

## **§91.1010. Voluntary Liquidation.**

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Voluntary liquidation means the dissolution of a credit union with the assets being sold or collected, liabilities paid, and shares/deposits distributed under the direction of the board of directors.

(2) Liquidation date means the date the membership votes to approve liquidation.

(3) Liquidating agent means the person or persons appointed by the board of directors to take possession of, manage, and liquidate the credit union.

(b) Initiating voluntary liquidation process.

(1) Unless the commissioner has issued a liquidation order, the board of directors may, by resolution, recommend the voluntary dissolution of the credit union and direct submission of the question to the members of the credit union.

(2) Within five days after the date the board adopts the resolution, the chairman of the board shall notify the commissioner, in writing, of the reasons for the proposed liquidation including a balance sheet and income statement as of the previous month-end.

(3) The board shall act promptly to obtain the membership's approval in accordance with subsection (f) of this section.

(4) The board's recommendation to dissolve and liquidate the credit union must be approved by the affirmative vote of a majority of members who submit ballots in person at the special membership meeting and by mail. If less than a majority vote to approve, the credit union may, subject to the commissioner's approval, resume normal business, resubmit the question of liquidation to the membership or request the appointment of a conservator under the Act and the rules adopted under it.

(5) After an affirmative vote by the members to dissolve and liquidate the credit union, the board of directors shall be responsible for conserving the assets, for expediting the liquidation, and for fair and equitable distribution of the assets to the members.

(6) Within 5 days after an affirmative vote to dissolve and liquidate the credit union the chairman shall notify the commissioner in writing of the intention to liquidate together with a list of the officers and directors.

(c) Notice of liquidation.

(1) If the vote to dissolve and liquidate the credit union is affirmative, the credit union shall:

(A) File a notice with the Department within five days after the liquidation date; and

(B) Mail a copy of the notice of liquidation to shareholders/depositors, other known creditors, and known claimants of the credit union within ten days after the liquidation date.

(2) A credit union shall publish public notice of liquidation, if so directed, and in the manner directed, by the Department.

(3) Creditors shall be provided at least 30 days after the liquidation date to submit their claims.

(d) Transaction of business during liquidation.

(1) Immediately after notice of the special meeting to consider voluntary liquidation is mailed to the membership, admission of new members shall be suspended. No new extensions

of credit shall be funded during the period between the board of directors' adoption of the resolution recommending voluntary liquidation and the membership meeting called to consider voluntary liquidation, except for the issuance of loans fully secured by a pledge of shares and the funding of outstanding loan commitments approved before adoption of the board resolution. Collection of loans and interest, payments of necessary expenses, clearing of share drafts and credit card charges shall continue.

(2) If the membership votes to dissolve and liquidate the credit union, the credit union shall immediately discontinue payments on shares/deposits, withdrawal of shares/deposits (except for transfer of shares/deposits to loans and interest), transfer of shares/deposits to another share/deposit account, in the same credit union, granting of loans, and making of investments other than short-term investments shall be discontinued. The credit union shall continue to collect on loans with interest and shall continue to pay necessary expenses during the period of liquidation. The credit union shall direct its Members to discontinue the use of share drafts and credit cards, and shall inform Members that on and after the 15<sup>th</sup> calendar day after the liquidation date, items will no longer be cleared.

(3) Approval of the Department must be obtained prior to consummating any sale of assets which would not provide sufficient funds to pay shareholders/depositors dollar-for-dollar, principal plus any interest accrued or due to the shareholder/depositor, through the liquidation date.

(e) Liquidation Plan. The board of directors shall develop and approve a written plan for the liquidation of the assets and payment of shares/deposits. The liquidation plan shall provide for the liquidation of the credit union within one year of the liquidation date. At a minimum, a credit union's liquidation plan shall address the following areas:

(1) Qualifications and experience of the proposed liquidating agent and the compensation and expenses attributable to the service of such person or persons;

(2) Income and expense items must be projected to determine that sufficient funds will be available to finance the liquidation of the credit union;

(3) Schedule for payment of all debts and liabilities owed by the credit union;

(4) Partial distributions of shares/deposits should be considered as funds become available from the liquidation of assets;

(5) Distribution of the credit union's assets that remain after settlement of debts and liabilities to all persons entitled to them;

(6) Disposition or maintenance of any remaining or unclaimed funds, real or personal property, or other assets;

(7) Surety bond coverage of all persons who will handle or have access to funds of the credit union and the proposed discovery period after final distribution of assets; and

(8) Retention of the credit union's records after liquidation, and in a manner that complies with subsection (j) of this section.

