a branch in this state pursuant to and in accordance with the requirements of ORS 711.017, 711.211, 714.133 or 714.135 shall have in this state the same powers under the laws of this state as a like-type banking organization. This section shall not be construed to permit an out-of-state banking organization to engage in its home state in the exercise of any powers which are authorized for the like-type banking organization under the laws of this state but are not authorized for the out-of-state banking institution in its home state. [1993 c.229 §7]

**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, 707.070, 707.080 to 707.120, 707.140 to 707.150, 707.170, 707.200 and 707.210 (1) 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 director 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 ORS 707.110 (2)(a), (b), (c) and (h).

(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 director finds the articles conform to subsection (3) of this section, the di-

rector 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 director within 90 days. If the director finds such bylaws to be consistent with the requirements of the Bank Act, the director shall issue a provisional charter to such bank.

(b) The provisional charter shall expire one year after its date of issuance. However, the director 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 director'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]

**707.029 Organization to facilitate acquisition by out-of-state institution; procedure; provisional charter.** (1) To facilitate the taking of action under ORS 715.065 (1)(b), an institution may be organized under this section solely for the purpose of merging with or acquiring the stock or assets and assuming the liabilities of:

(a) A bank in danger of failing, or a bank holding company of such a bank;

(b) A bank that has been or is being liquidated by the Director of the Department of Consumer and Business Services pursuant to ORS 711.400 to 711.615, or a bank holding company of such a bank; or

(c) A bank that is organized under the laws of this state, or a national bank or bank holding company that has its principal place of business in this state.

(2) Except as otherwise provided in this section, an institution organized under this section may not engage in or transact banking or trust business.

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

(4) Notwithstanding ORS 707.050, 707.070, 707.080 to 707.120, 707.140 to 707.150, 707.170, 707.200 and 707.210 (1) 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 incorporators shall file articles of incorporation executed in duplicate, signed by the prospective incorporator or incorporators and verified and filed in the office of the director together with the organization fee required under ORS 707.130 plus an additional organization fee of \$2,500.

(b) The articles of incorporation shall specify:

(A) The name and address of each incorporator.

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

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

(D) The purpose of the institution, which shall be limited to the purposes set forth in subsection (1) of this section. However, if the corporation is to be the resulting or continuing bank in a merger or other acquisition, 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 the merger or acquisition.

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

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

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

(7)(a) After the issuance of the certificate of incorporation, the new institution shall file a certified copy of its bylaws with the director within 90 days. If the director finds

the bylaws to be consistent with the requirements of the Bank Act, the director shall issue a provisional charter to the institution.

(b) The provisional charter shall expire one year after its date of issuance. However, the director may extend the expiration period. If the acquisition or merger for which the institution was organized 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. If the acquisition or merger is consummated, when the institution pays the organization and annual license fees required under ORS 707.130 and files with the director the documents required under ORS 707.140, the director shall issue to the institution a charter to do a banking business pursuant to ORS 707.140, unless the director finds that there exists one of the conditions enumerated in ORS 707.145. For purposes of ORS chapter 711, a provisional charter issued under this section shall be deemed a charter where appropriate. [1985 c.12 §3; 1987 c.216 §1; 1987 c.371 §2; 1987 c.373 §51a]

**707.030** [Repealed by 1973 c.797 §428]

**707.040** [Repealed by 1973 c.797 §428]

**707.050 Paid-up capital stock requirement.** Every institution organized after January 1, 1974, shall have a paid-up capital stock not less than \$1,500,000. The Director of the Department of Consumer and Business Services may require less paid-up capital stock for a particular institution if the director determines that the lesser amount is sufficient for safe and sound operation of the institution. The capital stock must be paid up either in cash or by exchange of real property and improvements thereon. The real property and improvements must be approved by the director as meeting all applicable requirements of law and all other conditions and standards that the director adopts by rule, including but not limited to a proper appraisal by a qualified appraiser. [Amended by 1963 c.195 §3; 1973 c.797 §53; 1985 c.786 §24]

**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 director 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 director 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 director 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 director may require. [Amended by 1971 c.68 §3; 1973 c.797 §54; 1977 c.135 §13; 1979 c.88 §9]

**707.075 Corporate name.** (1) The corporate name of an institution:

(a) Shall not contain any word or phrase that indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(b) Shall not be the same as, or deceptively similar to, any other corporate, limited partnership, reserved or registered name currently on file with the Secretary of State or Director of the Department of Consumer and Business Services, an assumed business name registered as provided in ORS 648.010 or a trademark, trade name or service mark registered as provided in ORS chapter 647.

(2) Nothing contained in this section shall preclude an institution from transacting business under an assumed business name. [1985 c.762 §36]

**707.080 Investigation and ruling on application; conditional approval; appeal.**

(1) When the application mentioned in ORS 707.070 has been filed, the Director of the Department of Consumer and Business Services 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 anticipated 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 Director of the Department of Consumer and Business Services is satisfied that the applicant meets the standards prescribed in subsection (1) of this section the director shall note the approval and the date on each copy of the application. If the director is not satisfied or believes that the public interest will be endangered the director shall note the disapproval of the director and the date on each copy of the application.

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

(4) The director 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 director agree to extend the time an additional 30 days.

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

(6) The applicants may appeal the decision of the director 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 Director of the Department of Consumer and Business Services that the articles of incorporation, the organization or manner of conducting business do not comply with the terms of the application, the requirements of approval or the requirements of law, the director 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 director 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 Director of the Department of Consumer and Business Services.

(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 institution 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) In addition, the articles of incorporation:

(a) Must prescribe the classes of shares and the number of shares of each class that the institution is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and prior to the issuance of shares of a class, the preferences, limitations and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations and relative rights identical to those of other shares of the same class except to the extent otherwise permitted by ORS 707.262.

(b) Must authorize one or more classes of shares that together have unlimited voting rights, and one or more classes of shares which may be the same class or classes as

those with voting rights, that together are entitled to receive the net assets of the institution upon dissolution.

(c) May authorize one or more classes of shares that:

(A) Have special, conditional or limited voting rights, or no voting rights, except to the extent prohibited by this chapter;

(B) Are redeemable or convertible as specified in the articles of incorporation:

(i) At the option of the institution, the shareholder or another person or upon the occurrence of a designated event;

(ii) For cash, indebtedness, securities or other property; or

(iii) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(C) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative or partially cumulative; or

(D) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the institution.

(4) The description of the designations, preferences, limitations and relative rights of share classes in subsection (3)(c) of this section is not exhaustive.

(5) The articles of incorporation also may contain any lawful provisions:

(a) Regulating the business or conduct of affairs of the institution;

(b) Defining, limiting and regulating the powers of the directors; or

(c) Eliminating or limiting the personal liability of a director to the institution or its shareholders for monetary damages for conduct as a director, provided that no such provisions shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective, and such provision shall not eliminate or limit the liability of a director for:

(A) Any breach of the director's duty of loyalty to the institution or its shareholders;

(B) Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

(C) Any unlawful distribution under the Bank Act; or

(D) Any transaction from which the director derived an improper personal benefit. [Amended by 1973 c.797 §58; 1987 c.197 §1a; 1989 c.324 §3]

#### **707.120 Issuance of certificate of incorporation when filings conform to law.**

(1) If the director finds that the articles of incorporation conform to law, the director 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 the office of the director.

(c) Issue a certificate of incorporation to which the director 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.

