WEST VIRGINIA CODE CHAPTER 31C ARTICLE 10

WV Legislature

§31C-10-1. Voluntary liquidation.

(a) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section.

(b) If it decides to begin the procedure, the board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily, and directing that the question of liquidation be submitted to the members.

(c) Within ten days after the board of directors decides to submit the question of liquidation to the members, the president shall notify the commissioner and the insuring organization in writing, setting forth the reasons for the proposed liquidation. Within ten days after the members act on the question of liquidation, the president shall notify the commissioner and the insuring organization in writing as to the action of the members on the proposal.

(d) As soon as the board of directors decides to submit the question of liquidation to the members, payments on, withdrawal of, and making any transfer of share and deposit accounts to loans and interest, making investments of any kind, and granting loans may be restricted or suspended pending action by members on the proposal to liquidate. On approval by the members of such proposal, all such business transactions shall be permanently discontinued. Necessary expenses of operation shall, however, continue to be paid on authorization of the board of directors or liquidating agent during the period of liquidation.

(e) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a regular or special meeting of the members is required. When authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first class mail, at least ten days prior to such meeting.

(f) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting on loans and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully concluded.

(g) The board of directors or the liquidating agent shall distribute the assets of the credit union or the proceeds of any disposition of the assets in the sequence described in subsection (f), section four, article one of this chapter.

(h) As soon as the board of directors or the liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, a certificate of dissolution shall be executed on a form prescribed by the commissioner and filed with the Secretary of State, which shall after filing and indexing same, be forwarded to the commissioner, whereupon such credit union shall be dissolved. The liquidating agent shall return all pertinent books and records of the liquidating credit

WV Legislature

union to the commissioner.

WV Legislature

§31C-10-2. Merger of credit unions.

(a) A credit union organized under this chapter may, with the approval of the commissioner and regardless of common bond, merge with one or more other credit unions organized under this chapter, the laws of another state or territory of the United States or the laws of the United States.

(b) When two or more credit unions merge, they shall either designate one of them as the continuing credit union, or they shall structure a totally new credit union and designate it as the new credit union. If the latter procedure is followed, the new credit union shall be organized under article two of this chapter. All participating credit unions other than the continuing or new credit union shall be designated as merging credit unions.

(c) Any merger of credit unions shall be done according to a plan of merger. After approval by the boards of directors of all participating credit unions, the plan shall be submitted to the commissioner for review and hearing to grant preliminary approval. If the plan includes the creation of a new credit union, all documents required by section one, article two of this chapter shall be submitted as part of the plan. In addition to any other documents or information required by the commissioner, each participating credit union shall submit the following:

(1) The time and place of the meeting of the board of directors at which the plan was agreed upon;

(2) The vote of the directors in favor of the adoption of the plan; and

(3) A copy of the resolution or other action by which the plan was agreed upon.

(d) The commissioner shall after review and hearing, grant preliminary approval by written order, if: (i) The plan has been approved properly by each board of directors; (ii) the documentation required to form a new credit union, if any, complies with section one, article two of this chapter; (iii) the action would not result or tend to create a monopoly, or substantially lessen competition, or otherwise further a restraint of trade, unless the anticompetitive effects of the proposed action are clearly outweighed in the public interest by the probable effect of the action in meeting the convenience and needs of the members to be served; and (iv) taking into consideration the financial and managerial resources and further prospects of the credit unions concerned, the action would not be contrary to the best interests of the community whose shares are affected by such action, nor detrimental to the safety and soundness of the credit union to be acquired.

(e) After the commissioner grants preliminary approval, each merging credit union shall, unless waived by the commissioner, conduct a membership vote on its participation in the plan. The vote shall be conducted either at a special membership meeting called for that purpose or by mail ballot. If a majority of the members voting approve the plan, the credit union shall submit a record of that fact to the commissioner indicating the vote by which the

WV Legislature

members approved the plan and either the time and place of the membership meeting or the mailing date and closing date of the mail ballot.

(f) The commissioner may waive the membership vote described in subsection (e) of this section for any credit union upon determining that the credit union is insolvent or about to be insolvent.

(g) The commissioner shall grant final approval of the plan of merger after determining that the requirements of subsection (e) of this section in the case of each merging credit union have been met. If the plan of merger includes the creation of a new credit union, the commissioner must approve the organization of the new credit union under section two, article two of this chapter as part of the approval of the plan of consolidation. The commissioner shall notify all participating credit unions of the approval of the plan.