(f) Approval of the liquidation proposal by membership.

(1) Not later than the 10<sup>th</sup> calendar day before the date of the special membership meeting to consider approval of the liquidation, the credit union shall notify, by first class mail, the Commissioner and each member who is eligible to vote on the proposal. The notice must adequately describe the purpose and subject matter of the vote and clearly inform members that they may vote at a special meeting held on the date set for the vote or by mailing in the ballot. The notice must include a clear and conspicuous disclosure of how the voluntary liquidation may

affect the availability of funds on deposit and state the date, time, and place of the meeting. A ballot must be included in the same envelope as the notice.

(2) No director or senior management employee may receive any economic benefit in connection with the voluntary liquidation of the credit union other than compensation and other benefits paid to directors and senior management employees in the ordinary course of business.

(3) A credit union considering the question of liquidation must conduct its membership vote in a fair and legal manner. No inducements may be offered to encourage members to participate in the vote.

(4) A credit union should be careful to conduct its special membership meeting in a manner conducive to accommodating all members wishing to attend, including selecting a meeting location that can accommodate the anticipated number of attendees and is conveniently located. The meeting should also be held on a day and time suitable to most members' schedules.

(g) Distribution of assets.

(1) The liquidating agent shall use the credit union's assets to pay, in the following order:

(A) Secured creditors to the extent of the value of their collateral;

(B) Liquidation expenses, including a surety bond;

(C) Depositors;

(D) General creditors, including secured creditors to the extent that their claims exceed the value of their collateral; and

(E) Distributions to members in proportion to the shares/deposits held by each member.

(2) After all assets of the credit union have been converted to cash or found to be worthless, and all loans and debts owing to it have been collected or found to be uncollectible, and all obligations of the credit union have been paid/settled, except for shares/deposits due its members, the credit union shall close its books and compute the pro rata distribution to its members. The computation shall be based on the total amount in each share/deposit account as of the liquidation date or the date on which all share drafts have cleared, whichever is later.

(3) Payments must be made to members promptly after the pro rata distribution has been computed. The credit union may mail a check to the member's last known address, deliver the check personally to the member, or make the payment by wire or any other electronic means authorized by the member.

(4) Unclaimed share/deposit accounts, unpaid claims, and unpaid claims of members or creditors who failed to cash their final distribution checks shall be escheated in accordance with Texas laws.

(5) The Department shall be notified in writing within five days after the final distribution of assets to the members begins.

(h) Economic benefit. No director or senior management employee may receive any economic benefit in connection with the voluntary liquidation of the credit union other than compensation and other benefits paid to directors and senior management employees in the ordinary course of business.

(i) Continued supervision of voluntary liquidation.

(1) A voluntary liquidation of a credit union shall be conducted only with the continued supervision of the Department. The commissioner may conduct any examinations of the credit union the commissioner considers necessary or appropriate.

(2) The credit union shall submit a report to the Department within 10 business days after the start of liquidation showing the credit union's balance sheet as of the start of liquidation. The liquidating credit union shall submit a report of progress as requested by the Department.

(3) If the commissioner has reason to conclude the voluntary liquidation of a credit union is not being safely or expeditiously conducted, or is being conducted in violation of this section, the commissioner may take possession of the business and property of the credit union in the same manner, with the same effect, and subject to the same rights accorded the credit union as if the commissioner had issued a liquidation order. The commissioner may appoint a new liquidating agent and proceed to liquidate the affairs of the credit union as provided in the Finance Code, Title 3, Subtitle D, Subchapter E.

(j) Retention of records.

(1) The board of directors shall appoint a custodian for the credit union's records that are to be retained after the final distribution of assets.

(2) The custodian shall retain all records of the liquidating credit union that are necessary to establish that the credit union paid creditors, and distributed assets to the members fairly and equitably in accordance with the approved liquidation plan. The custodian shall retain the records for a period of five years following the date the Department cancels the credit union's charter.

(k) Certificate of dissolution and liquidation. Within 120 days after the credit union begins final distribution of assets to members, it shall file with the Department a duly executed Certificate of Dissolution and Liquidation.

(l) Inquiries after liquidation. It will be the responsibility of the custodian for the credit union's records to respond timely to inquiries after liquidation.