

**Chapter 30A.44 RCW
INSOLVENCY AND LIQUIDATION**

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RCW 30A.44.010 Notice to correct unsafe conditions—Possession may be taken under specified circumstances. (1) Under the circumstances set forth in subsection (2) of this section, the director may give to a bank a notice to correct an unsafe condition of the bank; and if such bank fails to comply with the terms of such notice within thirty days from the date of its issuance or within such further time as the director may allow, then the director may take possession of such bank as in the case of insolvency.

(2) The director is authorized to give notice and take possession of a bank, as described in subsection (1) of this section, under the following circumstances:

(a) The obligations to its creditors, depositors, members, trust beneficiaries, if applicable, and others exceed its assets;

(b) It has willfully violated a supervisory directive, cease and desist order, or other authorized directive or order of the director;

(c) It has concealed its books, papers, records, or assets, or refused to submit its books, records, or affairs to any examiner of the department or the federal deposit insurance corporation;

(d) It is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business;

(e) It ceases to have deposit insurance acceptable to the director;

(f) It fails to submit a capital restoration plan acceptable to the department within a time previously called for or materially fails to implement a capital restoration plan that was previously submitted and accepted by the department; or

(g) It is critically undercapitalized or otherwise has substantially insufficient capital. [2014 c 37 s 223; 2010 c 88 s 30; 1994 c 92 s 107; 1955 c 33 s 30.44.010. Prior: 1917 c 80 s 59; 1915 c 98 s 1; RRS s 3266. Formerly RCW 30.44.010.]

Effective date—2010 c 88: See RCW 32.50.900.

RCW 30A.44.020 Director may order levy of assessment. (1)

Whenever it shall in any manner appear to the director that any offense or delinquency referred to in RCW 30A.44.010 has resulted in a bank being critically undercapitalized with no reasonably foreseeable prospect of recovery, or that it has suspended payment of its obligations or is insolvent, the director may notify such bank to levy an assessment on its stock or otherwise to make good such impairment or offense or other delinquency within such time and in such manner as the director may specify, or if the director deems necessary, the director may take possession thereof without notice.

(2) The board of directors of any such bank, with the consent of the holders of record of two-thirds of the capital stock expressed either in writing or by vote at a stockholders' meeting called for that purpose, shall have power and authority to levy such assessment upon the stockholders pro rata and to forfeit the stock upon which any such assessment is not paid, in the manner prescribed in RCW 30A.12.180. [2014 c 37 s 224; 2010 c 88 s 31; 1994 c 92 s 108; 1955 c 33 s 30.44.020. Prior: 1923 c 115 s 9; 1917 c 80 s 60; RRS s 3267. Formerly RCW 30.44.020.]

Effective date—2010 c 88: See RCW 32.50.900.

Levy of assessments: RCW 30A.12.180.

RCW 30A.44.030 Director's right to take possession may be contested. Within ten days after the director takes possession thereof, a bank may serve a notice upon the director to appear before the superior court of the county wherein such corporation is located and at a time to be fixed by the court, which shall not be less than five nor more than fifteen days from the date of the service of such notice, to show cause why the director's action taking possession of the bank should not be affirmed. Upon the return day of such notice, or such further day as the matter may be continued to, the court shall summarily hear said cause and shall dismiss the same, if it be found that possession was taken by the director in good faith and for cause, but if it find that no cause existed for the taking possession of such

bank, it shall require the director to restore such bank to possession of its assets and enjoin the director from further interference therewith without cause. [2014 c 37 s 225; 2010 c 88 s 32; 1994 c 92 s 109; 1955 c 33 s 30.44.030. Prior: 1917 c 80 s 68; RRS s 3275. Formerly RCW 30.44.030.]

Effective date—2010 c 88: See RCW 32.50.900.

RCW 30A.44.040 Notice of taking possession. Upon taking possession of any bank, the director shall forthwith give written notice thereof to all persons having possession of any assets of such corporation. No person knowing of the taking of such possession by the director shall have a lien or charge for any payment thereafter advanced or clearance thereafter made or liability thereafter incurred against any of the assets of such corporation. [2014 c 37 s 226; 1994 c 92 s 110; 1955 c 33 s 30.44.040. Prior: 1917 c 80 s 61; 1915 c 98 s 2; RRS s 3268. Formerly RCW 30.44.040.]