(2) An institution shall pay an annual license fee of \$15. The annual license fee shall be paid by the anniversary date of the institution, except that the initial license fee shall be paid when the organization fee provided for in subsection (1) of this section is paid.

(3) The organization fee and the annual license fee shall be paid to the director. [Amended by 1973 c.797 §60; 1987 c.197 §1b; 1989 c.324 §4]

#### **707.140 Filing organization papers; issuance of charter.**

(1) The Director of the Department of Consumer and Business Services shall examine the condition of an institution when the institution files with the director:

(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 director 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 director shall issue to the institution a charter to do a banking or trust business. [Amended by 1973 c.797 §61; 1987 c.216 §2]

**707.145 Refusal of authority to organize.** The director may disapprove an application for a permit to organize or refuse to approve the articles of incorporation or to grant a charter under ORS 707.080, 707.090 or 707.140, upon a finding that any person named in the application submitted under ORS 707.080 or in the documents submitted under ORS 707.140:

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

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

(3) Has willfully or repeatedly violated or failed to comply with any provisions of the Oregon Bank Act or any rule or order of the director;

(4) Has been convicted of a crime, an essential element of which is fraud;

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

(6) 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;

(7) Is the subject of an order of the director subjecting the person to a fine or a civil penalty, or removing the person from an office in any entity regulated by the director; or

(8) Is the subject of an order entered within the past five years, subjecting the person to a fine or other civil penalty, or removing the person from an office in a banking institution, a national bank, a state or federal savings association, a state or federal credit union or a consumer finance company issued by the banking supervisor 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 such banking institutions, savings associations, credit unions or consumer finance companies. [1977 c.135 §19; 1985 c.762 §§37,37a; 1985 c.786 §25; 1987 c.373 §52]

**707.150 Review of refusal of authority to organize; appeal.** Notwithstanding the provisions of ORS 183.310 to 183.550, the director may, without prior hearing or opportunity therefor, refuse to grant authority to organize an institution. In case authority to organize is refused by the director, 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]

**707.155 Authority to require additional investigatory information; fingerprinting.**

(1) In the course of investigating any person named in the application under ORS 707.070 or in the documents filed under ORS 707.140, the Director of the Department of Consumer and Business Services may require the person to provide additional information for the director's further inquiry. For the purpose of such further inquiry, the director may require any of the following persons to submit to fingerprinting:

(a) Any person required to be named in the application under ORS 707.070.

(b) Any person named in the documents filed under ORS 707.140 as a prospective incorporator or as a director, president or chief executive officer of the institution.

(2) Fingerprints acquired under subsection (1) of this section may be submitted to appropriate law enforcement agencies, including the Federal Bureau of Investigation, for the purpose of discovering any unlawful activities of the person. [1985 c.786 §23]

**707.160 Transaction of business prior to organization; failure to complete organization; liability.** (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 director.

(2) An institution which fails to pay in its capital and complete its organization and receive from the director 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.

(3) All persons purporting to act as or on behalf of an institution, knowing there was no incorporation, are jointly and severally liable for all liabilities created while so acting. [Amended by 1969 c.44 §1; 1973 c.797 §63; 1989 c.324 §5]

**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 director.

(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 director 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.** (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 director. The director 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 director 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 director 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 director 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 Payments by subscribers of capital stock for guaranty and surplus funds.** (1) The subscribers to the capital stock of an institution shall pay in, 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. The payment must be in cash or by exchange of real property and improvements thereon. The real property and improvements are subject to approval by the director as provided in ORS 707.050.

(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 undivided profits.

(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; 1983 c.296 §2; 1985 c.786 §26; 1987 c.216 §3]

**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:

(a) Be signed by the president or a vice president and the secretary or an assistant secretary of the institution, and may be sealed with the seal of the institution or a facsimile thereof. The signatures of the president or vice president and the secretary or assistant secretary upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or registrar other than the institution itself or an employee of the institution. In the case of any person who, as an officer, has signed or whose facsimile signature has been placed upon such certificate and has ceased being such officer before such certificate is issued, the certificate may be issued by the institution with the same effect as if the person were such officer at the date of its issue.

(b) If the institution is authorized to issue shares of more than one class, state upon the face or back of the certificate, or state that the institution will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations and relative rights of the shares of each class authorized to be issued, and, if the institution is authorized to issue any preferred or special class in series, state the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

(c) State that the institution is organized under the laws of this state.

(d) State the name of the person to whom issued.

(e) State the number and class of shares, and the designation of the series, if any, which such certificate represents.

(f) State the par value of each share represented by such certificate, except that 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.

(3) No certificate shall be issued for any share until such share is fully paid.

(4) At the request of any holder of two or more certificates of the capital stock of any institution organized under the laws of this state, such institution shall, upon the surrender of the certificates, issue to the holder of such capital stock one certificate for all shares of stock of any one class in such institution owned by the stockholder if the number of such shares owned by the stockholder in the particular class equals or exceeds 100. [Amended by 1959 c.108 §1; 1965 c.189 §1; 1973 c.797 §67; 1987 c.197 §2; 1989 c.324 §6]

**707.215 Cancellation of redeemed stock.** Notwithstanding ORS 707.270, 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; 1987 c.197 §3; 1989 c.324 §7]

**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 Director of the Department of Consumer and Business Services to make good any impairment of its capital stock, until the impairment has been made good. [Amended by 1973 c.797 §70]

**707.240 Employee stock option plans.**

(1) Upon approval of the Director of the Department of Consumer and Business Services and stockholders holding two-thirds of the stock of an institution, an institution may adopt and perform employee stock option or employee stock purchase plans. Applications for approval by the director 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 un-

issued stock with respect to which no prescriptive rights shall attach;

(e) A provision in the plan that an employee 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 employees 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 director that the stock has been issued and the amount paid for it is not less than par value at the time the employee became eligible under the plan or less than 90 percent of book value at the time when the employee became eligible under the plan, whichever is the greater. [1969 c.635 §1; 1973 c.797 §71]

**707.242 Bylaws.** The initial bylaws of an institution shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation or by bylaws existing on December 31, 1953. The bylaws may contain any provisions for the regulation and management of the affairs of the institution not inconsistent with law or the articles of incorporation. [1989 c.324 §9]

#### (Amendment of Articles of Incorporation)

**707.244 Amendment of articles of incorporation; purposes for amendment.** (1) An institution may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation, as amended, contain only such provisions as might be lawfully contained in the original articles of incorporation at the time of making such amendment. If a change in shares or the rights of shareholders, or an exchange, re-

classification or cancellation of shares or the rights of shareholders is to be made, the articles of incorporation, as amended, shall contain only such provisions as may be necessary to effect such change, exchange, reclassification or cancellation.

(2) In particular, and without limitation upon such general power of amendment, an institution may amend its articles of incorporation, from time to time, so as:

(a) To change its corporate name.

(b) To change its period of duration.

(c) To change, enlarge or diminish its corporate purposes.

(d) To increase or decrease the aggregate number of shares, or shares of any class, which the institution has authority to issue.

(e) To increase or decrease the par value of the authorized shares of any class with a par value, whether issued or unissued.

(f) To exchange, classify, reclassify or cancel all or any part of its shares, whether issued or unissued.

(g) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations and relative rights in respect to all or any part of its shares, whether issued or unissued.

(h) To change shares with a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares with a par value.

