

CREDIT UNION ACT (EXCERPT)
Act 215 of 2003
Part 2
RECEIVERS

490.231 Liquidation; appointment of federal agency as receiver.

Sec. 231.

(1) Except as provided in subsection (2), a domestic credit union shall only be liquidated as provided in this part. A receiver or other liquidating agent shall only be appointed for a domestic credit union or its assets and property under this part.

(2) If a federal agency is appointed as receiver of a domestic credit union, the receivership procedures of the federal agency shall govern the receivership.

History: 2003, Act 215, Eff. June 1, 2004

490.232 Appointment of receiver; conditions; proceeding; bond; reporting schedule; subrogation of federal agency to rights of deposit owners.

Sec. 232.

(1) If a domestic credit union refuses to pay its shares, deposits, or obligations in accordance with the terms under which the shares were received or the deposits or obligations were incurred, becomes insolvent, or refuses to submit its books, papers, and records for inspection by the commissioner, or if it appears to the commissioner that the domestic credit union is in an unsafe or unsound condition, the commissioner may either appoint a conservator under section 241 or apply to the circuit court for Ingham county or for the county in which the principal place of business of the domestic credit union is located for the appointment of a receiver for the domestic credit union.

(2) In a proceeding for the appointment of a receiver, the court may act upon the application immediately and without notice to any person. If at any time it appears to the court that the claimed reasons for receivership do not exist, the court shall dissolve the receivership and terminate the proceedings.

(3) An insuring federal agency may act as receiver without bond. All other receivers, with the exception of an employee of the office of financial and insurance services appointed as receiver in his or her official capacity, shall post a bond in an amount determined by the court.

(4) A receiver shall report to the commissioner regarding all matters involving the receivership on a schedule established by the commissioner.

(5) If a domestic credit union is closed and placed in receivership, and the insuring federal agency pays or makes available for payment the insured shares and deposit liabilities of the closed domestic credit union, the agency, whether or not it has become receiver of the domestic credit union, is subrogated to all of the rights of the owners of the deposits against the closed domestic credit union in the same manner and to the same extent as subrogation of the agency is provided for under federal law.

History: 2003, Act 215, Eff. June 1, 2004

490.233 Receiver; duties; powers.

Sec. 233.

(1) Subject to court approval, a receiver appointed under this part shall do all of the following:

(a) Take possession of the books, records, and assets of the domestic credit union and collect all debts, dues, and claims belonging to the domestic credit union.

(b) Sue and defend, compromise, and settle all claims involving the domestic credit union.

(c) Sell all real and personal property of the domestic credit union.

(d) Exercise all fiduciary functions of the domestic credit union as of the date of the commencement of the receivership.

(e) Pay all administrative expenses of the receivership. The administrative expenses are a first charge on the assets of the domestic credit union and the receiver shall pay those expenses before any final distribution or payment of dividends to creditors or members.

(f) Except as provided in this subdivision, pay ratably the debts of the domestic credit union. The receiver may pay any debt that does not exceed \$500.00 in full, but the holder of that debt is not entitled to payment of interest on the debt.

(g) After paying or providing for payment of all the administrative expenses and debts under subdivisions (e) and (f), pay ratably to the members of the domestic credit union the balance of the net assets of the domestic credit union, in proportion to the number of shares held and owned by each.

(h) Have all the powers of the directors, officers, and members of the domestic credit union necessary to support an action taken on behalf of the domestic credit union.

(i) Hold title to the domestic credit union's property, contracts, and rights of action, beginning on the date the domestic credit union is ordered in receivership.

(2) Subject to court approval, a receiver may do any of the following:

(a) Borrow money as necessary or expedient to aid in the liquidation of the domestic credit union and secure the borrowing by the pledge of or lien, security interest, or mortgage on the assets of the domestic credit union.

(b) Employ agents, legal counsel, accountants, appraisers, consultants, and other personnel the receiver considers necessary to assist in the performance of the receiver's duties. With the prior written approval of the commissioner, the receiver may employ personnel of the office of financial and insurance services if the receiver considers the employment to be advantageous or desirable. The expense of employing personnel of the office of financial and insurance services is an administrative expense of the liquidation that is payable to the office of financial and insurance services.

(c) Exercise other powers and duties ordered by a circuit court under the laws of this state applicable to the appointment of receivers by the circuit court.

History: 2003, Act 215, Eff. June 1, 2004

490.234 Voidable transfer or lien; person knowingly implementing voidable transfer or lien; personal liability; prohibitions to voiding otherwise voidable transfer; "preference" defined.

Sec. 234.

(1) Except as provided in subsection (3), a transfer of or lien on the property or assets of a domestic credit union is voidable by a receiver appointed under this part if the transfer or lien is 1 or more of the following:

(a) Made or created within 1 year before the date the domestic credit union is ordered into receivership if the receiving transferee or lien holder was at the time an official or employee of the domestic credit union or an affiliate of the domestic credit union.

(b) Made or created on or within 90 days before the date the domestic credit union is ordered in receivership with the intent of giving to a creditor or depositor, or enabling a creditor or depositor to obtain, a greater percentage of the claimant's debt than is given or obtained by another claimant of the same class.

(c) Accepted after the domestic credit union is ordered in receivership by a creditor or depositor having reasonable cause to believe that a preference will occur.

(d) Voidable by the domestic credit union and the domestic credit union may recover the property transferred or its value from the person to whom it was transferred or from a person who has received it, unless the transferee or recipient was a bona fide holder for value before the date the domestic credit union was ordered in receivership.

(2) A person acting on behalf of the domestic credit union, who knowingly has participated in implementing a voidable transfer or lien, and each person receiving property or the benefit of property of the domestic credit union as a result of the voidable transfer or lien, is personally liable to the receiver for the property or benefit received.

(3) A receiver appointed under this part shall not void an otherwise voidable transfer under this section if any of the following apply:

(a) The transfer or lien does not exceed the value of \$1,000.00.

(b) The transfer or lien was received in good faith by a person who gave value and who is not a person described in subsection (1)(a).

(c) The transfer of lien was intended by the domestic credit union and the transferee or lien holder as, and in fact substantially was, a contemporaneous exchange for new value given to the domestic credit union.

(4) As used in this section, "preference" means a transfer or grant of an interest in the property or assets of the domestic credit union that is either of the following:

(a) Made or incurred with the intent to hinder, delay, or defraud an entity to which, on or after the date that the transfer or grant of interest was made, the domestic credit union was or became indebted.

(b) Made or incurred for less than a reasonably equivalent value in exchange for the transfer or grant of interest if the domestic credit union was insolvent on the date that the transfer or grant of interest was made or became insolvent as a result of the transfer or grant of interest.

History: 2003, Act 215, Eff. June 1, 2004 ;-- Am. 2004, Act 471, Imd. Eff. Dec. 28, 2004

490.235 Disposal of obsolete and unnecessary records; maintenance methods; reservation, deposit, and use of assets.

Sec. 235.

(1) If approved by the court, a receiver appointed under this part may dispose of records of a domestic credit union in receivership that are obsolete and unnecessary to the continued administration of the receivership proceeding and retain the remaining records of the domestic credit union and the receivership for a period of time as ordered by the court.

(2) A receiver appointed under this part may devise a method for the effective, efficient, and economical maintenance of the records of the domestic credit union and of the receiver's office, including maintaining those records on any medium approved by the court.

(3) A receiver appointed under this part may reserve assets of a liquidated domestic credit union, deposit them in an account, and use them to maintain the records of a liquidated domestic credit union after the closing of the receivership proceeding.

History: 2003, Act 215, Eff. June 1, 2004