

troller of the Currency shall cause to be made such examinations of the affairs of such bank as shall be necessary to inform him as to the financial condition of such bank, and the examiner shall make a report thereon to the Comptroller of the Currency at the earliest practicable date.”

Executive Documents

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 205. Termination of conservatorship

(a) General rule

At any time the Comptroller¹ becomes satisfied that it may safely be done and that it would be in the public interest, the Comptroller (with the agreement of the Board of Directors of the Federal Deposit Insurance Corporation when the Corporation has been appointed conservator) may—

- (1) terminate the conservatorship and permit the involved bank to resume the transaction of its business subject to such terms, conditions, and limitations as the Comptroller may prescribe; or
- (2) terminate the conservatorship upon a sale, merger, consolidation, purchase and assumption, change in control, or voluntary dissolution and liquidation of the involved bank.

(b) Other grounds for termination

The Comptroller also may terminate the conservatorship upon the appointment of a receiver pursuant to section 191 of this title.

(c) Enforcement under Federal Deposit Insurance Act

Such terms, conditions, and limitations as may be prescribed under subsection (a)(1) shall be enforceable under the provisions of section 8(i) of the Federal Deposit Insurance Act [12 U.S.C. 1818(i)], to the same extent as an order issued pursuant to section 8(b) of the Federal Deposit Insurance Act [12 U.S.C. 1818(b)] which has become final. The bank may bring an action in the United States district court for the judicial district in which the home office of such bank is located or in the United States District Court for the District of Columbia for an order requiring the Comptroller to terminate the order. An action for judicial review of the terms, conditions, and limitations may not be commenced later than 20 days from the date of the termination of the conservatorship or the imposition of the order, whichever is later.

(d) Action upon termination

(1) In general

Upon termination of the conservatorship under subsection (a)(2), the Federal Deposit Insurance Corporation, as conservator, or when another person is appointed conservator, such other person, shall conclude the affairs of the conservatorship in accordance with paragraph (2).

¹So in original. Probably should be “Comptroller of the Currency”.

(2) Deposit and distribution of proceeds

(A) Within 180 days of the sale, merger, consolidation, purchase and assumption, change in control, or voluntary dissolution and liquidation, the conservator shall deposit all net proceeds received from the transaction, less any outstanding expenses of the conservatorship, with the United States district court for the judicial district in which the home office of such bank is located and shall cause notice to be published for three consecutive months and notify by mail all known and remaining creditors and shareholders. Within 60 days thereafter, any depositor, creditor, or other claimant of the bank, or any shareholder of the bank may bring an action in interpleader in that court for distribution of the proceeds. The district court shall distribute such funds equitably. If no such action is instituted within one year after the date the funds are deposited with the district court, title to such net proceeds shall revert to the United States and the district court shall remit the funds to the Treasury of the United States.

(B) The conservator shall be deemed to have discharged all responsibility of the conservatorship upon the deposit of the proceeds with the district court and giving the required notifications.

(Mar. 9, 1933, ch. 1, title II, § 205, 48 Stat. 3; Pub. L. 101-73, title VIII, § 804, Aug. 9, 1989, 103 Stat. 443.)

Editorial Notes

REFERENCES IN TEXT

The Federal Deposit Insurance Act, referred to in subsec. (c), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

AMENDMENTS

1989—Pub. L. 101-73 amended section generally. Prior to amendment, section read as follows: “If the Comptroller of the Currency becomes satisfied that it may safely be done and that it would be in the public interest, he may, in his discretion, terminate the conservatorship and permit such bank to resume the transaction of its business subject to such terms, conditions, restrictions and limitations as he may prescribe.”

Executive Documents

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§ 206. Conservator; powers and duties

(a) General powers

A conservator shall have all the powers of the shareholders, directors, and officers of the bank and may operate the bank in its own name unless the Comptroller¹ in the order of appointment limits the conservator’s authority.

¹So in original. Probably should be “Comptroller of the Currency”.

(b) Subject to rules of Comptroller

The conservator shall be subject to such rules, regulations, and orders as the Comptroller from time to time deems appropriate; and, except as otherwise specifically provided in such rules, regulations, or orders or in section 209 of this title, shall have the same rights and privileges and be subject to the same duties, restrictions, penalties, conditions, and limitations as apply to directors, officers, or employees of a national bank.