(i) To change the shares of any class, whether issued or unissued and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares either with or without par value, of other classes.

(j) To create new classes of shares with rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued.

(k) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared.

(L) To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series.

(m) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special

class of shares and fix and determine the relative rights and preferences of the shares of any series so established.

(n) To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect to which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.

(o) To revoke, diminish or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established.

(p) To limit, deny or grant to shareholders of any class the preemptive right to acquire additional or treasury shares of the institution, whether then or thereafter authorized. [1989 c.324 §10]

**707.246 Manner of amending articles of incorporation.** Amendments to the articles of incorporation shall be made in the following manner:

(1) If an institution has issued shares of stock:

(a) The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(b) Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected shall be given to each shareholder of record entitled to vote within the time and in the manner provided in this chapter for giving notice of meetings of shareholders. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

(c) At such meeting, a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(2)(a) If an institution has not issued any shares of stock, the articles of incorporation

may be amended by resolution adopted by a majority of the directors.

(b) If the provisions of the articles of incorporation relating to the duration, purposes, authorized capital, rights or preferences of shares, or if internal affairs are amended by the directors prior to the issuance of stock, the directors shall immediately notify in writing each person who is a party to any agreement for the subscription of stock of the institution. Such notice shall set forth the text of the amendment and state that the subscriber may, within 30 days after delivery or mailing of the notice of amendment, rescind the subscriber's subscription by notice in writing delivered or mailed to the directors at an address specified. If a notice of rescission is not delivered or mailed within 30 days, the subscriber may not thereafter assert the fact of the amendment as the basis for avoiding the subscription agreement or asserting any claim against any person.

(3) Any number of amendments may be submitted to the shareholders or directors and voted upon by them at one meeting. [1989 c.324 §11]

**707.248 Shareholders authorized to vote on amendment to articles of incorporation.** (1) The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of such class.

(b) Increase or decrease the par value of the shares of such class.

(c) Effect an exchange, reclassification or cancellation of all or part of the shares of such class.

(d) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class.

(e) Change the designations, preferences, limitations or relative rights of the shares of such class.

(f) Change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes.

(g) Create a new class of shares with rights and preferences prior and superior to the shares of such class, or increase the rights and preferences of any class with rights and preferences prior or superior to the shares of such class.

(h) In the case of a preferred or special class of shares, divide the shares of such

class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series or authorize the board of directors to do so.

(i) Limit or deny the existing preemptive rights of the shares of such class.

(j) Cancel or otherwise affect dividends on the shares of such class which had accrued but had not been declared.

(2) Different series of the same class of shares shall not constitute different classes of shares for the purpose of voting by classes upon a proposed amendment, except when a series will be adversely affected by an amendment in a manner different from other shares of the same class. [1989 c.324 §12]

**707.250 Execution of amendments to articles of incorporation.** The articles of amendment shall be executed in duplicate by the institution by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles, and shall set forth:

(1) The name of the institution.

(2) If the amendment alters or changes any provision of the original or amended articles of incorporation, an identification by reference or description of the affected provision and a statement of its text as it is amended to read. If the amendment strikes or deletes any provision of the original or amended articles of incorporation, an identification by reference or description of the provision so stricken or deleted and a statement that it is stricken or deleted. If the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each provision added.

(3) The date of the adoption of the amendment by the shareholders.

(4) The number of shares outstanding and the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class.

(5) The number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively.

(6) If such amendment provides for an exchange, reclassification or cancellation of issued shares, and, if the manner in which the same shall be effected is not set forth in the amendment, a statement of the manner in which the same shall be effected.

(7) If such amendment effects a change in the amount of stated capital, a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by such amendment.

(8) If such amendment was adopted by a majority of the directors pursuant to ORS 707.246 (2)(a), then, in lieu of the information required by subsections (3), (4) and (5) of this section, a statement that no shares have yet been issued and that the amendment was authorized as provided in ORS 707.246 (2)(a). The date of the adoption of the amendment by a majority of the directors shall be included. Articles of amendment under this subsection may be executed as provided in this section or by a majority of the directors. [1989 c.324 §13]

**707.252 Filing of amended articles of incorporation; certificate of amendment.**

(1) Duplicate originals of the articles of amendment shall be delivered to the director. If the director finds that the articles of amendment conform to law, the director shall, when all fees and charges have been paid as in this chapter prescribed:

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

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

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

(2) The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the director, shall be returned to the institution or its representative. [1989 c.324 §14]

**707.254 Effective date of amended articles of incorporation; effect on existing cause of action.** (1) Upon issuance of the certificate of amendment by the director, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(2) No amendment shall affect any existing cause of action in favor of or against such institution, any pending suit to which such institution shall be a party or the existing rights of persons other than shareholders. In the event the corporate name shall be changed by amendment, no suit brought by or against such institution under its former name shall abate for that reason. [1989 c.324 §15]

**707.256 Restated articles of incorporation.** (1) An institution may, by action taken in the same manner as required for

amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation, without further action of the board of directors or shareholders. Restated articles of incorporation shall contain a statement that they supersede the previously existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by ORS 707.110 to be included in the original articles of incorporation except that:

(a) The restated articles of incorporation shall set forth the amount of its stated capital at the time of the adoption of the restated articles of incorporation; and

(b) No statement need be made with respect to the number, names and addresses of directors constituting the initial board of directors or the names, occupations or places of residence of the incorporators or the shares subscribed for by each.

(2) Restated articles of incorporation when executed and filed with the director shall supersede the previously existing articles of incorporation and amendments thereto. The director shall, upon request, certify a copy of the articles of incorporation, the articles of incorporation as restated or any amendments to either thereof.

(3) The restated articles of incorporation, when filed, shall be accompanied by a statement, executed in duplicate by the institution by its president or a vice president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, setting forth the following:

(a) The name of the institution.

(b) The date of the adoption of the restated articles of incorporation by the shareholders.

(c) The number of shares outstanding and the number of shares entitled to vote thereon, and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class.

(d) The number of shares voted for and against the restated articles of incorporation, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the restated articles of incorporation, respectively.

(e) If the restated articles of incorporation provide for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the restated articles of incorporation, a statement of the manner in which the same shall be effected.

(f) If the restated articles of incorporation effect a change in the amount of stated capital, a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by the restated articles of incorporation. [1989 c.324 §16]

### (Shares)

**707.258 Terms of class of shares or series within class determined by board of directors.** (1) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations and relative rights, within the limits set forth in ORS 707.110, of any class of shares before the issuance of any shares of that class or of one or more series within a class before the issuance of any shares of that series.

(2) Each series of a class must be given a distinguishing designation.

(3) All shares of a series must have preferences, limitations and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, of those of other series of the same class.

(4) Before issuing any shares of a class or series created under this section, the institution must deliver to the director for filing, articles of amendment which are effective without shareholder action that set forth:

(a) The name of the institution;

(b) The text of the amendment determining the terms of the class or series of shares;

(c) The date it was adopted; and

(d) A statement that the amendment was duly adopted by the board of directors. [1989 c.324 §28]

**707.260 Fractional shares.** (1) An institution may:

(a) Issue fractions of a share or pay in money the value of fractions of a share;

(b) Arrange for disposition of fractional shares by the shareholders; and

(c) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(2) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the following information:

(a) The name of the issuing institution and a statement that it is organized under the law of this state;

(b) The name of the person to whom the scrip is issued; and

(c) The number and class of shares and the designation of the series, if any, for which the certificate may be exchanged.