RCW 30A.44.050 Powers and duties of director. Upon taking possession of any bank, the director shall proceed to collect the assets thereof and to preserve, administer and liquidate the business and assets of such corporation. With the approval of the superior court of the county in which such corporation is located, he or she may sell, compound or compromise bad or doubtful debts, and upon such terms as the court shall direct borrow, mortgage, pledge or sell all or any part of the real estate and personal property of such corporation. He or she shall deliver to each purchaser or lender an appropriate deed, mortgage, agreement of pledge or other instrument of title or security. If real estate is situated outside of said county, a certified copy of the orders authorizing and confirming the sale or mortgage thereof shall be filed for record in the office of the auditor of the county in which such property is situated. He or she may appoint special assistants and other necessary agents to assist in the administration and liquidation of such corporation, a certificate of such appointment to be filed with the clerk of the county in which such corporation is located. He or she shall require each special assistant to give a surety company bond, conditioned as he or she shall provide, the premium of which shall be paid out of the assets of such corporation. He or she may also employ an attorney for legal assistance in such administration and liquidation. [2014 c 37 s 227; 1994 c 92 s 111; 1955 c 33 s 30.44.050. Prior: 1933 c 42 s 25; 1917 c 80 s 62; 1915 c 98 s 3; RRS s 3269. Formerly RCW 30.44.050.]

RCW 30A.44.060 Notice to creditors—Claims. The director shall publish once a week for four consecutive weeks in a newspaper which he or she shall select, a notice requiring all persons having claims against such corporation to make proof thereof at the place therein specified not later than ninety days from the date of the first publication of said notice, which date shall be therein stated. He or she shall mail similar notices to all persons whose names appear as creditors upon the books of the corporation. He or she may approve or reject any claims, but shall serve notice of rejection upon the claimant by mail or personally. An affidavit of service of such notice

shall be prima facie evidence thereof. No action shall be brought on any claim after three months from the date of service of notice of rejection.

Claims of depositors may be presented after the expiration of the time fixed in the notice, and, if approved, shall be entitled to their proportion of prior dividends, if there be funds sufficient therefor, and shall share in the distribution of the remaining assets.

After the expiration of the time fixed in the notice the director shall have no power to accept any claim except the claim of a depositor, and all claims except the claims of depositors shall be barred. [1994 c 92 s 112; 1955 c 33 s 30.44.060. Prior: 1923 c 115 s 10; 1917 c 80 s 63; 1915 c 98 s 4; RRS s 3270. Formerly RCW 30.44.060.]

RCW 30A.44.070 Inventory—List of claims. Upon taking possession of such corporation, the director shall make an inventory of the assets in duplicate and file one in his or her office and one in the office of the county clerk. Upon the expiration of the time fixed for the presentation of claims, he or she shall make a duplicate list of claims presented, segregating those approved and those rejected, to be filed as aforesaid. He or she shall also make and file a supplemental list of claims at least fifteen days before the declaration of any dividend, and in any event at least every six months. [1994 c 92 s 113; 1955 c 33 s 30.44.070. Prior: 1917 c 80 s 65; 1915 c 98 s 6; RRS s 3272. Formerly RCW 30.44.070.]

RCW 30A.44.080 Objections to approved claims. Objection may be made by any interested person to any claim approved by the director, which objection shall be determined by the court upon such notice to the claimant and objector as the court shall prescribe. [1994 c 92 s 114; 1955 c 33 s 30.44.080. Prior: 1917 c 80 s 67; 1915 c 98 s 8; RRS s 3274. Formerly RCW 30.44.080.]

RCW 30A.44.090 Dividends. At any time after the expiration of the date fixed for the presentation of claims, the director, subject to the approval of the court, may declare one or more dividends out of the funds remaining in his or her hands after the payment of expenses. [1994 c 92 s 115; 1955 c 33 s 30.44.090. Prior: 1917 c 80 s 66; 1915 c 98 s 7; RRS s 3273. Formerly RCW 30.44.090.]

