

§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 resolution is adopted, 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 (e) of this section.

(4) Not later than the 10th day before the date of the meeting to request the membership's approval, notice of the meeting shall be mailed by first-class mail to each member of the credit union and the commissioner. The notice shall inform members that they have the right to vote on the liquidation proposal in person at the membership meeting called for that purpose or by written ballot, included with the notice. Written ballots must be received no later than the time and date stated on the notice.

(5) A majority of the members casting votes at the meeting or by mail may vote to approve the board's recommendation and dissolve and liquidate the credit union. 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.

(6) 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.

(7) Within 5 days of an affirmative vote to dissolve and liquidate the credit union the chairman, or president, and the secretary shall notify the commissioner 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 of 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 of the liquidation date.

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

(3) Creditors shall be provided at least 30 days from 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 vote to dissolve and liquidate the credit union is affirmative, 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, granting of loans, and making of investments other than short-term investments shall be discontinued. Collection of loans and interest and payment of necessary expenses will continue during the period of liquidation. Members shall be notified to discontinue the use of share drafts and credit cards, and items will not be cleared 15 days from the liquidation date.

(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 should provide for the liquidation of the credit union within one year of the liquidation date. At a minimum, credit union's liquidation plan should 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) Payment of all debts and liabilities owed by the credit union should be scheduled;

(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 person 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.

(f) Approval of the liquidation proposal by membership.

(1) A majority of the members casting votes at the meeting or by mail may vote to approve the board's recommendation and dissolve and liquidate the credit union. 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 regulations adopted under it.

(2) Within 5 days of an affirmative vote to dissolve and liquidate the credit union the chairman or president, and the secretary shall notify the commissioner of the intention to liquidate together with a list of the officers and directors.

(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 books shall be closed and the pro rata distribution to the members shall be computed. 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 his or her last known address, deliver the check personally to the member, or make the payment by wire or any other electronic means authorized by a 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 when the final distribution of assets to the members is started.

(h) 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 at 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, 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.

(i) Retention of records.

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

(2) All records of the liquidating credit union necessary to establish that creditors were paid and that assets were fair and equitably distributed to the members shall be retained by the custodian for a period of five years following the date of charter cancellation.

(j) Certificate of dissolution and liquidation. Within 120 days after the final distribution of assets to members is started, a duly executed Certificate of Dissolution and Liquidation shall be filed with the Department.

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