§ 54C-83. Involuntary liquidation.

(a) The Commissioner of Banks, with prior approval of the Commission, may take custody of the books, records, and assets of every kind and character of any savings bank organized and operated under this Chapter for any of the purposes enumerated in this section, if it reasonably appears from examinations or from reports made to the Commissioner of Banks that:

(1) The directors, officers, or liquidators have neglected, failed, or refused to take action that the Commissioner of Banks may deem necessary for the protection of the savings bank or have impeded or obstructed an examination;

(2) The net worth of the savings bank is impaired to the extent that the realizable value of its assets is insufficient to pay in full its creditors and holders of deposit accounts;

(3) The business of the savings bank is being conducted in a fraudulent, illegal, or unsafe manner, or that the savings bank is in an unsafe or unsound condition to transact business; for purposes of this subdivision, any savings bank that, except as authorized in writing by the Commissioner of Banks, fails to make full payment of any withdrawal when due is in an unsafe or unsound condition to transact business, notwithstanding the certificate of incorporation or the statutes or regulations with respect to payment of withdrawals in event a savings bank does not pay all withdrawals in full;

(4) The officers, directors, or employees have assumed duties or performed acts in excess of those authorized by statute or regulation or charter, or without supplying the required bond;

(5) The savings bank has experienced a substantial dissipation of assets or earnings due to any violation or violation of statute or regulation, or due to any unsafe or unsound practice or practices;

(6) The savings bank is insolvent, or is in imminent danger of insolvency or has suspended its ordinary business transactions due to insufficient funds; or

(7) The savings bank is unable to continue operations.

(b) Unless the Commissioner of Banks finds that an emergency exists that may result in loss to members, deposit account holders, stockholders, or creditors, and that requires that the Commissioner of Banks take custody immediately, the Commissioner of Banks shall first give written notice to the directors and officers specifying the conditions criticized and allowing a reasonable time in which corrections may be made before a receiver shall be appointed as outlined in subsection (d) of this section.

(c) The purposes for which the Commissioner of Banks may take custody of a savings bank include examination or further examination, conservation of its assets, restoration of impaired capital, and the making of any reasonable or equitable adjustment deemed necessary by the Commissioner of Banks under any plan of reorganization.

(d) If the Commissioner of Banks, after taking custody of a savings bank, finds that one or more of the reasons for having taken custody continue to exist through the period of custody, with little or no likelihood of amelioration of the situation, then the Commissioner of Banks shall appoint as receiver or coreceiver any qualified person, firm, or corporation for the purpose of liquidation of the savings bank, which receiver shall furnish bond in form, amount, and with surety as the Commissioner of Banks may require. The Commissioner of Banks may appoint the association's deposit account insurance corporation or its nominee as the receiver, and the insuring corporation shall be permitted to serve without posting bond.

(e) In the event the Commissioner of Banks appoints a receiver for a savings bank, the Commissioner of Banks shall mail a certified copy of the appointment order by certified mail to the address of the savings bank as it appears on the records of the Division, and to any previous receiver or other legal custodian of the savings bank, and to any court or other authority to which the previous receiver or other legal custodian is subject. Notice of the appointment may be published in a newspaper of general circulation in the county where the savings bank has its principal office.

(f) Whenever a receiver for a savings bank is appointed under subsection (d) of this section, the savings bank may within 30 days thereafter bring an action in the Superior Court of Wake County, for an order requiring the Commissioner of Banks to remove the receiver.

(g) The duly appointed and qualified receiver shall take possession promptly of the savings bank for which the receiver has been so appointed, in accordance with the terms of the appointment, by service of a certified copy of the Commissioner of Banks' appointment order upon the savings bank at its principal office through the officer or employee who is present and appears to be in charge. Immediately upon taking possession of the savings bank, the receiver shall take possession and title to books, records, and assets of every description of the savings bank. The receiver, by operation of law and without any conveyance or other instrument, act or deed, shall succeed to all the rights, titles, powers, and privileges of the savings bank, its members or stockholders, holders of deposit accounts, its officers and directors or any of them; and to the titles to the books, records, and assets of every description of any previous receiver or other legal custodian of the savings bank. The members, stockholders, holders of deposit accounts, officers or directors, or any of them, shall not thereafter, except as expressly provided in this section have or exercise any rights, powers or privileges or act in connection with any assets or property of any nature of the savings bank in receivership. The Commissioner of Banks, with the approval of the Commission, may at any time, direct the receiver to return the savings bank to its previous or a newly constituted management. The Commissioner of Banks may provide for a meeting or meetings of the members or stockholders for any purpose, including the election of directors or an increase in the number of directors, or both, or the election of an entire new board of directors; and may provide for a meeting or meetings of the directors for any purpose including the filling of vacancies on the board, the removal of officers and the election of new officers, or for any of these purposes. Any meeting of members or stockholders, or of directors, shall be supervised or conducted by a representative of the Commissioner of Banks.