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, receive dividends and participate in the assets of the institution upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(a) That the scrip will become void if not exchanged for full shares before a specified date; or

(b) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders. [1989 c.324 §32]

**707.262 Share options.** Subject to any provisions set forth in its articles of incorporation and subject to preemptive rights, if any, of existing shareholders, an institution may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the institution shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which and the price or prices at which such shares may be purchased from the institution on the exercise of any such right or option. No such rights or options shall be issued to a director, officer or employee of the institution or of any subsidiary thereof unless the issuance is approved at the annual meeting or a special meeting by the holders of at least two-thirds of the outstanding shares entitled to vote thereon, or unless such issuance is pursuant to a plan previously so approved. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive. The price or prices to be received for any shares with a par value, other than treasury shares to be issued on the exercise of such rights or options, shall not be less than the par value thereof. [1989 c.324 §29]

**707.264 Stated capital; capital surplus.**

In case of the issuance by an institution of shares with a par value, the consideration received therefor shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute capital surplus. [1989 c.324 §30]

**707.266 Expenses of organization or issue of shares.** The reasonable charges and expenses of organization or reorganization of an institution, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by such institution out of the consideration received by it in payment for its shares without rendering such shares not fully paid and nonassessable. [1989 c.324 §31]

**707.268 Restrictions on redemption of shares.** No redemption or purchase of redeemable shares shall be made by an institution when it is insolvent or when such redemption or purchase would render it insolvent, or which would reduce the net assets below the aggregate amount payable to the shareholders with prior or equal rights to the assets of the institution upon involuntary dissolution. [1989 c.324 §33]

**707.270 Effect of redemption of shares.**

(1) When redeemable shares of an institution are redeemed or purchased by the institution, the redemption or purchase shall effect a cancellation of such shares, and a statement of cancellation shall be filed as provided in this section. Thereupon such shares shall be restored to the status of authorized but unissued shares, unless the articles of incorporation provide that such shares when redeemed or purchased shall not be reissued, in which case the filing of the statement of cancellation shall constitute an amendment to the articles of incorporation and shall reduce the number of shares of the class so canceled, which the institution is authorized to issue by the number of shares so canceled.

(2) The statement of cancellation shall be executed in duplicate by the institution by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

(a) The name of the institution.

(b) The number of redeemable shares canceled through redemption or purchase, itemized by classes and series.

(c) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation.

(d) The amount, expressed in dollars, of the stated capital of the institution after giving effect to such cancellation.

(e) If the articles of incorporation provide that the canceled shares shall not be reissued, the number of shares which the institution has authority to issue, itemized by classes and series, after giving effect to such cancellation.

(3) Duplicate originals of such statement shall be delivered to the director. If the director finds that such statement conforms to law, the director shall, when all fees and charges have been paid as prescribed by this chapter:

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

(b) File one duplicate original in the office of the director.

(c) Return the other duplicate original to the institution or its representative.

(4) Upon the filing of such statement of cancellation, the stated capital of the institution shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled.

(5) Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by the Bank Act. [1989 c.324 §34]

**707.272 Capital surplus; use.** (1) The surplus, if any, created by or arising out of a reduction of the stated capital of an institution shall be capital surplus.

(2) The capital surplus of an institution may be increased from time to time by resolution of the board of directors directing that all or a part of the earned surplus of the institution be transferred to capital surplus.

(3) An institution may, by resolution of its board of directors, apply any part or all of its capital surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the institution by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus shall, to the extent thereof, effect a reduction of capital surplus.

(4) An institution may, by resolution of its board of directors, create a reserve or reserves out of its earned surplus for any proper purpose or purposes and may abolish any such reserve in the same manner. Earned surplus of the institution to the extent so reserved shall not be available for the payment of dividends or other distributions by the institution except as expressly permitted by the Bank Act. [1989 c.324 §35]

**GENERAL POWERS**

**707.310 Powers of institutions; insurance transactions.** (1) Except as otherwise provided in the Bank Act or the articles of incorporation of an institution, an institution shall have:

(a) Perpetual duration and succession in its corporate name, unless a limited period of duration is stated in its articles of incorporation;

(b) The same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation, power to:

(A) Sue and be sued and complain and defend in its corporate name;

(B) Have a corporate seal, which may be altered at will, and use it or a facsimile thereof by impressing, affixing or reproducing it in any other manner;

(C) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds and other obligations that may be convertible into other securities of the institution or include the option to purchase other securities of the institution and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;

(D) Conduct its business, locate offices and exercise the powers granted by the Bank Act within or without this state;

(E) Elect or appoint directors, officers, employees and agents of the institution;

(F) Make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state for managing the business and regulating the affairs of the institution;

(G) Make donations for the public welfare or for charitable, scientific or educational purposes;

(H) Transact any lawful business that will aid governmental policy;

(I) Pay pensions and establish pension plans, and share option plans and benefit or incentive plans for any or all of its current or former directors, officers, employees and agents;

(J) Be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other enterprise; and

(K) Cease its corporate activities and surrender its corporate franchise;

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

(d) The power to be licensed under ORS 744.002 as an agent to transact one or more of the classes of insurance described in ORS 744.115 except for title insurance; and

(e) All powers necessary or convenient to effect any or all of the purposes for which the institution is organized or to perform any or all of the acts expressly or impliedly authorized or required under the Bank Act.

(2) With respect to any exercise of the power granted under subsection (1)(d) of this section, other than the licensing of the institution to transact livestock insurance, mortgage insurance, motor vehicle physical damage insurance, credit life insurance, credit health insurance, credit insurance or lender's property insurance, as these classes of insurance are described in ORS 744.115:

(a) The conduct by the institution of insurance agency activities shall be subject to the approval of the Director of the Department of Consumer and Business Services. The director shall base consideration for approval on the condition of the institution, the adequacy of a formal business plan for the insurance activities and the existence of satisfactory management for the insurance activity.

(b) The director may revoke or restrict the ongoing authority of the institution to engage in the insurance agency activity if the condition of the institution substantially deteriorates or if the insurance activities are adversely affecting the institution.

(c) If the insurance agency activity is conducted in a branch or office in which the institution carries on its banking business, the insurance agency activity shall be physically separated from those parts of the premises in which the institution carries on the banking business.

(d) All persons who act on behalf of the institution to transact insurance, as that term is defined in ORS 731.146, other than to transact livestock insurance, mortgage insurance, motor vehicle physical damage insurance, credit life insurance, credit health insurance, credit insurance or lender's property insurance, as these classes of insurance are described in ORS 744.115, shall be engaged only in the insurance agency activity and shall not in any manner perform any other work for the institution.

(e) Prior to selling any policy of insurance, the institution shall disclose in writing to the purchaser that the purchaser shall not be required to purchase the insurance from the institution as a condition of obtaining any service from or engaging in any transaction with the institution.

(f) The institution shall file a written report with the director no later than March 31 each year disclosing the insurance activities of the institution. The required contents

of the report shall be established by the director by rule. The reports filed with the director under this paragraph shall be available for public inspection in the office of the director.

