

## CHAPTER 36

### CONSERVATION, LIQUIDATION AND INSOLVENCY

#### **§361. Applicability of chapter**

Notwithstanding any other provisions of law, the provisions of this chapter apply to and supersede any other provision of law governing conservation, liquidation and insolvency of financial institutions organized under the laws of this State. [PL 2003, c. 322, §14 (AMD).]

#### SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1997, c. 398, §H1 (AMD). PL 2003, c. 322, §14 (AMD).

#### **§362. Payments restrained to preserve assets or protect depositors**

**1. Application to court.** Whenever it may become necessary to preserve the assets or protect depositors in a financial institution, the Superior Court may, on application by the superintendent, the governing body of such institution or 3/4 of its depositors, members or investors or more if required by the institution's organizational documents, after due notice, issue an order restraining the institution from paying out its funds or any portion of its funds or from declaring or paying any dividends or deposits for such time as the court considers advisable.

[PL 1997, c. 398, Pt. H, §2 (AMD).]

**2. Authority of court.** The court may at any time revoke or modify the original order and authorize the institution to pay dividends upon its deposits, or pay any portion of its deposits to such as may desire to withdraw the same or make any other or further order that may be necessary to protect the depositors or members of such institution.

[PL 1975, c. 500, §1 (NEW).]

**3. Rights of parties.** Nothing in this section shall be construed to take away the rights of the parties in interest to proceed under sections 365 or 366, subsection 1.

[PL 1975, c. 500, §1 (NEW).]

#### SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1997, c. 398, §H2 (AMD).

#### **§363. Conservation of assets**

**(REPEALED)**

#### SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1991, c. 34, §4 (RP).

#### **§363-A. Conservation of assets**

**1. Appointment of conservator.** Whenever, in the judgment of the superintendent, because of unsafe or unsound practice in conducting the business of a financial institution or other potentially hazardous condition, it is necessary to conserve or revalue the assets of the financial institution or to reorganize and put into sound condition the financial institution for the benefit of depositors, beneficiaries of fiduciary accounts, creditors or the public, the superintendent may issue an order describing the unsafe, unsound or other hazardous condition and appointing one or more conservators for the financial institution, who shall endeavor promptly to remedy the condition or conditions stated in the order.

A. The superintendent may require a bond as the superintendent determines proper and issue orders as necessary to carry out the provisions of this section. The superintendent may appoint a deputy

superintendent or other person, including the federal corporation insuring the financial institution's accounts pursuant to section 422, as conservator. [PL 2005, c. 83, §7 (NEW).]

B. A conservator, in addition to the powers set forth elsewhere in this chapter and other powers authorized in an order of the superintendent, has all the rights, powers, privileges and authority possessed by the officers, governing body, corporators, members and investors of the financial institution, including the power to remove any officer or member of the governing body if the order of removal is approved in writing by the superintendent. The conservator may, in the name of the financial institution:

(1) Prosecute and defend all suits and other legal proceedings; and

(2) Execute, acknowledge and deliver all deeds, assignments, releases and other instruments necessary and proper to effectuate any sale of real or personal property or any compromise approved by the superintendent. Any deed or other instrument executed pursuant to this subparagraph is valid and effective for all purposes to the same extent as though fully authorized by the financial institution. [PL 2005, c. 83, §7 (NEW).]

C. If a deputy superintendent or other employee of the bureau is appointed conservator, no additional compensation need be paid, but any reasonable and necessary expenses as conservator, including expenses for assistants and counsel, must be paid by the financial institution. If a person other than an employee of the bureau is appointed conservator, then the compensation is determined by the superintendent and must be paid by the financial institution along with any reasonable and necessary expenses of the conservator, including expenses for assistants and counsel. [PL 2005, c. 83, §7 (NEW).]

D. In the event that the federal corporation insuring the financial institution's deposits or accounts pursuant to section 422 accepts an appointment as conservator, the corporation acquires both legal and equitable title to all assets, rights or claims and to all real or personal property of the financial institution to the extent necessary for the corporation to perform its duties as conservator or as may be necessary under applicable federal law to effectuate the appointment. If the corporation pays or makes available for payment the insured deposit liabilities of a financial institution by reason of actions taken pursuant to this section, the corporation becomes subrogated to the rights of all the depositors of the financial institution, whether or not it has become conservator of the financial institution, in the same manner and to the same extent as it would be subrogated in the conservation of a financial institution operating under a federal charter and insured by the corporation. [PL 2005, c. 83, §7 (NEW).]