(h) A duly appointed and qualified receiver may:

(1) Demand, sue for, collect, receive and take into possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, chooses in action, bills, notes and property of every description of the savings bank;

(2) Foreclose mortgages, deeds of trust, and other liens executed to the savings bank to the extent the savings bank would have had this right;

(3) Institute suits for the recovery of any estate, property, damages, or demands existing in favor of the savings bank, and shall, upon the receiver's own application, be substituted as party plaintiff in the place of the savings bank in any suit or proceeding pending at the time of the receiver's appointment;

(4) Sell, convey, and assign all the property rights and interests owned by the savings bank;

(5) Appoint agents;

(6) Examine and investigate papers and persons, and pass on claims as provided in the regulations as prescribed by the Commissioner of Banks;

(7) Make and carry out agreements with the insuring corporation or with any other financial institution for the payment or assumption of the savings bank's liabilities, in whole or in part, and to sell, convey, transfer, pledge, or assign assets as security or otherwise and to make guarantees in connection therewith; and

(8) Perform all other acts that might be done by the employees, officers, and directors.

These powers shall be continued in effect until liquidation and dissolution or until return of the savings bank to its prior or newly constituted management.

(i) A receiver may, at any time during the receivership and before final liquidation, be removed and a replacement appointed by the Commissioner of Banks.

(j) The Commissioner of Banks may determine that the liquidation proceedings should be discontinued. The Commissioner of Banks shall then remove the receiver and restore all the rights, powers, and privileges of its members and stockholders, customers, employees, officers, and directors, or restore these rights, powers, and privileges to its members, stockholders, and customers, and grant these rights, powers, and privileges to a newly constituted management, all as of the time of the restoration of the savings bank to its management unless another time for the restoration is specified by the Commissioner of Banks. The return of a savings bank to its management or to a newly constituted management from the possession of a receiver shall, by operation of law and without any conveyance or other instrument, act or deed, vest in the savings bank the title to all property held by the receiver in the capacity as receiver for the savings bank.

(k) A receiver may also be appointed under the authority of G.S. 1-502. No judge or court, however, shall appoint a receiver for any State savings bank unless five days' advance notice of the motion, petition, or application for appointment of a receiver has been given to the savings bank and to the Commissioner of Banks.

(l) Following the appointment of a receiver, the Commissioner of Banks may request the Attorney General to institute an action in the name of the Commissioner of Banks in the superior court against the savings bank for the orderly liquidation and dissolution of the association, and for an injunction to restrain the officers, directors, and employees from continuing the operation of the savings bank.

(m) Claims against the State association in receivership shall have the following order of priority for payment:

(1) Costs, expenses, and debts of the savings bank incurred on or after the date of the appointment of the receiver, including compensation for the receiver.

(2) Claims of holders of special purpose or thrift accounts.

(3) Claims of holders of deposit accounts.

(4) Claims of general creditors.

(5) Claims of stockholders of a stock savings bank.

(6) All remaining assets to members and stockholders in an amount proportionate to their holdings as of the date of the appointment of the receiver.

(n) All claims of each class described within subsection (m) of this section shall be paid in full so long as sufficient assets remain. Members of the class for which the receiver cannot make payment in full because assets will be depleted during payment to that class shall be paid an amount proportionate to their total claims.

(o) The Commissioner of Banks may direct the payment of claims for which no provision is made in this section, and may direct the payment of claims within a class.

(p) When all assets of the savings bank have been fully liquidated, and all claims and expenses have been paid or settled, and the receiver has recommended a final distribution, the dissolution of the savings bank in receivership shall be accomplished in the following manner:

(1) The receiver shall file with the Commissioner of Banks a detailed report, in a form to be prescribed by the Commissioner of Banks, of the receiver's acts and proposed final distribution, and dissolution.

(2) Upon the Commissioner of Banks' approval of the final report of the receiver, the receiver shall provide notice and thereafter shall make the final distribution, in any manner as the Commissioner of Banks may direct.

(3) When a final distribution has been made except as to any unclaimed funds, the receiver shall deposit the unclaimed funds with the Commissioner of Banks and shall deliver to the Commissioner of Banks all books and records of the dissolved association.

(4) Upon completion of the foregoing procedure, and upon the joint petition of the Commissioner of Banks and receiver to the superior court, the court may find that the savings bank should be dissolved, and following publication of notice of dissolution as the court may direct, the court may enter a decree of final resolution and the savings bank shall therefore be dissolved.

(5) Upon final dissolution of the savings bank in receivership or at any time as the receiver shall be otherwise relieved of duties, the Commissioner of Banks shall cause an audit to be conducted, during which the receiver shall be available to assist. The accounts of the receiver shall then be ruled upon by the Commissioner of Banks and Commission and if approved, the receiver shall thereupon be given a final and complete discharge and release. (1991, c. 680, s. 1; 2001-193, s. 16.)