(3) An institution licensed to transact insurance shall not in any manner use customer information obtained from another insurance agent to promote, develop or solicit insurance business for the institution unless the other insurance agent consents to such use of the customer information. [Amended by 1973 c.797 §72; 1973 c.823 §140; 1974 s.s. c.36 §23; 1987 c.197 §4; 1987 c.916 §1; 1989 c.324 §36; 1989 c.331 §28; 1989 c.701 §64]

**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 Director of the Department of Consumer and Business Services and subject to any limitations which the director 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 Director of the Department of Consumer and Business Services, 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 section 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 director, 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.

(3) Notwithstanding subsections (1) and (2) of this section, an institution shall have the power to create and issue the number of shares of capital stock stated in its articles of incorporation or the amendments thereto. [Amended by 1969 c.635 §2; 1973 c.797 §76; 1977 c.135 §16; 1983 c.37 §4]

**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 Director of the Department of Consumer and Business Services 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 director 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 banking 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 director 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 Director of the Department of Consumer and Business Services 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 Director of the Department of Consumer and Business Services 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 Director of the Department of Consumer and

Business Services. 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 holidays, Saturdays, regular banking days; emergency closings.** (1) As used in this section:

(a) "Bank" includes any banking institution, national bank, extranational institution or foreign institution 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) The following days are holidays for purposes of this section:

(a) Each Sunday.

(b) New Year's Day on January 1.

(c) Martin Luther King, Jr.'s birthday on the third Monday in January.

(d) Presidents Day on the third Monday in February.

(e) Memorial Day on the last Monday in May.

(f) Independence Day on July 4.

(g) Labor Day on the first Monday in September.

(h) Veterans Day on November 11.

(i) Thanksgiving Day on the fourth Thursday in November.

(j) Christmas Day on December 25.

(3) When a holiday listed in subsection (2) of this section falls on Saturday, the preceding Friday shall be a holiday. When a holiday listed in subsection (2) of this section, other than a Sunday, falls on a Sunday, the succeeding Monday shall be a holiday.

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

(5) Subject to any applicable federal law or regulation, an office of a bank may be closed for any part or all of a banking day if the times or days which the office is open are posted on the premises of the office.

(6) A bank shall not be open for the general conduct of banking business on any holiday. However, nothing in this section shall be construed to prohibit a bank from engaging on a holiday in activities that do not collectively constitute being open for the general conduct of banking business. For purposes of this subsection, a bank is open for the general conduct of banking business if its office or offices are open to the public for carrying on substantially all business functions of the bank.

(7) When the Director of the Department of Consumer and Business Services determines that an emergency exists, the director 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 director 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.

(8) 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 director for a period not to exceed 48 hours, excluding 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 director, or in the case of a national bank, to the Comptroller of the Currency.

(9) 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.

(10) 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 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 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; 1985 c.627 §1; 1989 c.582 §1; 1989 c.596 §1]

**707.440 Challenge to validity of institution action; prohibition; exceptions.** (1)

Except as provided in subsection (2) of this section, the validity of an institution's action may not be challenged on the ground that the institution lacks or lacked power to act.

(2) An institution's power to act may be challenged:

(a) In a proceeding by a shareholder against the institution to enjoin the act; or

(b) In a proceeding by the institution, directly, derivatively or through a receiver, trustee or other legal representative, against an incumbent or former director, officer, employee or agent of the institution.

(3) In a shareholder's proceeding under subsection (2)(a) of this section to enjoin an unauthorized act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss other than anticipated profits suffered by the institution or another party because of enjoining the unauthorized act. [1989 c.324 §38]

**707.450 Authority to act as insurer.** Nothing in ORS 707.310, 708.430, 715.075, 716.594, 716.610, 744.066, 744.115, 746.195 and 746.211 shall be construed to permit a banking institution, a bank holding company or any subsidiary of a banking institution or bank holding company to act as insurer, as defined in ORS 731.106. [1987 c.916 §12]

**Note:** 707.450 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 707 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## STOCKHOLDERS, DIRECTORS AND OFFICERS

### (Stockholder Meetings)

**707.610 Annual and special stockholder meetings; notice of orders.** (1) A stockholders' meeting for the election of a board of directors and transaction of other business shall be held in this state within 120 days after the close of the fiscal year of the institution. If an institution was issued one or more orders by the director under ORS 706.580 within the fiscal year immediately preceding the date of the stockholders' meeting, the institution shall include in every notice required for the stockholders' meeting under ORS 707.611:

(a) A copy of ORS 706.580; and

(b) A statement that the institution received such an order or orders.

(2) A special meeting of stockholders may be called at any time by the chief executive officer, a majority of the board of directors, any other person or group authorized by the articles of incorporation or bylaws of the in-

stitution to call such meetings, or not fewer than three stockholders holding in the aggregate not less than one-third of the outstanding capital stock of the institution. The articles of incorporation or bylaws of the institution may reserve to an officer or the board of directors the authority to designate the time and place of such a meeting. However, the meetings shall be held in the State of Oregon. Unless the director consents to a later meeting date, the meetings shall be held not later than 45 days after the call for the meeting is issued. [Amended by 1957 c.59 §1; 1967 c.170 §1; 1973 c.797 §84; 1983 c.296 §3; 1985 c.786 §27; 1987 c.177 §1; 1989 c.324 §39]

**707.611 Notice of meeting.** Written or printed notice stating the place, date and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called shall be delivered not less than 10 days nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at the shareholder's address as it appears on the stock transfer books of the institution, with postage prepaid. [1989 c.324 §43]

**707.612 Action without meeting.** Any action required by this chapter to be taken at a meeting of the shareholders or directors of an institution or any other action which may be taken at a meeting of the shareholders, directors or of a committee may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the shareholders or directors or all of the members of the committee entitled to vote with respect to the subject matter thereof. The action shall be effective on the date on which the last signature is placed on the consent or consents or at such earlier time as is set forth therein. Such consent or consents shall have the same force and effect as a unanimous vote of such shareholders, directors or committee members and may be stated as such in any articles or document filed under this chapter. [1989 c.324 §52]

**707.613 Shareholder waiver of notice.** A shareholder may, at any time, waive any notice required by this chapter, the articles of incorporation or bylaws. The waiver must be in writing, be signed by the shareholder entitled to the notice and be delivered to the institution for inclusion in the minutes for filing with the corporate records. [1989 c.324 §51]

**707.615 Record date.** (1) For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of an institution may provide that the stock transfer books shall be closed for a stated period, not to exceed in any case 50 days. If the stock transfer books shall be closed for the purpose of determining the shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least 10 days immediately preceding such meeting.

(2) In lieu of closing the stock transfer books, the bylaws or, in the absence of an applicable bylaw, the board of directors may fix in advance a date as the record date for any such determination of shareholders. The record date, in any case, shall be not more than 50 days and, in the case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders.

(3) When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof. [1989 c.324 §44]

**707.617 Shareholders list for meeting.**

(1) The officer or agent having charge of the stock transfer books for shares of an institution shall make, at least 10 days prior to each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof. The list shall be arranged in alphabetical order, with the address of and the number of shares held by each shareholder and, for a period of 10 days prior to such meeting, shall be kept on file at the registered office of the institution and shall be subject to inspection by any shareholder at any time during usual business hours. Such list also shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original stock transfer books shall be prima facie evidence as to which shareholders are entitled to ex-

amine such list or transfer books or to vote at any meeting of shareholders.

(2) Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting.

