

§871-A. Dissolution

1. Voluntary dissolution. This subsection governs the voluntary dissolution of a credit union.

A. A recommendation may be made that a credit union be dissolved and voluntarily liquidated by majority vote of either the entire membership of the credit union entitled to vote or the board of directors of the credit union. Within 10 days after recommendation, the credit union shall notify the superintendent, the federal agency that insures the credit union accounts and the credit union members in writing of the recommendation and the reasons for dissolution. If the entire membership votes to dissolve and voluntarily liquidate the credit union, then no additional votes of the entire membership need be taken. If the board of directors of the credit union votes to dissolve and voluntarily liquidate the credit union, then a special meeting of the credit union's entire membership must be called, no sooner than 10 days after notice has been mailed to the superintendent. A majority of the entire membership of the credit union entitled to vote must vote to dissolve and voluntarily liquidate the credit union. Members may cast their votes by proxy on forms prepared by the board of directors and mailed with the meeting notice. [PL 2003, c. 322, §42 (NEW).]

B. Whenever there is a recommendation of dissolution pursuant to paragraph A, the board of directors shall provide the superintendent with a plan of dissolution. The plan of dissolution must set forth the method and schedule for terminating the business of the credit union and may provide for a restriction on withdrawal of shares or withdrawal of share certificates. Before the 2nd membership vote required in paragraph A may be taken, the board must receive the superintendent's approval of the plan of dissolution. [PL 2003, c. 322, §42 (NEW).]

C. The superintendent may approve the dissolution of a credit union recommended by a majority of the entire board of directors but approved by less than a majority of all members if the superintendent finds, upon the written and verified application of the board, that:

- (1) The board mailed written notice of the meeting to consider dissolution to all members qualified to vote;
- (2) The notice disclosed the purpose of the meeting and that approval of dissolution might be sought pursuant to this paragraph;
- (3) A majority of the votes cast by the members were in favor of dissolution; and
- (4) The board has an acceptable plan of dissolution. [PL 2003, c. 322, §42 (NEW).]

D. If the superintendent approves dissolution, either by vote of the board or vote of the members, the credit union shall immediately cease to do business, except for the express purposes of liquidation including the discharging of debts, collecting on loans, distributing assets and every other act necessary to wind up and liquidate the business. It may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted. [PL 2003, c. 322, §42 (NEW).]

E. The board of directors shall use the assets of the credit union to pay claims in the following order:

- (1) Claimants whose claims are secured must receive their security. To the extent their respective claims exceed the value of the security for those claims, as determined to the satisfaction of the receiver, they each have an unsecured claim against the credit union having priority as provided in subparagraph (2); and
- (2) Unsecured claims against the liquidation estate that are proved to the satisfaction of the receiver have priority in the following order:
 - (a) Administrative costs and expenses of liquidation;

- (b) Claims for wages and salaries, including vacation, severance and sick leave pay;
- (c) Taxes legally due and owing to the United States or any state or subdivision of the United States or state;
- (d) Debts due and owing to the State and the United States, including the National Credit Union Administration;
- (e) General creditors, and secured creditors to the extent that the secured creditors' respective claims exceed the value of the security for those claims;
- (f) Pro rata distribution to members in proportion to the respective amount of their deposits and shares;
- (g) In a case involving liquidation of a corporate credit union, membership capital of the corporate credit union;
- (h) In a case involving liquidation of a designated community development credit union, any outstanding secondary capital accounts issued pursuant to state law; and
- (i) In a case involving liquidation of a corporate credit union, paid-in capital. [PL 2003, c. 322, §42 (NEW).]

F. Priorities for payment of claims under paragraph E are to be based on the circumstances that exist on the date of the liquidation. [PL 2003, c. 322, §42 (NEW).]

G. If the repudiation or disaffirmance of any contract or lease gives rise to a claim for damages, the claim must be considered a general creditor claim under paragraph E, subparagraph (2), division (e) and not a cost or expense of liquidation under paragraph E, subparagraph (2), division (a). [PL 2003, c. 322, §42 (NEW).]