RCW 30A.44.100 Receiver prohibited except in emergency. No receiver shall be appointed by any court for any bank, nor shall any assignment of any bank for the benefit of creditors be valid, excepting only that a court otherwise having jurisdiction may in case of imminent necessity appoint a temporary receiver to take possession of and preserve the assets of such corporation. Immediately upon any such appointment, the clerk of such court shall notify the director in writing of such appointment and the director shall forthwith take possession of such bank, as in case of insolvency, and the temporary receiver shall upon demand of the director surrender up to him or her such possession and all assets which shall have come into the possession of such receiver. The director shall in due course pay such

receiver out of the assets of such corporation such amount as the court shall allow. [2014 c 37 s 228; 2010 c 88 s 33; 1994 c 92 s 116; 1955 c 33 s 30.44.100. Prior: 1917 c 80 s 69; 1915 c 98 s 9; RRS s 3276. Formerly RCW 30.44.100.]

Effective date—2010 c 88: See RCW 32.50.900.

RCW 30A.44.110 Preferences prohibited—Penalty. (1) Every transfer of its property or assets by any bank, made (a) in contemplation of insolvency or after it shall have become insolvent, (b) within ninety days before the date the director takes possession of such bank under RCW 30A.44.010, 30A.44.020, 30A.44.100, or 30A.44.160, or the federal deposit insurance corporation is appointed as receiver or liquidator of such bank under RCW 30A.44.270, and (c) with a view to the preference of one creditor over another or to prevent the equal distribution of its property and assets among its creditors, shall be void.

(2) Every director, officer, or employee of a bank making any such transfer of assets is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2014 c 37 s 229; 2010 c 88 s 34; 2003 c 53 s 190; 1955 c 33 s 30.44.110. Prior: 1917 c 80 s 55; RRS s 3262. Formerly RCW 30.44.110.]

Effective date—2010 c 88: See RCW 32.50.900.

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

RCW 30A.44.120 Receiving deposits when insolvent—Penalty. An officer, director, or employee of any bank who shall fraudulently receive for it any deposit, knowing that such bank or trust company is insolvent, is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2014 c 37 s 230; 2003 c 53 s 191; 1955 c 33 s 30.44.120. Prior: 1933 c 42 s 26; 1917 c 80 s 81; RRS s 3288. Formerly RCW 30.44.120.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

Receiving deposits after insolvency prohibited: State Constitution Art. 12 s 12.

RCW 30A.44.130 Expense of liquidation. All expenses incurred by the director in taking possession, administering and winding up any such corporation, including the expenses of assistants and reasonable fees for any attorney who may be employed in connection therewith, and the reasonable compensation of any special assistant placed in charge of such corporation shall be a first charge upon the assets thereof. Such charges shall be fixed by the director, subject to the approval of the court. [1994 c 92 s 117; 1955 c 33 s 30.44.130. Prior: 1917 c 80 s 64; 1915 c 98 s 5; RRS s 3271. Formerly RCW 30.44.130.]

RCW 30A.44.140 Liquidation after claims are paid. When all proper claims of depositors and creditors (not including stockholders) have been paid, as well as all expenses of administration and liquidation and proper provision has been made for unclaimed or unpaid deposits and dividends, and assets still remain in his or her hands, the director shall call a meeting of the stockholders of such corporation, giving thirty days' notice thereof, by one publication in a newspaper published in the county where such corporation is located. At such meeting, each share shall entitle the holder thereof to a vote in person or by proxy. A vote by ballot shall be taken to determine whether the director shall wind up the affairs of such corporation or the stockholders appoint an agent to do so. The director, if so required, shall wind up such corporation and distribute its assets to those entitled thereto. If the appointment of an agent is determined upon, the stockholders shall forthwith select such agent by ballot. Such agent shall file a bond to the state of Washington in such amount and so conditioned as the director shall require. Thereupon the director shall transfer to such agent the assets of such corporation then remaining in his or her hands, and be relieved from further responsibility in reference to such corporation. Such agent shall convert the assets of such corporation into cash and distribute the same to the parties thereunto entitled, subject to the supervision of the court. In case of his or her death, removal or refusal to act, the stockholders may select a successor with like powers. [1994 c 92 s 118; 1955 c 33 s 30.44.140. Prior: 1917 c 80 s 70; RRS s 3277. Formerly RCW 30.44.140.]