(3) An officer or agent having charge of the stock transfer books who fails to prepare the list of shareholders, to keep it on file for a period of 10 days prior to each meeting of shareholders or to produce and keep it open for inspection at the meeting, as provided in this section, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage. [1989 c.324 §45]

**707.619 Voting entitlement of shares.**

(1) Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or classes are limited or denied by the articles of incorporation as permitted by the Bank Act.

(2) Neither treasury shares, nor shares of its own stock held by an institution in a fiduciary capacity, nor shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the institution shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time. The prohibition of this subsection does not apply if, under the terms of a trust in which such shares are held, the manner in which such shares shall be voted may be determined by the trustee, by a donor or beneficiary of the trust or by some other person named in the trust, and such shares are actually voted in the manner determined or directed by the trustee, donor, beneficiary or other person so authorized.

(3) A shareholder may vote either in person or by proxy executed in writing by the shareholder or by the shareholder's duly authorized attorney in fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy.

(4) At each election for directors, every shareholder entitled to vote at such election shall have the right to vote, either in person or by proxy, the number of shares owned by the shareholder for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote. If the articles of incorporation specifically permit cumulative voting, every shareholder shall have the right to cumulate the shareholder's votes either by giving one candidate as many votes as the number of such direc-

tors multiplied by the number of the shareholder's shares shall equal or by distributing such votes on the same principle among any number of such candidates.

(5) Shares standing in the name of another domestic or foreign corporation may be voted by such officer, agent or proxy as the bylaws of such corporation may prescribe or, in absence of such provision, as the board of directors of such corporation may determine.

(6) Shares held by an administrator, executor, guardian or conservator may be voted by such person, either in person or by proxy, without a transfer of such shares into such person's name. Shares standing in the name of a trustee may be voted by the trustee, either in person or by proxy, but no trustee shall be entitled to vote shares held by the trustee without a transfer of the shares to the name of the trustee.

(7) Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under control of a receiver may be voted by such receiver without a transfer into the receiver's name if authority to do so is contained in an appropriate order of the court by which such receiver was appointed.

(8) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(9) On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with another institution with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares. [1989 c.324 §47]

**707.620 Special stockholder meeting.** If the Director of the Department of Consumer and Business Services considers it expedient the director 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]

**707.621 Quorum.** (1) Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of

less than one-third of the shares entitled to vote at the meeting. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by the Bank Act or the articles of incorporation.

(2) The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum. [1989 c.324 §46]

**707.623 Modification of voting requirements.** Whenever, with respect to any action to be taken by the shareholders of an institution, the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than that required by this chapter with respect to such action, the provisions of the articles of incorporation shall control. [1989 c.324 §48]

**707.625 Exemption from personal liability for good faith acts or omissions in compliance with rule or order.** A person may not be held personally liable for an act done or omitted by the person in good faith and in compliance with a rule or order of the Director of the Department of Consumer and Business Services under this chapter regardless of whether the rule or order is later amended, rescinded or determined to be invalid by judicial or other authority. [1987 c.445 §4]

**707.630** [Repealed by 1973 c.797 §428]

#### (Directors and Officers)

**707.640 Directors; citizenship and residence requirements.** (1) No fewer than one-half of the directors of an institution, at the time of their election and during their continuance in office, shall:

(a) Be citizens of the United States; and

(b) Be residents of this state or reside within 100 miles of the principal place of business of the institution.

(2) At least one director shall be a resident of the State of Oregon. [Amended by 1973 c.797 §86; 1985 c.786 §28]

**707.642 Organizational meeting of directors.** After the issuance of the certificate of incorporation, an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers and transacting such other business as may come before the meeting. The incorporators who

called the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting. [1989 c.324 §27]

**707.644 Board of directors executive committee.** If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of all the directors in office when the action is taken, may designate from among its members an executive committee and one or more other committees. The executive committee and one or more other committees, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the institution, shall have and may exercise all the authority of the board of directors in the management of the institution. No such committee shall have the authority of the board of directors in reference to amending the articles of incorporation; adopting a plan of merger or consolidation; recommending to the shareholders the sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all the property and assets of the institution other than in the usual and regular course of its business; recommending to the shareholders a voluntary dissolution of the institution or a revocation thereof; or amending the bylaws of the institution. The designation of such committees and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon the board of directors or such member by law. [1989 c.324 §50]

**707.646 Staggered terms for directors.** If there are six or more directors, the articles of incorporation or the bylaws may provide for staggering their terms by dividing the total number of directors into two or three groups, with each group to be as nearly equal in number as possible. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election; the terms of the second group expire at the second annual shareholders' meeting after their election; and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. Thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire. If the institution has cumulative voting, terms of directors may be staggered only if authorized by the articles of incorporation, and no class shall have fewer than three members. [1989 c.324 §26]

**707.648 Removal of directors by shareholders.** (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation

provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove the director.

(3) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove the director.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director, and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director. [1989 c.324 §49]

**707.650** (Amended by 1973 c.797 §87; 1975 c.544 §9a; 1977 c.135 §17; 1983 c.37 §5; repealed by 1983 c.296 §12)

**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 the director, officer, manager or agent will, as far as the duty devolves on the director, officer, manager or agent, diligently and honestly administer the affairs of the institution or foreign or extranational institution, and that the director, officer, manager or agent 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 Director of the Department of Consumer and Business Services. [Amended by 1973 c.797 §88; 1975 c.725 §7]

**707.670 Regular meetings of directors; quorum; meetings by telephone.** (1)(a) The board of directors of an institution shall hold regular meetings as provided in this subsection.

(b) Unless paragraph (c) of this subsection is applicable, the board of directors shall hold a regular meeting at least once every month.

(c) Notwithstanding paragraph (b) of this subsection, with the approval of the director, the board of directors of an institution may hold regular meetings as infrequently as once each calendar quarter.

(2) A quorum at any meeting of the board of directors shall consist of:

(a) If the institution has a fixed board size, a majority of the members of the whole board.

(b) If the institution has a variable-range board size, a majority of the number of directors prescribed or, if no number is prescribed, a majority of the number in office immediately before the meeting begins.

(3) If less than a quorum of directors is present at a meeting, they may adjourn until the next meeting.

(4) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(5) Meetings of the board of directors, regular or special, may be held either within or without this state.

(6) Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.

(7) Unless otherwise restricted by the articles of incorporation or bylaws, members of the board of directors of an institution or any committee designated by the board may hold a meeting of the board or committee by means of conference telephone or similar communications equipment that allows all persons participating in the meeting to hear each other. Participation in a meeting under this subsection shall constitute presence in person at the meeting. [Amended by 1963 c.166 §1; 1973 c.797 §89; 1983 c.296 §4; 1989 c.324 §40; 1993 c.255 §1]

**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 employees.

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; failure to attend.** (1) The Director of the Department of Consumer and Business Services 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 the director 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 director vacancy.** Subject to ORS 707.705, 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. [Amended by 1985 c.786 §29]

**707.700 Selection and control of officers by directors; effect of removal of officers or chief executive.** (1) After a charter has been issued to an institution, the board of directors shall elect a chief executive officer who shall also be a director, a president who also may be the chief executive officer, and at least one vice president and may appoint a cashier, a treasurer and all necessary officers and employees.

(2) The board of directors may define the duties, fix the compensation, dismiss, fill vacancies and require bonds or irrevocable letters of credit for the faithful performance of the duties of the employees and officers of the institution.

(3) In the event the board dismisses the chief executive officer, the chief executive officer shall no longer serve as a director.