[PL 2005, c. 83, §7 (NEW).]

**2. Segregation of assets.** A conservator appointed under subsection 1 may order that there be segregated and set aside investments that in the conservator's judgment are of slow or doubtful value or that, on account of unusual conditions, cannot be converted into cash at their full fair value.

A. Pursuant to the conservator's segregation order, the clerk or treasurer of the financial institution shall withdraw all investments so segregated and the then book value of the investments from the list of investments and book values of assets as shown on the books of the financial institution. [PL 2005, c. 83, §7 (NEW).]

B. The clerk or treasurer of the financial institution shall make and keep a complete and accurate list of the investments segregated under this subsection, their book values and any other records with respect to the investments as the superintendent or conservator may from time to time prescribe. [PL 2005, c. 83, §7 (NEW).]

As used in this subsection, "investment" or "investments" includes all assets of the financial institution, whether real or personal.

[PL 2005, c. 83, §7 (NEW).]

**3. Deposit reductions.** Simultaneously with the reductions taken pursuant to subsection 2, the following actions must be taken by the financial institution.

A. In the case of a mutual financial institution or cooperative financial institution, each deposit standing in that financial institution must be reduced so as to divide pro rata among the depositors or members the aggregate book value of all investments segregated under subsection 2. After the order under subsection 2 has been delivered, a depositor or member may not demand or receive on account of a deposit more than the amount remaining to the credit of the deposit after the reduction has been made, and dividends must be computed only on the amounts so remaining, except as otherwise provided in this section. The treasurer or clerk of that financial institution shall withdraw the sum of any deposit reductions from the statements of the amounts due to depositors or members and enter the reductions on individual passbooks as they are presented. The investments and amounts due depositors or members then remaining with changes thereafter made in a usual course of business are deemed to be the investments held by and deposits standing in that financial institution for the purpose of taxation and all other purposes, except as elsewhere provided in this chapter. [PL 2005, c. 83, §7 (NEW).]

B. In the case of an investor-owned financial institution, if the liabilities of that financial institution, excluding the outstanding equity interest, exceed its assets, the deficit, after making due allowances for priorities, must be divided pro rata among the depositors and each account charged with its proportionate share of the deficit. A depositor is entitled to withdraw the amount of the depositor's account as fixed and determined in the amounts and at the times the conservator, with the prior written approval of the superintendent, directs. That financial institution shall issue to each depositor a certificate showing the amount of the deficit charged to the depositor's account. The certificate is negotiable and may not bear interest. No dividend, profit, withdrawal or distribution may be made thereafter in liquidation of equity interests in that financial institution until the certificates have been paid in full with interest compounded at the rate of 3% per year; otherwise, the certificates may not be deemed to be a liability of that financial institution. [PL 2005, c. 83, §7 (NEW).]

C. Nothing in this subsection permits a conservator or the superintendent to reduce deposits or accounts insured by a federal corporation pursuant to section 422 without written approval of the federal corporation. [PL 2005, c. 83, §7 (NEW).]

[PL 2005, c. 83, §7 (NEW).]

**4. Sale of segregated investments.** Investments segregated under subsection 2 may be sold or exchanged for other securities or investments by a vote of the members of the governing body of the financial institution but must be sold when so ordered by the conservator or the superintendent. All money received from the sales of or as income from the securities or investments must be entered into a special account and held by the financial institution for the benefit of the depositors or members whose deposits were reduced under subsection 3, to be disposed of as provided in subsection 5. [PL 2005, c. 83, §7 (NEW).]

**5. Repayment of reductions.** The members of the governing body of a financial institution from time to time may, and when directed by the superintendent shall, declare pro rata dividends of money received as provided in subsection 4 to be distributed among the depositors or members whose deposits were reduced under subsection 3, payable to those who would then have been entitled to receive the sums deducted if the sums had continued to be included in the reduced deposits, and payable as other dividends are paid.

A. Any depositor or member whose deposit was reduced, any holder of a certificate issued pursuant to subsection 3, paragraph B or the financial institution may file a complaint with the superintendent after one year from the date of the reduction for an order of distribution whenever the condition of

the financial institution, taking into account the rights of creditors and of preferred stockholders, if any, warrants the payment. [PL 2005, c. 83, §7 (NEW).]