RCW 30A.44.150 Unclaimed dividends—Disposition. Any dividends to depositors or other creditors of such bank remaining uncalled for and unpaid in the hands of the director for six months after order of final distribution, shall be deposited in a bank to his or her credit, in trust for the benefit of the persons entitled thereto and subject to the supervision of the court shall be paid by him or her to them upon receipt of satisfactory evidence of their right thereto.

All moneys so deposited remaining unclaimed for five years after deposit shall escheat to the state for the benefit of the permanent school fund and shall be paid by the director into the state treasury. It shall not be necessary to have the escheat adjudged in a suit or action. [2014 c 37 s 231; 1994 c 92 s 119; 1955 c 33 s 30.44.150. Prior: 1923 c 115 s 11; 1917 c 80 s 71; RRS s 3278. Formerly RCW 30.44.150.]

RCW 30A.44.160 Voluntary closing—Possession of the director—Notice. (1) Subject to the consent of the director, a bank may voluntarily stipulate and consent to an order taking possession and thereby place itself under the control of the director to be liquidated and be made subject to receivership as provided in this chapter.

(2) Upon issuance of such order taking possession, the bank shall post a notice on its door as follows: "This bank is in the possession of the Director of the Washington State Department of Financial Institutions."

(3) The posting of such notice or the taking possession of any bank by the director shall be sufficient to place all of its assets

and property of every nature in his or her possession and bar all attachment proceedings. [2014 c 37 s 232; 2010 c 88 s 35; 1994 c 92 s 120; 1955 c 33 s 30.44.160. Prior: 1917 c 80 s 72; RRS s 3279. Formerly RCW 30.44.160.]

Effective date—2010 c 88: See RCW 32.50.900.

RCW 30A.44.170 Voluntary liquidation—Notice to creditors. Any bank may, upon receipt of written permission from the director, go into voluntary liquidation by a vote of its stockholders owning two-thirds of its capital stock. When such liquidation is authorized, the directors of such corporation shall publish in a newspaper published in the place where such corporation is located, once a week for four consecutive weeks, a notice requiring creditors of such corporation to present their claims against it for payment. [2014 c 37 s 233; 1994 c 92 s 121; 1955 c 33 s 30.44.170. Prior: 1917 c 80 s 74; RRS s 3281. Formerly RCW 30.44.170.]

RCW 30A.44.180 Unclaimed dividends on voluntary liquidation. Whenever any bank shall voluntarily liquidate, any dividends to depositors or other creditors of such bank remaining uncalled for and unpaid at the conclusion of the liquidation shall be transmitted to the director and shall be deposited by him or her in a bank or trust company to his or her credit in trust for the benefit of the persons entitled thereto, and shall be paid by him or her to them upon receipt of satisfactory evidence of their right thereto.

All moneys so deposited remaining unclaimed for five years after deposit shall escheat to the state for the benefit of the permanent school fund and shall be paid by the director into the state treasury. It shall not be necessary to have the escheat adjudged in a suit or action. [2014 c 37 s 234; 1994 c 92 s 122; 1955 c 33 s 30.44.180. Prior: 1947 c 148 s 1; Rem. Supp. 1947 s 3281-1. Formerly RCW 30.44.180.]

RCW 30A.44.190 Disposition of unclaimed personal property. Whenever any bank shall be liquidated, voluntarily or involuntarily, and shall retain in its possession at the conclusion of the liquidation, uncalled for and unclaimed personal property left with it for safekeeping, such property shall, in the presence of at least one witness, be inventoried by the liquidating agent and sealed in separate packages, each package plainly marked with the name and last known address of the person in whose name the property stands on the books of the bank. If the property is in safe deposit boxes, such boxes shall be opened by the liquidating agent in the presence of at least one witness, and the property inventoried, sealed in packages and marked as above required. All the packages shall be transmitted to the director, together with certificates signed by the liquidating agent and witness or witnesses, listing separately the property standing in the name of any one person on the books of the bank, together with the date of inventory, and name and last known address of the person in whose name the property stands. [2014 c 37 s 235; 1994 c 92 s 123; 1955 c 33 s 30.44.190. Prior: 1947 c 148 s 2; Rem. Supp. 1947 s 3281-2. Formerly RCW 30.44.190.]

