

§365. Insolvency liquidation**1. Injunction against insolvent institution.**

[PL 1991, c. 34, §5 (RP).]

1-A. Appointment of receiver. If, upon examination of a financial institution, the superintendent is of the opinion that it is insolvent or that its condition renders its further proceedings hazardous to the public or to those having funds including trust assets in its custody, the superintendent may order the institution closed and appoint a receiver who shall proceed to liquidate the financial institution.

[PL 2005, c. 83, §8 (AMD).]

2. Powers of receivers. Receivers have the following powers.

A. The person appointed by the superintendent as a receiver may be the superintendent, a deputy, or such other person, including the corporation insuring the institution's accounts pursuant to section 422, as the superintendent may choose; and a certified copy of the order making such appointment is evidence thereof. A receiver has the power and authority provided in this Title, and such other powers and authority as may be expressed in the order of the superintendent. [PL 1991, c. 34, §5 (AMD).]

B. If the superintendent or a deputy is appointed receiver, no additional compensation need be paid, but any reasonable and necessary expenses as a receiver must be paid by the institution. If another person is so appointed, then the compensation of the receiver must be paid from the assets of that institution. [PL 1991, c. 34, §5 (AMD).]

C. If the federal corporation insuring the institution's deposits or accounts pursuant to section 422 accepts an appointment as receiver, that corporation acquires both legal and equitable title to all assets, rights or claims and to all real or personal property of the institution, to the extent necessary for that corporation to perform its duties as receiver or as may be necessary under applicable federal law to effectuate that appointment. [PL 1991, c. 34, §5 (AMD).]

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3. Specific powers of receivers. Upon taking possession of the property and business of a financial institution under this section, the receiver:

A. May collect money due to the institution and do all acts necessary to conserve its assets and business, and shall proceed to liquidate its affairs; [PL 1991, c. 34, §5 (AMD).]

B. Shall collect all debts due and claims belonging to the institution and may sell or compound all bad or doubtful debts; [PL 1991, c. 34, §5 (AMD).]

C. May sell, for cash or other consideration or as provided by law, all or any part of the real and personal property of the institution; [PL 1991, c. 34, §5 (AMD).]

D. May take, in the name of the institution, a mortgage on the real property from a bona fide purchaser to secure the whole or part of the purchase price; and [PL 1991, c. 34, §5 (AMD).]

E. May borrow money and issue evidence of indebtedness therefor. To secure the repayment of same, the receiver may mortgage, pledge, transfer in trust or hypothecate any or all of the property of such institution, whether real, personal or mixed, superior to any charge thereon for expenses of liquidation. [PL 1991, c. 34, §5 (AMD).]

F. [PL 1991, c. 34, §5 (RP).]

G. [PL 1991, c. 34, §5 (RP).]

Whenever the federal corporation insuring the institution's deposits or accounts pursuant to section 422 pays or makes available for payment the insured deposit liabilities of an institution, such corporation shall become subrogated to the rights of all depositors of the institution, whether or not it has become

receiver thereof, in the same manner and to the same extent as it would be subrogated in the liquidation of a financial institution operating under a federal charter and insured by such corporation.

[PL 1991, c. 34, §5 (AMD).]

4. Reports of receiver; legal advice.

[PL 1991, c. 34, §5 (RP).]

5. Distribution of assets: stock institution.

[PL 1991, c. 34, §5 (RP).]

6. Distribution of assets: mutual institution.

[PL 1991, c. 34, §5 (RP).]

7. Attachments dissolved; actions discontinued; judgment recovered added to claims.

[PL 1991, c. 34, §5 (RP).]

8. Untimely claims barred.

[PL 1991, c. 34, §5 (RP).]

9. Unknown depositors. When it appears upon the settlement of the account of the receiver of a financial institution pursuant to this section that there are remaining in the receiver's hands funds due depositors who can not be found and whose heirs or legal representatives are unknown, the unclaimed funds must be disposed of according to Title 33.

[PL 1991, c. 34, §5 (AMD).]

10. Procedures in liquidation. When the superintendent appoints the FDIC as receiver, federal law prescribes the procedures that the FDIC follows in liquidation of the insolvent institution. When an insolvent institution is liquidated, assets must be distributed in the following priority:

A. First, the payment of the costs and expenses of the liquidation; [PL 1991, c. 386, §11 (NEW).]

B. Second, the payment of claims for deposits, including, but not limited to, the claims of depositors in a mutual institution for the return of their deposits; [PL 1991, c. 386, §11 (NEW).]

C. Third, the payment of all debts, claims and obligations owed by the institution and not accorded priority pursuant to paragraphs A and B; [PL 1991, c. 386, §11 (NEW).]

D. Fourth, the payment of claims otherwise proper that were not filed within the prescribed time; and [PL 1991, c. 386, §11 (NEW).]

E. Fifth, the payment of any obligation expressly subordinated to deposits and to claims entitled to the priority established by paragraphs A and B. [PL 1991, c. 386, §11 (NEW).]

Any funds remaining must be divided among the investors in an investor-owned institution according to their respective interests or, in the case of a mutual institution, pro rata among the depositors in proportion to the respective amount of their deposits.

Interest must be given the same priority as the claim on which it is based, but interest may not be paid on any claim until the principal of all claims within the same class and all higher-priority classes has been paid or adequately provided for in full.

[PL 1997, c. 398, Pt. H, §5 (AMD).]

11. Immunity from civil liability. A person serving as a receiver is immune from any civil liability, in the same manner as and to the same extent as employees of governmental entities are under the Maine Tort Claims Act, for acts performed within the scope of the receiver's duties.

[PL 2005, c. 83, §9 (NEW).]

12. Directors not liable. The members of the board of directors of a financial institution may not be liable to the financial institution's shareholders or creditors for acquiescing in or consenting in good faith to the appointment of a receiver for that financial institution or requiring the financial institution

to be acquired by a financial institution holding company or to combine with another financial institution, if grounds exist for appointing a receiver for the financial institution.

[PL 2009, c. 228, §6 (NEW).]

SECTION HISTORY

PL 1975, c. 500, §1 (NEW). PL 1977, c. 707, §1 (AMD). PL 1991, c. 34, §5 (AMD). PL 1991, c. 386, §11 (AMD). PL 1997, c. 398, §H4 (AMD). PL 1997, c. 398, §H5 (AMD). PL 2005, c. 83, §§8,9 (AMD). PL 2009, c. 228, §6 (AMD).

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