

§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).

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