RCW 30A.44.200 Duty of director—Notice to owner. Upon receiving possession of the packages, the director shall cause them to be opened in the presence of at least one witness, the property reinventoried, and the packages resealed, and held for safekeeping. The liquidated bank, its directors, officers, and shareholders, and the liquidating agent shall thereupon be relieved of responsibility and liability for the property so delivered to and received by the director. The director shall send immediately to each person in whose name the property stood on the books of the liquidated bank, at his or her last known address, in a securely closed, postpaid and registered letter, a notice that the property listed will be held in his or her name for a period of not less than two years. At any time after the mailing of such notice, and before the expiration of two years, such person may require the delivery of the property so held, by properly identifying himself or herself and offering evidence of his or her right thereto, to the satisfaction of the director. [2014 c 37 s 236; 1994 c 92 s 124; 1955 c 33 s 30.44.200. Prior: 1947 c 148 s 3; Rem. Supp. 1947 s 3281-3. Formerly RCW 30.44.200.]

RCW 30A.44.210 Final notice after two years—Sale. After the expiration of two years from the time of mailing the notice, the director shall mail in a securely closed postpaid registered letter, addressed to the person at his or her last known address, a final notice stating that two years have elapsed since the sending of the notice referred to in RCW 30A.44.200, and that the director will sell all the property or articles of value set out in the notice, at a specified time and place, not less than thirty days after the time of mailing the final notice. Unless the person shall, on or before the day mentioned, claim the property, identify himself or herself and offer evidence of his or her right thereto, to the satisfaction of the director, the director may sell all the property or articles of value listed in the notice, at public auction, at the time and place stated in the final notice: PROVIDED, That a notice of the time and place of sale has been published once within ten days prior to the sale in a newspaper of general circulation in the county where the sale is held. Any such property held by the director, the owner of which is not known, may be sold at public auction after it has been held by the director for two years, provided, that a notice of the time and place of sale has been published once within ten days prior to the sale in a newspaper of general circulation in the county where the sale is held. [2014 c 37 s 237; 1994 c 92 s 125; 1985 c 469 s 15; 1955 c 33 s 30.44.210. Prior: 1947 c 148 s 4; Rem. Supp. 1947 s 3281-4. Formerly RCW 30.44.210.]

RCW 30A.44.220 Disposition of proceeds—Escheat. The proceeds of such sale shall be deposited by the director in a bank to his or her credit, in trust for the benefit of the person entitled thereto, and shall be paid by him or her to such person upon receipt of satisfactory evidence of his or her right thereto.

All moneys so deposited remaining unclaimed for five years after deposit shall escheat to the state for the benefit of the permanent school fund and shall be paid by the director into the state treasury. It shall not be necessary to have the escheat adjudged in a suit or action. [2014 c 37 s 238; 1994 c 92 s 126; 1955 c 33 s 30.44.220.]

Prior: 1947 c 148 s 5; Rem. Supp. 1947 s 3281-5. Formerly RCW 30.44.220.]

RCW 30A.44.230 Procedure as to papers, documents, etc. Whenever the personal property held by a liquidated bank shall consist either wholly or in part, of documents, letters, or other papers of a private nature, such documents, letters, or papers shall not be sold, but shall be retained by the director for a period of five years, and, unless sooner claimed by the owner, may be thereafter destroyed in the presence of the director and at least one other witness. [2014 c 37 s 239; 1994 c 92 s 127; 1955 c 33 s 30.44.230. Prior: 1947 c 148 s 6; Rem. Supp. 1947 s 3281-6. Formerly RCW 30.44.230.]