(4) Any officer or agent elected or appointed by the board of directors may be removed by the board of directors whenever, in its judgment, the best interests of the institution will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights. [Amended by 1973 c.797 §92; 1983 c.37 §6; 1985 c.786 §32; 1989 c.324 §41; 1991 c.331 §110]

**707.705 Investigation of new director, president and chief executive officer; fingerprinting; disapproval of election or appointment.** (1) After a charter has been

issued to a banking institution, before a person first takes office as director, president or chief executive officer, the name of the person shall be submitted to the Director of the Department of Consumer and Business Services, with any information about the person that the director may require.

(2) The director shall investigate each person whose name is submitted under this section to determine the character, honesty, financial responsibility and competence of the person. In the course of investigating any person under this section, the director may require the person to provide additional information for the director's further inquiry. For the purpose of such further inquiry, the director may require the person to submit to fingerprinting. Fingerprints acquired under this subsection may be submitted to appropriate law enforcement agencies, including the Federal Bureau of Investigation, for the purpose of discovering any unlawful activities of the person.

(3) The director may disapprove the election or appointment of the person for any reason stated in ORS 707.145. The director shall issue the disapproval in writing to the board of directors that submitted the person's name. A copy of the disapproval shall be served personally or by certified mail upon the disapproved person. The disapproval may be issued without a prior administrative hearing.

(4) A person whom the director disapproves under this section may appeal the disapproval as a contested case pursuant to ORS 183.415 to 183.500. [1985 c.786 §31]

**707.710 Removal of officer, director, resident manager, agent.** (1) For any reason specified in subsection (2) of this section, the Director of the Department of Consumer and Business Services by order:

(a) May direct the board of directors of a banking institution to remove a director or officer of the banking institution.

(b) May direct the board of directors of a foreign or extranational institution to remove a resident officer, manager or agent of the foreign or extranational institution.

(2) The Director of the Department of Consumer and Business Services may issue an order of removal under subsection (1) of this section:

(a) For any reason stated in ORS 707.145; or

(b) If the person who is the subject of the order has refused otherwise to comply with any written requirements or instructions of the director.

(3) An order of removal under this section shall be in writing and may be issued

without a prior administrative hearing. A copy of the order shall be served personally or by certified mail upon the person to be removed.

(4) Upon receipt of an order of removal the board of directors shall suspend the person from office.

(5) The person suspended from office may appeal the order of the director as a contested case under ORS 183.415 to 183.500.

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

(7) Any officer or director of a banking institution or any resident officer, manager or agent of a foreign or extranational institution 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 as an officer, director, stockholder, resident officer, manager or agent, without receiving permission from the director. [Amended by 1973 c.797 §93; 1983 c.296 §5; 1985 c.762 §§38,38a; 1985 c.786 §33]

**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, willfully do any act which is expressly forbidden by the Bank Act or omit to perform any duty imposed upon the officer or director by the Bank Act. [Amended by 1973 c.797 §94]

**707.730 Official communications from Department of Consumer and Business Services; submission to directors.** Every official communication directed by the Director of the Department of Consumer and Business Services or any examiner to an institution or to any officer of an institution, relating to an investigation or examination conducted by the Department of Consumer and Business Services 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 noted in the minutes of the meeting of the board in the manner prescribed by the director. [Amended by 1973 c.797 §95; 1985 c.762 §39]

**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 Director of the Department of Consumer and Business Services.

(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; reports.** (1) The board of directors of an institution shall annually appoint an examining committee of not fewer than three stockholders of the institution who are not active officers of the institution or not fewer than three other persons who are approved by the Director of the Department of Consumer and Business Services. 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 that 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 director within five days.

(2) The director may accept the report of persons appointed with the approval of the director in lieu of the report to be made by the examining committee under subsection (1) of this section. [Amended by 1973 c.797 §96; 1981 c.192 §5; 1985 c.786 §34]

#### (Indemnification of Directors, Officers, Employees and Agents)

**707.744 Definitions for ORS 707.744 to 707.764.** As used in ORS 707.744 to 707.764:

(1) "Director" means an individual who is or was a director of an institution or an individual who, while a director of an institution, is or was serving at the institution's request as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. A director is considered to be serving an employee benefit plan at the institution's request if the director's duties to the institution also impose duties on or otherwise involve services by the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the

context requires otherwise, the estate or personal representative of a director.

(2) "Expenses" includes counsel fees.

(3) "Institution" includes any domestic or foreign predecessor entity of an institution in a merger or other transaction in which the predecessor's existence ceased upon the consummation of the transaction.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty or fine, including an excise tax assessed with respect to an employee benefit plan or reasonable expenses incurred with respect to a proceeding.

(5) "Officer" means an individual who is or was an officer of an institution or an individual who, while an officer of an institution, is or was serving at the institution's request as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. An officer is considered to be serving an employee benefit plan at the institution's request if the officer's duties to the institution also impose duties on or include services by the officer to the employee benefit plan or to participants in or beneficiaries of the plan. "Officer" includes, unless the context requires otherwise, the estate or personal representative of an officer.

(6) "Party" includes an individual who was, is or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal. [1989 c.324 §17]

**707.746 Authority to indemnify directors.** (1) Except as provided in subsection (4) of this section, an institution may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if:

(a) The conduct of the individual was in good faith;

(b) The individual reasonably believed that the individual's conduct was in the best interests of the institution, or at least not opposed to its best interests; and

(c) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the best interests of the participants in and beneficiaries of the plan is conduct that satisfies the

requirement of subsection (1)(b) of this section.

(3) The termination of a proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(4) An institution may not indemnify a director under this section:

(a) In connection with a proceeding by or in the right of the institution in which the director was adjudged liable to the institution; or

(b) In connection with any other proceeding charging improper personal benefit to the director in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the institution is limited to reasonable expenses incurred in connection with the proceeding. [1989 c.324 §18]

#### **707.748 Mandatory indemnification.**

Unless limited by its articles of incorporation, an institution shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because of being a director of the institution against reasonable expenses incurred by the director in connection with the proceeding. [1989 c.324 §19]

**707.749** [1985 c.786 §20; 1987 c.216 §4; renumbered 707.849 in 1989]

**707.750** [1977 c.135 §20; 1981 c.192 §6; repealed by 1985 c.786 §70]

**707.752 Advance for expenses.** (1) An institution may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) The director furnishes the institution a written affirmation of the director's good faith belief that the director has met the standard of conduct described in ORS 707.746; and

(b) The director furnishes the institution a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct.

(2) The undertaking required by subsection (1)(b) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Any authorization of payments under this section may be made by provision in the articles of incorporation, or bylaws, by a resolution of the shareholders or board of directors or by contract. [1989 c.324 §20]

**707.754 Court-ordered indemnification.** Unless the institution's articles of incorporation provide otherwise, a director of the institution who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification if it determines:

(1) The director is entitled to mandatory indemnification under ORS 707.748, in which case the court shall also order the institution to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in ORS 707.746 or was adjudged liable as described in ORS 707.746 (4), whether the liability is based on a judgment, settlement or proposed settlement or otherwise. [1989 c.324 §21]

**707.755** [1985 c.786 §21; renumbered 707.855 in 1989]

**707.756 Determination and authorization of indemnification.** (1) An institution may not indemnify a director under ORS 707.746 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in ORS 707.746.