B. The superintendent may at any time declare the repayment under paragraph A to be final. [PL 2005, c. 83, §7 (NEW).]  
[PL 2005, c. 83, §7 (NEW).]

**6. Conservator continuing business.** The conservator may continue to operate the financial institution in accordance with the following conditions and limitations.

A. All depositors, members and investors of the financial institution may continue to make payments to the financial institution in accordance with the terms and conditions of their contracts. [PL 2005, c. 83, §7 (NEW).]

B. The conservator may set aside and make available for withdrawal by depositors or members and payment to other creditors on a ratable basis the amounts as in the opinion of the superintendent may safely be used for that purpose. [PL 2005, c. 83, §7 (NEW).]

C. The conservator may receive deposits under the following limitations. The deposits:

(1) May not be subject to any limitation as to payment or withdrawal;

(2) Must be segregated;

(3) May not be used to liquidate any indebtedness of the financial institution existing at the time that the conservator was appointed or any subsequent indebtedness incurred for the purpose of liquidating the indebtedness of the financial institution existing at the time the conservator was appointed; and

(4) Must be kept in cash or invested in direct obligations of the United States or deposited with another financial institution. [PL 2005, c. 83, §7 (NEW).]

[PL 2005, c. 83, §7 (NEW).]

**7. Replacement conservator.** The superintendent may, without notice or hearing, replace a conservator with another conservator.

[PL 2005, c. 83, §7 (NEW).]

**8. Termination of conservatorship.** The superintendent by order may terminate the conservatorship according to this subsection.

A. The superintendent may terminate the conservatorship at the superintendent's discretion. [PL 2005, c. 83, §7 (NEW).]

B. Any interested party may petition the superintendent for termination of the conservatorship 6 months following appointment of the conservator. [PL 2005, c. 83, §7 (NEW).]

C. Upon termination of the conservatorship, the powers and duties of the conservator appointed pursuant to subsection 1 cease. [PL 2005, c. 83, §7 (NEW).]

D. Upon termination of the conservatorship:

(1) The financial institution is returned to its governing body and operates as if the conservator had not been appointed; or

(2) A receiver is appointed as provided in section 365. [PL 2005, c. 83, §7 (NEW).]

A certified copy of any order discharging the conservator and returning the financial institution to its governing body is sufficient evidence of termination of conservatorship.

[PL 2005, c. 83, §7 (NEW).]

**9. Immunity from civil liability.** A person serving as a conservator is immune from any civil liability for acts performed within the scope of the conservator's duties in the same manner and to the same extent as employees of governmental entities are under the Maine Tort Claims Act. [PL 2005, c. 83, §7 (NEW).]

**9-A. Directors not liable.** The members of the board of directors of a financial institution may not be liable to the financial institution's shareholders or creditors for acquiescing in or consenting in good faith to the appointment of a conservator for that financial institution or requiring the financial institution to be acquired by a financial institution holding company or to combine with another financial institution, if grounds exist for appointing a conservator for the financial institution. [PL 2009, c. 228, §5 (NEW).]

**10. Judicial review.** Any person affected adversely by any act or omission of the superintendent or conservator under this section or section 367-A may bring an action in the Superior Court of Kennebec County seeking an order annulling, altering or modifying the act or enjoining the performance of the act or requiring action to be taken under any provision of this section.

A. The proceedings may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require. The person bringing the action has the burden of proof to show that the act or omission is unlawful or arbitrary and capricious. Only the financial institution may bring an action challenging the superintendent's order establishing the conservatorship. The court must uphold the superintendent's order establishing the conservatorship and the appointment of a conservator unless the court finds that the superintendent's action was unlawful or arbitrary and capricious. [PL 2011, c. 559, Pt. A, §6 (AMD).]

B. The person must bring the action under paragraph A within 10 business days after receiving notice of the act or omission in person, by registered mail or by publication of a certificate signed by the conservator, by the superintendent or by the president, treasurer or clerk of the financial institution in a newspaper of general circulation in the county where the financial institution has its principal office. [PL 2005, c. 83, §7 (NEW).]