(h) Upon final approval of the plan by the commissioner and the filing of the proper documents with the office of the Secretary of State, all property, property rights, and members' interests in each merging credit union shall vest in the continuing or new credit union as applicable without deed, endorsement, or other instrument of transfer, and all debts, obligations and liabilities of each merging credit union shall be deemed to have been assumed by the continuing or new credit union. The rights and privileges of the members of each participating credit union shall remain intact; however, if a person is a member of more than one of the participating credit unions, that person shall be entitled to only a single set of membership rights in the continuing or new credit union.

(i) If the surviving or new credit union created by the transaction is chartered by another state or territory of the United States, it shall, in addition to the criteria set forth in subsection (c) of this section, be subject to the requirements of section six, article two of this chapter. No merger resulting in an out-of-state credit union acquiring a West Virginia credit union shall be permitted unless that other state or territory permits a West Virginia credit union to merge or acquire credit unions in their state or territory on terms that are, on the whole, substantially no more restrictive than those established under the terms of this section: Provided, That no such merger shall be approved where the West Virginia credit union to be acquired has been in operation for less than two years.

(j) Notwithstanding any other provision of law, the commissioner may, without prior hearing, authorize a merger or consolidation of a credit union which is insolvent or is about to be insolvent with any other credit union or may authorize a credit union to purchase any of the assets of, or assume any of the liabilities of, any other credit union which is insolvent or about to be insolvent if the commissioner is satisfied that:

(1) An emergency requiring expeditious action exists with respect to such other credit union;

(2) Other alternatives are not reasonably available; and

(3) The public interest would best be served by approval of such merger, consolidation,

WV Legislature

purchase or assumption.

(k) Notwithstanding any other provision of law, the commissioner may authorize an institution whose deposits or accounts are insured by the Federal Deposit Insurance Corporation to purchase any of the assets of, or assume any of the liabilities of, a credit union which is insolvent or about to be insolvent, except that prior to exercising this authority the commissioner should consider attempting to effect a merger or consolidation with, or purchase and assumption by, another credit union as provided in subsection (j) of this section; and

(l) For purposes of the authority contained in subsection (k) of this section, insured share and deposit accounts of the credit union may upon consummation of the purchase and assumption be converted to insured deposits or other comparable accounts in the acquiring institution, and the commissioner and the insuring organization shall be absolved of any liability to the credit union's members with respect to those accounts.

WV Legislature

§31C-10-3. Conversion.

(a) A credit union incorporated under the laws of this state may be converted to a credit union organized under the laws of any other state or under the laws of the United States by complying with the following requirements:

(1) The proposition for the conversion shall first be approved and a date set for a vote thereon by the members (either at a meeting to be held on such date or by written ballot to be filed on or before such date) by a majority of the directors of the West Virginia state credit union. Written notice of the proposition and of the date set for the vote shall then be delivered in person to each member, or mailed to each member at the address for such member appearing on the records of the credit union, not more than sixty or less than fourteen days prior to such date. Approval of the proposition for conversion shall be by the affirmative vote of two thirds of the members voting in person or in writing;

(2) A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, shall be filed with the commissioner of banking within ten days after the vote is taken; however, no West Virginia state-chartered credit union may convert its charter to that of another state unless: (i) The conversion is approved by the commissioner of banking in writing after notice; (ii) the other state allows conversions of its credit unions to a West Virginia state charter on a reciprocal basis; and (iii) the majority, or in the event the credit union operates offices in more than two states, the plurality, of the credit union's members are residents of that other state. To the extent that an out-of-state credit union created by conversion seeks to conduct business through a branch or service facility in West Virginia, the provisions of section six, article two of this chapter shall apply;

(3) Promptly after the commissioner of banking has approved the conversion in writing, and in no event later than ninety days thereafter, the credit union shall take such action as may be necessary under the applicable federal or state law to make it a federal credit union or credit union of another state and within ten days after receipt of the federal credit union charter or out-of-state credit union charter there shall be filed with the commissioner of banking a copy of the charter thus issued. Upon such filing, the credit union shall cease to be a West Virginia state-chartered credit union;

(4) The successor federal credit union or out-of-state chartered credit union shall be vested with all the assets and shall continue to be responsible for all of the obligations of the West Virginia state credit union to the same extent as though the conversion had not taken place.

(b) A credit union organized under the laws of the United States or of any other state may convert to a credit union incorporated under the laws of this state. To effect a conversion, a credit union must comply with all the requirements of the jurisdiction under which it was originally organized and the requirements of the laws and rules of this state and file proof of compliance with the commissioner. The commissioner shall generally treat the conversion to a West Virginia state-chartered credit union as a formation of a new credit union pursuant to article two of this chapter and the procedures and requirements therein shall be followed to

WV Legislature

the extent applicable.

WV Legislature