

1301:9-2-38

**Powers and duties of liquidating agents.**

- (A) As soon as practicable after taking possession, the liquidating agent shall inventory the assets of such credit union as of the date of taking possession. The inventory shall show the value of the assets carried on the books of the credit union, and the security therefor, if any; contain a brief description of the assets and any security; and a list of the credit union's creditor and accounts liabilities. A copy of such inventory shall be furnished to the superintendent upon completion.
- (B) The liquidating agent shall promptly publish a notice to the credit union's creditors to present their claims, together with proof, to the liquidating agent by a date specified in the notice. This date shall be not less than ninety days after the publication of the notice. The liquidating agent shall republish such notice approximately one and two months, respectively, after the initial publication. At the time of initial publication, the liquidating agent shall mail a notice similar to the published notice to any creditor shown on the credit union's books at the last address appearing therein. If the liquidating agent discovers the name of a creditor whose name does not appear on the credit union's books, a notice similar to the published notice shall be mailed to such creditor within thirty days after the discovery of the name and address.
- (C) Any party wishing to submit a claim against the liquidated credit union must submit a written proof of claim in accordance with the requirements set forth in the notice to creditors. A failure to submit a written claim within the time provided in the notice to creditors shall be deemed a waiver of said claim and the claimant shall have no further rights or remedies with respect to such claim. The liquidating agent may require submission of supplemental evidence by the claimant and by interested parties in the event of a dispute concerning a claim against any asset of the liquidated credit union. The liquidating agent shall determine whether to allow or disallow a claim and shall notify the claimant within one hundred eighty days from the date a claim against a credit union is filed. Failure by the liquidating agent to determine a claim and notify the claimant within the one hundred eighty day period shall be deemed a denial of the claim.
- (D) The liquidating agent shall collect all obligations and money due such credit union and may, to the extent consistent with its appointment, do all things desirable or expedient in its discretion to wind up the affairs of the credit union including, but not limited to, the following:
- (1) Exercise all rights and powers of the credit union including, but not limited to, any rights and powers under any mortgage, deed of trust, chose in action, option, collateral note, contract, judgment or decree, or instrument of any nature;

- (2) Institute, prosecute, maintain, defend, intervene, and otherwise participate in any and all actions, suits, or other legal proceedings by and against the liquidating agent or the credit union or in which the liquidating agent, the credit union, or its creditors or shareholders shall have an interest, and in every way to represent the credit union, its shareholders and creditors;
  - (3) Employ on a salary or fee basis such persons as in the judgment of the liquidating agent are necessary or desirable to carry out its responsibilities and functions, including, but not limited to, appraisers, certified public accountants and attorneys;
  - (4) Execute, acknowledge, and deliver any and all deeds, contracts, leases, assignments, bills of sale, releases, extensions, satisfactions, and other instruments necessary or proper for any purposes, including, but not limited to, the effectuation, termination, or transfer of real, personal or mixed property, or which shall be necessary or proper to liquidate the credit union, and any deed or other instrument executed pursuant to the authority hereby given shall be as valid and effective for all purposes as if the same had been executed as the act and deed of the credit union;
  - (5) Disaffirm or repudiate any contract or lease to which the credit union is a party, the performance of which the liquidating agent, in his sole discretion, determines to be burdensome, and which disaffirmance or repudiation in the liquidating agent's sole discretion will promote the orderly administration of the credit union's affairs;
  - (6) Deposit, withdraw, or transfer funds, and otherwise exercise complete control over all investment or depository accounts maintained by or for the credit union at financial depositories or similar institutions; and
  - (7) Exercise such other authority as is conferred by the laws of this state.
- (E) The liquidating agent shall have power to:
- (1) Pay all costs and expenses of the liquidation, subject to the approval of the superintendent;
  - (2) Pay off and discharge taxes and liens;
  - (3) Pay out and expend such sums as are deemed necessary or advisable for or in connection with the preservation, maintenance, conservation, protection, remodeling, repair, rehabilitation, or improvement of any asset or property of any nature of the credit union or the liquidating agent;

(4) Pay off and discharge any assessments, liens, claims, or charges of any kind against any asset or property of any nature on which the credit union or the liquidating agent has a lien by way of mortgage, deed of trust, pledge, or otherwise, or in which the credit union or liquidating agent has any interest; ~~and~~

(5) Settle, compromise, or obtain the release of, for cash or other consideration, claims and demands against the credit union or the liquidating agent.

~~(F) The liquidating agent shall have power to:~~

~~(1)~~(6) Sell for cash or on terms, exchange, assign, or otherwise dispose of, in whole or in part, any or all of the assets and property of the credit union, real, personal and mixed, tangible and intangible, of any nature, including any mortgage, deed of trust, chose in action, bond, note, contract, judgment, or decree, share or certificate of share of stock or debt, owing to the credit union or the liquidating agent; and

~~(2)~~(7) Surrender, abandon, and release any chose in action, or other assets or property of any nature, whether the subject of pending litigation or not, and settle, compromise, modify, or release, for cash or other consideration, claims and demands in favor of the credit union or the liquidating agent.

Effective:

Five Year Review (FYR) Dates:

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Certification

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Date

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