C. Notwithstanding paragraph B, action may not be brought more than 30 days after the order of the superintendent under subsection 8. [PL 2005, c. 83, §7 (NEW).]

D. The court may issue injunctions to prevent multiplicity of proceedings seeking to annul, alter or modify the actions of the superintendent or the conservator made under the provisions of this chapter or to prevent undue interference with the regulation and conservation of the financial institution. [PL 2005, c. 83, §7 (NEW).]

E. The court, upon application by the superintendent or conservator, has jurisdiction to enforce orders relating to the conservatorship and the financial institution in conservatorship. [PL 2005, c. 83, §7 (NEW).]

F. Notwithstanding Title 5, section 8003, the Maine Administrative Procedure Act does not apply to the procedures described in this subsection. [PL 2005, c. 83, §7 (NEW).]  
[PL 2011, c. 559, Pt. A, §6 (AMD).]

## SECTION HISTORY

PL 2005, c. 83, §7 (NEW). PL 2009, c. 228, §5 (AMD). PL 2011, c. 559, Pt. A, §6 (AMD).

### §364. Voluntary liquidation

**1. Application to court.** Whenever, in the opinion of the superintendent and a majority of the governing body of any financial institution or in the opinion of 3/4 of its depositors, members or investors or more if required by the institution's organizational documents, it is inexpedient for any reason for the institution to continue the further prosecution of its business, the governing body may join with the superintendent in an application to the Superior Court for liquidation of the affairs of the

institution, or the depositors, members or investors may file such an application with the concurrence of the superintendent.

[PL 1999, c. 218, §19 (AMD).]

**2. Injunction to restrict payments.** Upon presentation of such application, the court may issue an injunction wholly or partially restraining further payment of deposits until further order of court.

[PL 1975, c. 500, §1 (NEW).]

**3. Order to liquidate.** If, after notice and hearing on application, the court is of the opinion that it is inexpedient for the institution to continue the further prosecution of its business, it may make orders and decrees as seem proper for liquidation of the institution's affairs, distribution of its assets, protection of its depositors, members and investors, if any, and the welfare of the community.

[PL 1997, c. 398, Pt. H, §3 (AMD).]

**4. Liquidation proceedings.** Further proceedings on such application may be in the manner provided for liquidation of an insolvent financial institution, or the court may authorize the chief executive officer, president and governing body of such institution then in office to liquidate its affairs under direction of the court.

[PL 1997, c. 398, Pt. H, §3 (AMD).]

**5. Applicability of section 362.** Section 362 is made applicable to such applications.

[PL 1975, c. 500, §1 (NEW).]

#### SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1997, c. 398, §H3 (AMD). PL 1999, c. 218, §19 (AMD).

#### §365. Insolvency liquidation

##### 1. Injunction against insolvent institution.

[PL 1991, c. 34, §5 (RP).]

**1-A. Appointment of receiver.** If, upon examination of a financial institution, the superintendent is of the opinion that it is insolvent or that its condition renders its further proceedings hazardous to the public or to those having funds including trust assets in its custody, the superintendent may order the institution closed and appoint a receiver who shall proceed to liquidate the financial institution.

[PL 2005, c. 83, §8 (AMD).]

##### 2. Powers of receivers.

Receivers have the following powers.

A. The person appointed by the superintendent as a receiver may be the superintendent, a deputy, or such other person, including the corporation insuring the institution's accounts pursuant to section 422, as the superintendent may choose; and a certified copy of the order making such appointment is evidence thereof. A receiver has the power and authority provided in this Title, and such other powers and authority as may be expressed in the order of the superintendent. [PL 1991, c. 34, §5 (AMD).]

B. If the superintendent or a deputy is appointed receiver, no additional compensation need be paid, but any reasonable and necessary expenses as a receiver must be paid by the institution. If another person is so appointed, then the compensation of the receiver must be paid from the assets of that institution. [PL 1991, c. 34, §5 (AMD).]

C. If the federal corporation insuring the institution's deposits or accounts pursuant to section 422 accepts an appointment as receiver, that corporation acquires both legal and equitable title to all assets, rights or claims and to all real or personal property of the institution, to the extent necessary for that corporation to perform its duties as receiver or as may be necessary under applicable federal law to effectuate that appointment. [PL 1991, c. 34, §5 (AMD).]

[PL 1991, c. 34, §5 (AMD).]

