WEST VIRGINIA CODE: §31A-7-4

§31A-7-4. Receivership.

(a) If the commissioner ascertains from any source that the capital of any financial institution is substantially impaired and such institution, after receiving notice from the commissioner, does not promptly make good such impairment to the satisfaction of the commissioner, or if the commissioner ascertains from any source that any financial institution is insolvent or reasonably appears about to be insolvent, the commissioner shall appoint a receiver to take full and exclusive possession and control of and title to the books, records, papers, moneys, assets, business and all other things of the financial institution. Such title shall pass to and vest in the receiver by operation of law without the execution of any instruments of conveyance, assignment, transfer or endorsement. The commissioner shall give the receiver a certificate of appointment. Immediately upon taking such possession and control, the receiver shall establish and maintain such books, records and procedures for accountability as the commissioner prescribes and may exercise all the powers, duties and authority provided for in this article.

Immediately upon taking charge of the financial institution, the receiver, 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 receiver.

(b) In any case where a receiver is to be appointed pursuant to subsection (a) of this section, if the involved financial institution has deposits insured by the federal deposit insurance corporation and if such corporation is required or otherwise willing to be receiver for the institution, the commissioner shall appoint the federal deposit insurance corporation as receiver for that financial institution.

(c) A receiver appointed under any provision of this article has the following general powers, duties and responsibilities:

(1) To take full and exclusive possession and control of and title to the papers, books, records, moneys, assets, business and all other things of every description and location of the financial institution and to collect all debts, dues and claims belonging to the financial institution;

(2) To sue upon and defend all rights, actions, issues, questions, claims and other matters involving the financial institution;

(3) To exercise all fiduciary functions of the financial institution as of the date of the

WV Legislature

commencement of the receivership;

(4) To borrow such sums of money as are reasonable and necessary in aiding any liquidation of the financial institution and, in connection therewith, to secure any such borrowing by the pledge, hypothecation or mortgage of the assets of the institution;

(5) Subject to the approval of the circuit court of the county in which the principal office of the financial institution is located in any case where the federal deposit insurance corporation is the receiver and subject to the approval of the commissioner in every other case, to sell any real, personal or mixed property of the financial institution and to compromise and settle any bad or doubtful debts due to or from the financial institution;

(6) In any case where the federal deposit insurance corporation is the receiver, to do all acts and undertakings permitted or required by federal law;

(7) To take all necessary or convenient actions, including the bringing of any administrative action before the commissioner or a hearing examiner or any action in any court of competent jurisdiction, to ascertain any matter concerning the depositors or creditors of the financial institution relative to the receivership of the institution or to proceed against any officer, director or stockholder of the institution to ascertain or enforce any liability thereof or for the determination or adjudication of any other matter involving the institution; and

(8) To do all other acts and undertakings, not inconsistent with the provisions of this article, necessary or convenient to carry out the provisions of this article or to effectively accomplish the intent and purpose of this article.

(d) In any case where the federal deposit insurance corporation is not the receiver, if the assets of an insolvent financial institution are not sufficient to pay in full all its depositors and creditors, without waiting to administer the assets of the institution and without delaying for any other cause but only after having first obtained the approval of the commissioner therefor, the receiver shall immediately institute all civil actions necessary for the benefit of the depositors and creditors to collect from the stockholders of the financial institution all amounts for which the stockholders are jointly or severally liable to the institution. According to the direction of the commissioner, any such action may be instituted and maintained in the name of the receiver, the financial institution or the commissioner.

(e) Before entering upon the discharge of any function under this article, each receiver other than the federal deposit insurance corporation shall enter into a bond in favor of the State of West Virginia in an amount and penalty fixed by the commissioner, with corporate surety authorized to do business in this state and approved by the commissioner, conditioned upon the faithful discharge of his duties as receiver and upon his fully accounting for and handing over as required by law all properties, moneys, funds and other things that come into the possession or control, or both, of the receiver and his agents, attorneys and other representatives. Such bond and the certificate of appointment shall be recorded in the office of the clerk of the county commission of the county in which the principal office of the

WV Legislature

financial institution is located.

(f) The provisions of section three of this article do not in any way inhibit or proscribe the appointment of a receiver under this section, and, whenever a receiver is appointed under this section, any conservatorship theretofore appointed for the same financial institution shall by operation of law immediately terminate.

(g) On a temporary emergency basis, when the commissioner has ascertained that the capital of a financial institution has become substantially impaired and the institution has failed, refused or neglected to make good such impairment to the commissioner's satisfaction or when the commissioner has ascertained that a financial institution is insolvent or reasonably appears about to be insolvent, the commissioner may immediately give written or oral notice of such finding to the involved financial institution and shall immediately thereupon take and retain full and exclusive possession and control of the business and property of the institution and close such institution until a receiver has been appointed for the institution in accordance with the provisions of subsection (a) of this section or until the institution has been permitted by the commissioner to resume its regular business, one or the other of which must be done by the commissioner within thirty days of the actual taking of such possession and control. When the commissioner closes an institution, he shall place an appropriate sign to that effect at the main entrance of the financial institution. Effective as of the closing of the institution a judgment lien, attachment lien or any voluntary or involuntary lien of any kind shall not attach in any way to any asset or other property of the institution and the directors, officers and agents of the institution shall not have any authority to act in any way on behalf of the institution or to convey, transfer, assign, pledge, mortgage or encumber any asset or other property thereof. Any attempt by any director, officer or agent of the financial institution to convey, transfer, assign, pledge, mortgage or encumber or otherwise establish any lien upon any asset or other property of the financial institution or in any manner to prefer any depositor, creditor, shareholder, director, officer, agent or any other person, firm or corporation after the posting of such notice or in contemplation thereof is void.

(h) In any case where a financial institution is insolvent or reasonably appears about to be insolvent and where the commissioner has failed, refused or neglected to act under the provisions of this section, any stockholder, depositor or creditor of the financial institution may petition the circuit court of the county in which the principal office of the institution is located to order the commissioner to proceed in accordance with the other pertinent provisions of this section, and the court shall expeditiously hear and decide such matter and assume jurisdiction and render a prompt decision with respect to such matter. Any such petitioner shall give notice of the contents of the petition and day, time and place of the hearing by personal service upon the commissioner in the manner prescribed by the West Virginia rules of civil procedure not less than five days before the hearing date. Upon such hearing, if the court finds that the condition of the involved financial institution is that it is insolvent or reasonably appears about to be insolvent and that the commissioner has unreasonably failed, refused or neglected to act thereupon, then the court shall order the commissioner to proceed in accordance with the other pertinent provisions of this section. If

WV Legislature

the commissioner fails, refuses or neglects to comply with such court order and such order has become final, such failure, refusal or neglect constitutes grounds for the commissioner's removal from office.

(i) Any finding made pursuant to this section by the commissioner that a financial institution is insolvent or reasonably appears about to be insolvent is conclusive as to all parties affected by such finding, including any court considering the matter.

(j) With the consent of the commissioner or by court order, as necessary, a financial institution may voluntarily submit itself to receivership or conservatorship under the provisions of this article.

WV Legislature