H. All unsecured claims of any category or class or priority described in paragraph E, subparagraph 2, divisions (a) to (i) must be paid in full, or provisions made for such payment, before any claims of lesser priority are paid. If there are insufficient funds to pay all claims of a category or class, payment must be made pro rata. Notwithstanding anything to the contrary in this section, the receiver may, at any time, and from time to time, prior to the payment in full of all claims of a category or class with higher priority, make such distributions to claimants in priority categories described in paragraph E, subparagraph (2), divisions (a) to (e) as the receiver believes are reasonably necessary to conduct the liquidation, as long as the receiver determines that adequate funds exist or will be recovered during the liquidation to pay in full all claims of any higher priority. If a surplus remains after making distribution in full on all allowed claims described in paragraph E, subparagraph (2), divisions (a) to (i), the surplus must be distributed pro rata to the credit union's members. [PL 2003, c. 322, §42 (NEW).]

I. A credit union liquidating voluntarily may not continue in existence for more than 3 years after approval of dissolution, unless an extension is granted by the superintendent for good cause shown in an application filed prior to expiration of the 3-year period. [PL 2003, c. 322, §42 (NEW).]

J. After all debts, liabilities and obligations of the credit union are paid or discharged or otherwise adequately provided for, the credit union shall file articles of dissolution with the Secretary of State. Articles of dissolution must set forth:

- (1) The name and address of the credit union;
- (2) The date dissolution was approved;
- (3) A statement of how dissolution was approved;
- (4) A report of liquidating activities; and
- (5) Such other information as the superintendent may require.

Dissolution is effective upon the superintendent's acceptance of articles of dissolution for filing with the bureau. At the time of the superintendent's acceptance of the filing, the credit union ceases to exist, except for the purposes of suits or other proceedings provided for by law. [PL 2003, c. 322, §42 (NEW).]

[PL 2003, c. 322, §42 (NEW).]

2. Involuntary dissolution. This subsection governs the involuntary dissolution of a credit union.

A. If, upon examination of a credit union, the superintendent determines that the credit union is insolvent or that the credit union is operating in an unsafe or unsound manner, the superintendent may appoint a receiver who shall proceed to close the credit union. The credit union shall remain in existence for the purpose of winding up its affairs. [PL 2003, c. 322, §42 (NEW).]

B. The person appointed by the superintendent as a receiver may be the superintendent, a deputy or any other person, including the agency insuring the credit union's accounts pursuant to section 836, as the superintendent may choose, and a certified copy of the order making such an appointment is evidence of the appointment. The receiver need not post a bond. The receiver has the power and authority provided in this Title and any other powers and authority as may be expressed in the order of the superintendent. [PL 2003, c. 322, §42 (NEW).]

C. If the superintendent or a deputy is appointed receiver, no additional compensation need be paid, but any reasonable and necessary expenses of the superintendent or deputy as receiver must be paid by the credit union. If another person is appointed, then the compensation of the receiver must be paid from the assets of that credit union. [PL 2003, c. 322, §42 (NEW).]

D. In the event that the federal agency insuring the credit union's shares or accounts pursuant to section 836 accepts an appointment as receiver, the agency shall acquire both legal and equitable title to all assets, rights or claims and to all real and personal property of the credit union to the extent necessary for the agency to perform its duties as receiver under applicable federal law to effectuate the appointment. If the agency pays or makes available for payment the insured shares of a credit union by reason of actions taken pursuant to this section, the agency is subrogated to the rights of all the members of the credit union, whether or not it has become receiver of the credit union, in the same manner and to the same extent as it would be subrogated in the receivership of a credit union operating under a federal charter and insured by the agency. [PL 2003, c. 322, §42 (NEW).]

