WEST VIRGINIA CODE: §31A-7-3

§31A-7-3. Conservatorship; reorganization.

(a) Whenever the commissioner considers it necessary in order to protect or preserve the assets of any financial institution in this state for the benefit of the depositors and other creditors thereof, he may appoint a conservator for such financial institution. The conservator may be an employee of the state department of banking and shall give such bond and security as the commissioner considers proper.

(b) The conservator, under the direction of the commissioner, shall take possession of the papers, books, records and assets of every description of such financial institution and take such other action as is necessary to conserve such assets pending further disposition of the business of the institution. Immediately upon taking charge of the financial institution, the conservator, in conjunction with a representative of the institution designated by the directors thereof, shall make in triplicate a complete inventory of all assets of the institution and an itemized list of all its liabilities. The original and two copies of the list shall be subscribed and sworn to by the persons making them. The original shall be filed with the commissioner as soon as practicable. One such copy shall be furnished to the institution, and the other copy shall be retained by the conservator.

(c) A conservator has all the rights, powers, duties, responsibilities and privileges that receivers have under this article and is subject to all obligations to which such receivers are subject.

(d) During the period that a conservator remains in possession of a financial institution, the legal relations of all parties with respect thereto shall, subject to the other provisions of this section, be the same as if a receiver had been appointed therefor under other pertinent provisions of this article.

(e) All reasonable and necessary expenses actually incurred in the course of any such conservatorship shall be paid out of the assets of the financial institution and are a lien on such assets, which lien has priority over any other lien. The conservator shall be paid a reasonable compensation, to be fixed by the commissioner, for his services but such compensation must not exceed the amount that would be paid to employees of the state department of banking for similar services.

(f) If the commissioner becomes satisfied that such a course of action may be pursued safely and that it is in the public interest, he may, in his discretion, terminate the conservatorship and permit the financial institution to resume the transaction of its business subject to such terms, conditions, restrictions and limitations as he imposes or the commissioner may appoint a receiver pursuant to section four of this article to take over the property and affairs of the institution.

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(g) While a financial institution is in the hands of a conservator, the commissioner may require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors, on a ratable basis, such amounts as in the opinion of the commissioner may be used safely for such purpose, subject to such priorities and preferences as are provided by law. The commissioner may, in his discretion, permit the conservator to receive deposits, and such deposits are not subject to any limitation as to payment or withdrawal. Such deposits shall be segregated and shall not be used either to liquidate any indebtedness of the financial institution existing at the time that the conservator was appointed for it or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of such institution existing at the time the conservator was appointed.

(h) Deposits received while a financial institution is in the hands of a conservator shall: (1) Be kept on hand in cash or (2) be deposited with a federal reserve bank or deposited with such financial institution as the commissioner in his discretion designates or (3) be invested in direct obligations of the United States or the State of West Virginia or in funded obligations of any political subdivision of this state approved by the commissioner.

(i) In any reorganization of any financial institution under a plan of a kind that by its own terms or under existing law requires the consent, as the case may be, of depositors and other creditors, or of stockholders, or of both depositors and other creditors and stockholders, such reorganization shall become effective only when the commissioner is satisfied that the plan of reorganization is fair and equitable to all depositors, other creditors and stockholders and that it is in the public interest and has approved the plan subject to such conditions, restrictions and limitations as he imposes, and when, after reasonable notice of such reorganization, as the case may be, depositors and other creditors of such financial institution representing at least seventy-five percent in amount of its total deposits and other liabilities; or stockholders owning at least two thirds in amount of its outstanding capital stock; or both depositors and other creditors representing at least seventy-five percent in amount of the total deposits and other liabilities and stockholders owning at least two thirds in amount of its outstanding capital stock have consented in writing to the plan of reorganization. Claims of depositors or other creditors which will be satisfied in full under the plan of reorganization shall not be included among the total deposits and other liabilities of the financial institution in determining the seventy-five percent thereof as above provided.

(j) When any such reorganization becomes effective, all books, records, and assets of the financial institution shall be disposed of in accordance with the provisions of the plan and the affairs of the financial institution shall be conducted by its board of directors in the manner provided by the plan and under such conditions, restrictions and limitations that have been imposed by the commissioner. In any such reorganization that has been approved and has become effective as provided herein, all depositors and other creditors and stockholders of the financial institution, whether or not they have consented to the plan of reorganization, are fully and in all respects subject to and bound by its provisions, and the claims of all depositors and other creditors shall be treated as if they had consented to such plan of reorganization.

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(k) Fifteen days after the affairs of the financial institution have been returned to its board of directors by the conservator, either with or without a reorganization as provided in subsection (i) of this section, the provisions of subsections (g) and (h) of this section shall no longer be effective. Before the conservator returns the affairs of the institution to its board of directors, he shall publish a notice, in such form as the commissioner approves, stating the date on which the affairs of the financial institution will be returned to its board of directors and that the provisions of subsections (g) and (h) of this section will not be effective fifteen days after such date. The notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the financial institution is located. On the date of the publication of such notice, the conservator shall send a copy of such notice by registered mail to the last known address of every person who is a depositor as shown by the records of the institution. The conservator shall send a similar notice in like manner to every person making a deposit in such institution under said subsection (g) after the date of such newspaper publication and before the time when the affairs of the institution are returned to its directors.

(l) The provisions of this section shall not under any circumstances be construed to impair in any way any powers of the Governor or the commissioner provided elsewhere by law with respect to any matter covered by this section.

(m) The commissioner may prescribe such rules and regulations, not inconsistent with the provisions of this article, as he considers necessary or convenient to carry out the provisions of this section.

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