(2) A determination that indemnification of a director is permissible shall be made:

(a) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) If a quorum cannot be obtained under paragraph (a) of this subsection, by a majority vote of a committee duly designated by the board of directors consisting solely of two or more directors not at the time parties to the proceeding. However, directors who are parties to the proceeding may participate in designation of the committee;

(c) By special legal counsel selected by the board of directors or its committee in the manner prescribed in paragraph (a) or (b) of this subsection, or if a quorum of the board of directors cannot be obtained under paragraph (a) of this subsection and a committee cannot be designated under paragraph (b) of this subsection, the special legal counsel

shall be selected by majority vote of the full board of directors, including directors who are parties to the proceeding; or

(d) By the shareholders.

(3) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (2)(c) of this section to select counsel. [1989 c.324 §22]

**707.758 Indemnification of officers, employees and agents.** Unless an institution's articles of incorporation provide otherwise:

(1) An officer of the institution is entitled to mandatory indemnification under ORS 707.748 and is entitled to apply for court-ordered indemnification under ORS 707.754, in each case to the same extent as a director under ORS 707.748 and 707.754.

(2) The institution may indemnify and advance expenses under ORS 707.744 to 707.762 to an officer, employee or agent of the institution to the same extent as to a director. [1989 c.324 §23]

**707.760** [1985 c.786 §22; renumbered 707.860 in 1989]

**707.762 Insurance.** An institution may purchase and maintain insurance on behalf of an individual against liability asserted against or incurred by the individual who is or was a director, officer, employee or agent of the institution or who, while a director, officer, employee or agent of the institution, is or was serving at the request of the institution as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. The institution may purchase and maintain the insurance even if the institution has no power to indemnify the individual against the same liability under ORS 707.746 or 707.748. [1989 c.324 §24]

**707.764 Application of ORS 707.744 to 707.762.** (1) The indemnification and provisions for advancement of expenses provided by ORS 707.744 to 707.762 shall not be deemed exclusive of any other rights to which directors, officers, employees or agents may be entitled under the institution's articles of incorporation or bylaws, any agreement, general or specific action of its board of directors, vote of shareholders or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person. Specifically and not by way of lim-

itation, an institution shall have the power to make or agree to make any further indemnification, including advancement of expenses, of:

(a) Any director as authorized by the articles of incorporation, any bylaws approved, adopted or ratified by the shareholders or any resolution or agreement approved, adopted or ratified, before or after such indemnification or agreement is made, by the shareholders, provided that no such indemnification shall indemnify any director from or on account of acts or omissions for which liability could not be eliminated under ORS 707.110 (5)(c); and

(b) Any officer, employee or agent who is not a director as authorized by its articles of incorporation or bylaws, general or specific action of its board of directors or agreement. Unless the articles of incorporation, or any such bylaws, agreement or resolution provide otherwise, any determination as to any further indemnity under this paragraph shall be made in accordance with ORS 707.756.

(2) If articles of incorporation limit indemnification or advance of expenses, any indemnification and advance of expenses are valid only to the extent consistent with the articles of incorporation.

(3) ORS 707.744 to 707.762 do not limit an institution's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to a proceeding. [1989 c.324 §25]

## OPERATIONAL AUDITS AND REVIEW OF FINANCIAL STATEMENTS

**707.849 Operational audit.** (1) The board of directors of a banking institution, in conformance with standards adopted by the Director of the Department of Consumer and Business Services, shall cause to be conducted an operational audit of the banking institution. An operational audit:

(a) Shall be conducted by an independent auditor, unless the director provides otherwise under ORS 707.860. An auditor for purposes of this paragraph must be a person who is authorized by the State Board of Accountancy to engage in the practice of public accounting.

(b) May be either a continuing audit or an audit conducted at intervals not more than 18 months apart.

(2) Each operational audit or report on a continuing audit shall be submitted to the board of directors and made a part of the minutes of the regular meeting next follow-

ing submission of the audit or report. A copy of each audit or report shall be submitted to the director along with the following:

(a) A copy of the agreement, if any, under which the banking institution engaged the services of the person who conducted the audit.

(b) A copy of any correspondence from the person who conducted the audit containing comments, criticisms and suggestions as to the conduct of the affairs of the banking institution, if the comments, criticisms and suggestions are not included in the audit itself.

(3) Upon receipt of an operational audit or report on a continuing audit, the board of directors shall examine and study the audit and, not later than the 90th day after receipt, shall inform the director in writing what actions the board has taken in response to comments, criticisms and suggestions contained in the audit, or in accompanying correspondence. [Formerly 707.749]

**707.855 Review of financial statement.**

(1) The board of directors of a banking institution, in conformance with standards adopted by the Director of the Department of Consumer and Business Services, shall cause to be conducted a review of the financial statement of the banking institution. The review of the financial statement must comply with the rules adopted by the director under ORS 707.860. The review:

(a) Shall be conducted by an independent auditor.

(b) Shall be conducted annually.

(2) Each review of the financial statement shall be submitted to the board of directors and made a part of the minutes of the regular meeting next following submission of the review. A copy of each review shall be submitted to the Director of the Department of Consumer and Business Services along with the following:

(a) A copy of the agreement, if any, under which the banking institution engaged the services of the person who conducted the review.

(b) A copy of any correspondence from the person who conducted the review containing comments, criticisms and suggestions as to the conduct of the affairs of the banking institution, if the comments, criticisms and suggestions are not included in the review itself.

(3) Upon receipt of a review of a financial statement, the board of directors shall examine and study the review and, not later than the 90th day after receipt, shall inform the director in writing what actions the board has taken in response to comments,

criticisms and suggestions contained in the review or in correspondence accompanying it.

(4) A banking institution shall provide a copy of its financial statement to its stockholders and to any person who requests a copy. The financial statement shall include a brief statement of the scope of the review of the financial statement and the opinion of the person conducting it.

(5) Upon application of a banking institution, the director may waive the requirement of the review of the financial statement for a particular year if the director determines that the banking institution is sufficiently sound that such a review is not necessary for that year. [Formerly 707.755]

**707.860 Adoption of rules governing operational audits and reviews of financial statements; investigation of auditors; waiver of audit; single audit report.** (1) The Director of the Department of Consumer and Business Services by rule:

(a) Shall adopt standards and establish requirements for the operational audit required under ORS 707.849.

(b) Shall adopt standards and establish requirements for the review of the financial statement required under ORS 707.855. The standards shall be consistent with the statement on standards for accounting and review services by the American Institute of Certified Public Accountants, so that persons conducting reviews may do so according to standard accounting practices.

(c) Shall adopt standards of fitness, training and professional competence to be required of persons employed to conduct operational audits and reviews of financial statements. The director may establish different standards for audits and reviews. The director may provide that operational audits may be conducted by a correspondent bank of a banking institution.

(2) The director may investigate the general fitness, honesty and ability of any person employed to conduct an audit or review and may disapprove the person for any reason stated in ORS 707.145 or if the director determines that the training and ability of the person are inadequate to conduct a proper audit or review.

(3) Upon application of a banking institution, if the director determines that the banking institution and its system of internal controls are sufficiently sound, the director may waive the requirement under ORS 707.849 that the operational audit be conducted by an independent auditor.

(4) A banking institution, according to standards adopted by the director, may sub-

mit to the director a single audit report in satisfaction of the operational audit and the review of the financial statement. [Formerly 707.760]

707.990 [Repealed by 1973 c.797 §428]

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