(c) Payment of depositors and creditors

The Comptroller may require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors such amounts as in the opinion of the Comptroller may safely be used for that purpose. All depositors and creditors who are similarly situated shall be treated in the same manner.

(d) Compensation of conservator and employees

The conservator and professional employees appointed to represent or assist the conservator shall not be paid amounts greater than are payable to employees of the Federal Government for similar services, except that the Comptroller of the Currency may authorize payment at higher rates (but not in excess of rates prevailing in the private sector), if the Comptroller determines that paying such higher rates is necessary in order to recruit and retain competent personnel.

(e) Expenses

All expenses of any such conservatorship shall be paid by the bank and shall be a lien upon the bank which shall be prior to any other lien.

(Mar. 9, 1933, ch. 1, title II, §206, 48 Stat. 3; Pub. L. 101-73, title VIII, §805, Aug. 9, 1989, 103 Stat. 445.)

Editorial Notes

AMENDMENTS

1989—Pub. L. 101-73 amended section generally. Prior to amendment, section read as follows: “While such bank is in the hands of the conservator appointed by the Comptroller of the Currency, the Comptroller 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 Comptroller may safely be used for this purpose; and the Comptroller may, in his discretion, permit the conservator to receive deposits, but deposits received while the bank is in the hands of the conservator shall not be subject to any limitation as to payment or withdrawal, and such deposits shall be segregated and shall not be used to liquidate any indebtedness of such bank existing at the time that a conservator was appointed for it, or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of such bank existing at the time such conservator was appointed. Such deposits received while the bank is in the hands of the conservator shall be kept on hand in cash, invested in the direct obligations of the United States, or deposited with a Federal reserve bank. The Federal reserve banks are authorized to open and maintain separate deposit accounts for such purpose, or for the purpose of receiving deposits from State officials in charge of State banks under similar circumstances.”

Executive Documents

EXCEPTION AS TO TRANSFER OF FUNCTIONS

Functions vested by any provision of law in Comptroller of the Currency, referred to in this section, not included in transfer of functions to Secretary of the Treasury, see note set out under section 1 of this title.

§§ 207, 208. Repealed. Pub. L. 101-73, title VIII, § 808, Aug. 9, 1989, 103 Stat. 446

Section 207, acts Mar. 9, 1933, ch. 1, title II, §207, 48 Stat. 3; May 20, 1933, ch. 34, 48 Stat. 72, prescribed conditions for reorganization of banks, requiring consent of depositors and other creditors, of stockholders, or of both depositors and other creditors and stockholders, namely that the reorganization plan be fair and equitable to depositors, other creditors, and stockholders and be in the public interest; that the plan be consented to in writing; and that the approved plan be binding on all consenting or nonconsenting depositors, creditors, and stockholders.

Section 208, act Mar. 9, 1933, ch. 1, title II, §208, 48 Stat. 4, made the provisions for segregation of deposits inapplicable after termination of conservatorship, and provided for termination of conservatorship after publication of notice of termination and mailing of a copy of such notice by registered mail to depositors of record.

§ 209. Liability protection**(a) Federal agency and employees**

In any case in which the conservator is a Federal agency or an employee of the Government, the provisions of chapters 161 and 171 of title 28 shall apply with respect to such conservator's liability for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship.

(b) Other conservators

In any case where the conservator is not a conservator described in subsection (a), the conservator shall not be liable for damages in tort or otherwise for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship, unless such acts or omissions constitute gross negligence, including any similar conduct or any form of intentional tortious conduct, as determined by a court.

(c) Indemnification

The Comptroller¹ shall have authority to indemnify the conservator on such terms as the Comptroller deems proper.

(Mar. 9, 1933, ch. 1, title II, §209, 48 Stat. 5; Sept. 3, 1954, ch. 1263, §23, 68 Stat. 1234; Pub. L. 101-73, title VIII, §806, Aug. 9, 1989, 103 Stat. 445.)

Editorial Notes

AMENDMENTS

1989—Pub. L. 101-73 amended section generally. Prior to amendment, section read as follows: “Conservators appointed pursuant to the provisions of this subchapter shall be subject to the provisions of and to the penalties prescribed by sections 334, 656, and 1005 of title 18; and sections 202, 216, 281, 431, 432, and 433 of title 18, in so far as applicable, are extended to apply to contracts, agreements, proceedings, dealings, claims and controversies by or with any such conservator or the

¹ So in original. Probably should be “Comptroller of the Currency”.