**3. Specific powers of receivers.** Upon taking possession of the property and business of a financial institution under this section, the receiver:

- A. May collect money due to the institution and do all acts necessary to conserve its assets and business, and shall proceed to liquidate its affairs; [PL 1991, c. 34, §5 (AMD).]
- B. Shall collect all debts due and claims belonging to the institution and may sell or compound all bad or doubtful debts; [PL 1991, c. 34, §5 (AMD).]
- C. May sell, for cash or other consideration or as provided by law, all or any part of the real and personal property of the institution; [PL 1991, c. 34, §5 (AMD).]
- D. May take, in the name of the institution, a mortgage on the real property from a bona fide purchaser to secure the whole or part of the purchase price; and [PL 1991, c. 34, §5 (AMD).]
- E. May borrow money and issue evidence of indebtedness therefor. To secure the repayment of same, the receiver may mortgage, pledge, transfer in trust or hypothecate any or all of the property of such institution, whether real, personal or mixed, superior to any charge thereon for expenses of liquidation. [PL 1991, c. 34, §5 (AMD).]
- F. [PL 1991, c. 34, §5 (RP).]
- G. [PL 1991, c. 34, §5 (RP).]

Whenever the federal corporation insuring the institution's deposits or accounts pursuant to section 422 pays or makes available for payment the insured deposit liabilities of an institution, such corporation shall become subrogated to the rights of all depositors of the institution, whether or not it has become receiver thereof, in the same manner and to the same extent as it would be subrogated in the liquidation of a financial institution operating under a federal charter and insured by such corporation. [PL 1991, c. 34, §5 (AMD).]

**4. Reports of receiver; legal advice.**  
[PL 1991, c. 34, §5 (RP).]

**5. Distribution of assets: stock institution.**  
[PL 1991, c. 34, §5 (RP).]

**6. Distribution of assets: mutual institution.**  
[PL 1991, c. 34, §5 (RP).]

**7. Attachments dissolved; actions discontinued; judgment recovered added to claims.**  
[PL 1991, c. 34, §5 (RP).]

**8. Untimely claims barred.**  
[PL 1991, c. 34, §5 (RP).]

**9. Unknown depositors.** When it appears upon the settlement of the account of the receiver of a financial institution pursuant to this section that there are remaining in the receiver's hands funds due depositors who can not be found and whose heirs or legal representatives are unknown, the unclaimed funds must be disposed of according to Title 33. [PL 1991, c. 34, §5 (AMD).]

**10. Procedures in liquidation.** When the superintendent appoints the FDIC as receiver, federal law prescribes the procedures that the FDIC follows in liquidation of the insolvent institution. When an insolvent institution is liquidated, assets must be distributed in the following priority:

- A. First, the payment of the costs and expenses of the liquidation; [PL 1991, c. 386, §11 (NEW).]
- B. Second, the payment of claims for deposits, including, but not limited to, the claims of depositors in a mutual institution for the return of their deposits; [PL 1991, c. 386, §11 (NEW).]

C. Third, the payment of all debts, claims and obligations owed by the institution and not accorded priority pursuant to paragraphs A and B; [PL 1991, c. 386, §11 (NEW).]

D. Fourth, the payment of claims otherwise proper that were not filed within the prescribed time; and [PL 1991, c. 386, §11 (NEW).]

E. Fifth, the payment of any obligation expressly subordinated to deposits and to claims entitled to the priority established by paragraphs A and B. [PL 1991, c. 386, §11 (NEW).]

Any funds remaining must be divided among the investors in an investor-owned institution according to their respective interests or, in the case of a mutual institution, pro rata among the depositors in proportion to the respective amount of their deposits.

Interest must be given the same priority as the claim on which it is based, but interest may not be paid on any claim until the principal of all claims within the same class and all higher-priority classes has been paid or adequately provided for in full.

[PL 1997, c. 398, Pt. H, §5 (AMD).]

**11. Immunity from civil liability.** A person serving as a receiver is immune from any civil liability, in the same manner as and to the same extent as employees of governmental entities are under the Maine Tort Claims Act, for acts performed within the scope of the receiver's duties.

[PL 2005, c. 83, §9 (NEW).]