E. Upon taking possession of the property and business of a credit union under this chapter, the receiver:

- (1) May collect money due to the credit union and do all acts necessary to conserve its assets and business and shall proceed to liquidate its affairs;
- (2) Shall collect all debts due and claims belonging to the credit union and may sell or compound all bad or doubtful debts;
- (3) May sell, for cash or other consideration or as provided by law, all or any part of the real and personal property of the credit union;
- (4) May take, in the name of the credit union, a mortgage on the real property from a bona fide purchaser to secure the whole or part of the purchase price;
- (5) May borrow money and issue evidence of indebtedness for the money. To secure the repayment of the indebtedness, the receiver may mortgage, pledge, transfer in trust or hypothecate any or all of the property of the credit union, whether real, personal or mixed, superior to any charge for expenses of liquidation; and
- (6) May represent the credit union in lawsuits under the receiver's own name as receiver of the credit union. [PL 2003, c. 322, §42 (NEW).]

F. The receiver shall use the assets of the credit union to pay claims in the following order:

(1) Claimants whose claims are secured must receive their security. To the extent their respective claims exceed the value of the security for those claims, as determined to the satisfaction of the receiver, they each have an unsecured claim against the credit union having priority as provided in subparagraph (2); and

(2) Unsecured claims against the liquidation estate that are proved to the satisfaction of the receiver have priority in the following order:

- (a) Administrative costs and expenses of liquidation;
- (b) Claims for wages and salaries, including vacation, severance and sick leave pay;
- (c) Taxes legally due and owing to the United States, any state or any subdivision of the United States or any state;
- (d) Debts due and owing to the State and the United States, including the National Credit Union Administration;
- (e) General creditors, and secured creditors to the extent that the secured creditors' respective claims exceed the value of the security for those claims;
- (f) Pro rata distribution to members in proportion to the respective amount of their deposits and shares;
- (g) In a case involving liquidation of a corporate credit union, membership capital of the corporate credit union;
- (h) In a case involving liquidation of a designated community development credit union, any outstanding secondary capital accounts issued pursuant to state law; and
- (i) In a case involving liquidation of a corporate credit union, paid-in capital. [PL 2003, c. 322, §42 (NEW).]

G. Priorities for payment of claims under paragraph F are based on the circumstances that exist on the date of the liquidation. [PL 2003, c. 322, §42 (NEW).]

H. If the repudiation or disaffirmance of any contract or lease gives rise to a claim for damages, the claim must be considered a general creditor claim under paragraph F, subparagraph (2), division (e) and not a cost or expense of liquidation under paragraph F, subparagraph (2), division (a). [PL 2003, c. 322, §42 (NEW).]

I. All unsecured claims of any category or class or priority described in paragraph F, subparagraph (2), divisions (a) to (i) must be paid in full, or provisions made for such payment, before any claims of lesser priority are paid. If there are insufficient funds to pay all claims of a category or class, payment must be made pro rata. Notwithstanding anything to the contrary in this section, the receiver may, at any time, and from time to time, prior to the payment in full of all claims of a category or class with higher priority, make such distributions to claimants in priority categories described in paragraph F, subparagraph (2), divisions (a) to (e) as the receiver believes are reasonably necessary to conduct the liquidation, as long as the receiver determines that adequate funds exist or will be recovered during the liquidation to pay in full all claims of any higher priority. If a surplus remains after making distribution in full on all allowed claims described in paragraph F, subparagraph (2), divisions (a) to (i), the surplus must be distributed pro rata to the credit union's members. [PL 2003, c. 322, §42 (NEW).]

J. After all debts, liabilities and obligations of the credit union are paid or discharged or otherwise adequately provided for, the receiver shall file articles of dissolution with the Secretary of State. Articles of dissolution must set forth:

- (1) The name and address of the credit union;
- (2) The date dissolution was ordered;
- (3) A statement of how dissolution was ordered;
- (4) A report of liquidating activities; and
- (5) Such other information as the superintendent may require.

Dissolution is effective upon the superintendent's acceptance of articles of dissolution for filing with the bureau. At that time the credit union ceases to exist, except for the purposes of suits or other proceedings provided for by law. [PL 2003, c. 322, §42 (NEW).]

[PL 2003, c. 322, §42 (NEW).]

SECTION HISTORY

PL 2003, c. 322, §42 (NEW).

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