RCW 30A.44.240 Transfer of assets and liabilities to another bank. A bank may for the purpose of voluntary liquidation transfer its assets and liabilities to another bank, by a vote, or with the written consent of the stockholders of record owning two-thirds of its capital stock, but only with the written consent of the director and upon such terms and conditions as he or she may prescribe. Upon any such transfer being made, or upon the liquidation of any such corporation for any cause whatever or upon its being no longer engaged in the business of a bank, the director shall terminate its certificate of authority, which shall not thereafter be revived or renewed. When the certificate of authority of any such corporation shall have been revoked, it shall forthwith collect and distribute its remaining assets, and when that is done the director shall certify the fact to the secretary of state, whereupon the corporation shall cease to exist and the secretary of state shall note that fact upon his or her records. [2014 c 37 s 240; 1994 c 92 s 128; 1955 c 33 s 30.44.240. Prior: 1953 c 236 s 1; 1923 c 115 s 12; 1919 c 209 s 17; 1917 c 80 s 75; RRS s 3282. Formerly RCW 30.44.240.]

RCW 30A.44.250 Reopening. Whenever the director has taken possession of a bank for any cause, he or she may wind up such corporation and cancel its certificate of authority, unless enjoined from so doing, as herein provided. Or if at any time within ninety days after taking possession, he or she shall determine that all impairment and delinquencies have been made good, and that it is safe and expedient for such corporation to reopen, he or she may permit such corporation to reopen upon such terms and conditions as he or she shall prescribe. Before being permitted to reopen, every such corporation shall pay all of the expenses of the director, as herein elsewhere defined. [2014 c 37 s 241; 1994 c 92 s 129; 1955 c 33 s 30.44.250. Prior: 1917 c 80 s 73; RRS s 3280. Formerly RCW 30.44.250.]

RCW 30A.44.260 Destruction of records after liquidation. Where any files, records, documents, books of account or other papers have been taken over and are in the possession of the director in connection with the liquidation of any insolvent banks or trust companies under the laws of this state, the director may, in his or her discretion at any time after the expiration of one year from the declaration of the final dividend, or from the date when such liquidation has been entirely completed, destroy any of the files,

records, documents, books of account or other papers which may appear to the director to be obsolete or unnecessary for future reference as part of the liquidation and files of his or her office. [1994 c 92 s 130; 1955 c 33 s 30.44.260. Prior: 1925 ex.s. c 55 s 1; RRS s 3277-1. Formerly RCW 30.44.260.]

RCW 30A.44.270 Federal deposit insurance corporation as receiver or liquidator—Appointment—Powers and duties. (1) The federal deposit insurance corporation is hereby authorized and empowered to be and act without bond as receiver or liquidator of any bank the deposits in which are to any extent insured by that corporation and of which the director shall have taken possession pursuant to RCW 30A.44.010, 30A.44.020, or 30A.44.160.

(2) In the event of such closing, the director may appoint the federal deposit insurance corporation as receiver or liquidator of such bank.

(3) If the corporation accepts such appointment, it shall have and possess all the powers and privileges provided by the laws of this state with respect to a liquidator of a bank, its depositors and other creditors, and be subject to all the duties of such liquidator, except insofar as such powers, privileges, or duties are in conflict with the provisions of the federal deposit insurance act, as now or hereafter amended. [2014 c 37 s 242; 2010 c 88 s 36; 1994 c 92 s 131; 1973 1st ex.s. c 54 s 1. Formerly RCW 30.44.270.]

Effective date—2010 c 88: See RCW 32.50.900.

RCW 30A.44.280 Payment or acquisition of deposit liabilities by federal deposit insurance corporation—Not hindered by judicial review—Liability. The pendency of any proceedings for judicial review of the director's actions in taking possession and control of a bank and its assets for the purpose of liquidation shall not operate to defer, delay, impede, or prevent the payment or acquisition by the federal deposit insurance corporation of the deposit liabilities of the bank which are insured by the corporation. During the pendency of any proceedings for judicial review, the director shall make available to the federal deposit insurance corporation such facilities in or of the bank and such books, records, and other relevant data of the bank as may be necessary or appropriate to enable the corporation to pay out or to acquire the insured deposit liabilities of the bank. The federal deposit insurance corporation and its directors, officers, agents, and employees, and the director and his or her agents and employees shall be free from liability to the bank, its directors, stockholders, and creditors for or on account of any action taken in connection herewith. [2014 c 37 s 243; 1994 c 92 s 132; 1973 1st ex.s. c 54 s 2. Formerly RCW 30.44.280.]