**12. Directors not liable.** The members of the board of directors of a financial institution may not be liable to the financial institution's shareholders or creditors for acquiescing in or consenting in good faith to the appointment of a receiver for that financial institution or requiring the financial institution to be acquired by a financial institution holding company or to combine with another financial institution, if grounds exist for appointing a receiver for the financial institution.

[PL 2009, c. 228, §6 (NEW).]

#### SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1977, c. 707, §1 (AMD). PL 1991, c. 34, §5 (AMD). PL 1991, c. 386, §11 (AMD). PL 1997, c. 398, §H4 (AMD). PL 1997, c. 398, §H5 (AMD). PL 2005, c. 83, §§8,9 (AMD). PL 2009, c. 228, §6 (AMD).

#### **§366. Mutual institutions: insolvency; bylaws**

**(REPEALED)**

#### SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1991, c. 34, §6 (RP).

#### **§367. Additional authority in conservation and liquidation**

**(REPEALED)**

#### SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1975, c. 771, §111 (AMD). PL 1991, c. 34, §7 (RP).

#### **§367-A. Additional authority in conservation and liquidation**

**1. Attachments and preferences.** The superintendent or a conservator or receiver may bring an action:

A. To dissolve all attachments on the property of a financial institution made within 4 months before the appointment made under section 363-A or 365; [PL 2005, c. 83, §10 (NEW).]

B. To void as a preference any transfer made after, or in contemplation of, the appointment under section 363-A or 365; and [PL 2005, c. 83, §10 (NEW).]



C. To discontinue all actions pending against the financial institution. [PL 2005, c. 83, §10 (NEW).]

[PL 2005, c. 83, §10 (NEW).]

**2. Injunctions.** Whenever proceedings are instituted under this chapter, the Superior Court may issue an injunction restraining all persons from proceeding against the financial institution described in section 363-A or 365 until termination of conservatorship or final liquidation, including trustee processes.

[PL 2005, c. 83, §10 (NEW).]

**3. Other authority.** The superintendent, conservator or receiver may disaffirm or repudiate any contract or lease to which the financial institution is a party, fix the rights of the claimants and adjudicate and fix the time and mode of payment of all claims, accounts and deposits having priority.

[PL 2005, c. 83, §10 (NEW).]

**4. Proceedings generally.** The superintendent, conservator or receiver may bring an action described in this chapter, or any other action as determined appropriate, in the county in which the financial institution is located or has its principal place of business or in the Superior Court of Kennebec County. The proceedings may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

[PL 2011, c. 559, Pt. A, §7 (AMD).]

**5. Powers of superintendent.** The superintendent has the following powers.

A. The superintendent may take any actions necessary to carry out the terms and provisions of this chapter. [PL 2005, c. 83, §10 (NEW).]

B. All powers conferred under this chapter on the superintendent are in addition to the powers otherwise conferred upon the superintendent by law. [PL 2005, c. 83, §10 (NEW).]

C. The superintendent may adopt rules for the purpose of carrying out provisions of this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2005, c. 83, §10 (NEW).]

[PL 2005, c. 83, §10 (NEW).]

**6. Mergers.** The conservator or receiver, with the approval of the superintendent, may order the merger or consolidation of any financial institution that is described in section 363-A or 365 with any other financial institution, state-chartered or federally chartered, with the consent of the other financial institution and may prescribe the mode or procedure for the merger or consolidation and the terms and conditions of the merger or consolidation. Unless limited by the conservator or receiver, the effect of the merger on various property interests and fiduciary designations of the resulting institution is the same as described for mergers subject to section 357, subsection 1.

[PL 2023, c. 30, §5 (AMD).]

**7. Fiduciary accounts.** A conservator or receiver may terminate fiduciary positions of the financial institution, surrender property held by the financial institution as a fiduciary and settle fiduciary accounts. The conservator or receiver may release fiduciary property to one or more successor fiduciaries, and may sell one or more fiduciary accounts to one or more successor fiduciaries. Upon a sale or transfer of a financial institution's fiduciary property or a fiduciary account by a conservator or receiver, the successor fiduciary is automatically substituted without further action and without any order of any court. The conservator or receiver shall provide notice of the substitution, as far as practicable, to each person to whom the financial institution provides periodic reports of fiduciary activity. The notice must include the name of the financial institution, the name of the successor fiduciary and the effective date of the substitution. The successor fiduciary has all of the rights, powers, duties and obligations of the transferring financial institution and is deemed to be named, nominated or appointed as fiduciary in any will, trust, court order or similar written document or instrument that

names, nominates or appoints the transferring financial institution as fiduciary, whether executed before or after the substitution. The successor fiduciary has no obligations or liabilities under this chapter for any acts, actions, inactions or events occurring prior to the effective date of the substitution.

[PL 2023, c. 30, §6 (NEW).]

#### SECTION HISTORY

PL 2005, c. 83, §10 (NEW). PL 2011, c. 559, Pt. A, §7 (AMD). PL 2023, c. 30, §§5, 6 (AMD).

#### §368. Additional authority in liquidation

**1. Rulemaking.** The superintendent may adopt rules to carry out this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [PL 1997, c. 398, Pt. H, §6 (AMD).]

**2. Expenses.** All expenses of the superintendent or the superintendent's assistants incurred in carrying out this chapter must be paid out of the assets of the financial institution in connection with which the expenses were incurred.

[PL 1991, c. 34, §8 (NEW).]

#### SECTION HISTORY

PL 1991, c. 34, §8 (NEW). PL 1997, c. 398, §H6 (AMD).

#### §368-A. FDIC; acquisition of stock

The superintendent may waive the provisions of section 1013 and section 1015 when an equity interest is issued to or acquired by the FDIC in settlement of any liability, fixed or contingent, of a financial institution to the FDIC or in connection with the insolvency or liquidation of the financial institution. [PL 1997, c. 398, Pt. H, §7 (AMD).]

#### SECTION HISTORY

PL 1993, c. 538, §3 (NEW). PL 1997, c. 398, §H7 (AMD).

#### §369. Judicial review

**1. Action by financial institution.** A financial institution closed by action of the superintendent pursuant to this chapter may bring an action challenging the superintendent's appointment of a receiver in the Superior Court of Kennebec County within 10 days after the superintendent appoints a receiver.

The court must uphold the superintendent's finding that a financial institution is insolvent or that its condition is such as to render its further proceedings hazardous to the public or to those having funds in its custody and must uphold the appointment of a receiver unless the court finds that the superintendent's action was arbitrary and capricious.

[PL 2009, c. 228, §7 (NEW).]

**2. Action by person adversely affected.** Except when the Federal Deposit Insurance Corporation is appointed receiver and conducts a receivership under federal law, a person affected adversely by an act or omission of the superintendent or receiver under this section and sections 365, 367-A and 368 may bring an action in the Superior Court of Kennebec County seeking an order to annul, alter or modify the act or to enjoin the performance of the act or to require that action be taken under any provision of this section.

A. Any proceedings under this section may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require. The person bringing the action has the burden of proof to show that the act or omission is unlawful or arbitrary and capricious. [PL 2011, c. 559, Pt. A, §8 (AMD).]

B. The person must bring the action under this subsection within 10 business days after receiving notice of the act or omission in person, by registered mail or by publication of a certificate signed

by the superintendent or receiver in a newspaper of general circulation in the county where the financial institution has its principal office. [PL 2009, c. 228, §7 (NEW).]

C. Notwithstanding paragraph B, action may not be brought more than 30 days after the order of the superintendent determining that the business affairs of the receivership are substantially complete and that the receivership is terminated. Upon termination of the receivership, the superintendent is under no obligation to reopen the receivership. [PL 2009, c. 228, §7 (NEW).]

D. The court may issue injunctions to prevent multiplicity of proceedings seeking to annul, alter or modify the actions of the superintendent or receiver made under the provisions of this chapter or to prevent undue interference with the regulation and liquidation of the financial institution. [PL 2009, c. 228, §7 (NEW).]

E. The court, upon application by the superintendent or receiver, has jurisdiction to enforce orders relating to the receivership and the financial institution in receivership. [PL 2009, c. 228, §7 (NEW).]

F. Notwithstanding Title 5, section 8003, the Maine Administrative Procedure Act does not apply to the procedures described in this subsection. [PL 2009, c. 228, §7 (NEW).]  
[PL 2011, c. 559, Pt. A, §8 (AMD).]

#### SECTION HISTORY

PL 1991, c. 34, §8 (NEW). PL 2009, c. 228, §7 (RPR). PL 2011, c. 559, Pt. A, §8 (AMD).

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