

TITLE 26
BANKS AND BANKING

CHAPTER 10
CLOSING AND LIQUIDATION OF BANKS

26-1001. GROUNDS FOR CLOSING BANK. Whenever it shall appear to the department of finance that:

- (1) Any bank has violated its charter or any law of this state; or
- (2) Has violated any general rule or regulation of the director, made in accordance with law, or any special lawful order, direction or requirement of the director, directed to any particular bank; or
- (3) That the capital of any bank is impaired or for any reason is below the amount required by law and has not been made good after fifteen (15) days' notice, as provided by law, or without such notice, in the event a majority of the board of directors of such bank notify the director in writing that the same cannot be made good within fifteen (15) days; or
- (4) That such bank cannot meet or has failed to meet any of its liabilities as they become due in the regular course of business; or
- (5) That its reserve has fallen below the amount required by law and it has failed to make good such reserve within fifteen (15) days after being requested to do so by the director, or, without such notice, if a majority of the directors, in writing, notify the director that such reserve cannot be made good within fifteen (15) days, or if it is continually allowing its reserve to fall below the required amount; or
- (6) That it is conducting business in an unsafe and unauthorized manner, or is in an unsafe or unsound condition; or
- (7) It has refused to submit its papers, books and records to the inspection of the director or his authorized agent or representative; or
- (8) That any director or officer of such bank has refused to be examined on oath touching the affairs or business of any bank insofar as such relate to the solvency of the bank or matters having to do with the supervision of the director.

The director himself, or his duly authorized agent upon express authority from the director, may in his discretion, close said bank and take possession of all the books, records, assets and business of every description of such bank, and hold the same and retain possession thereof until such bank shall be authorized by him to resume business, or its operations or liquidation be turned over to the Federal Deposit Insurance Corporation as provided in this chapter, or its affairs be liquidated as herein provided, and he shall do so in cases where a bank comes into his hands voluntarily.

The powers and authority conferred on the director by this section, except in cases of voluntary surrender, shall be considered as discretionary and not as mandatory, and so long as the director acts in good faith in the matter, neither he nor his deputies shall be held liable civilly or criminally or upon their official bonds in any action taken thereunder or for any failure to act thereunder.

[26-1001, added 1979, ch. 41, sec. 2, p. 102.]

26-1002. PENALTY FOR CLOSING BANK WITH CRIMINAL INTENT. If the director of the department of finance or official in the department of finance, shall, as a result of malice or for personal gain, declare any bank insolvent, he shall, upon conviction thereof be subject to punishment by fine not

exceeding one thousand dollars (\$1,000), or imprisonment in the county jail not exceeding one (1) year, or both, within the discretion of the court.

[26-1002, added 1979, ch. 41, sec. 2, p. 103.]

26-1003. RECEIVING DEPOSITS WHEN INSOLVENT. The owners or officers of any bank or trust company who shall receive any deposits, knowing that such bank or trust company is insolvent, shall be guilty of a felony and punished, upon conviction thereof, by a fine not exceeding one thousand dollars (\$1,000), or imprisonment in the state penitentiary not exceeding two (2) years, or both such fine and imprisonment, at the discretion of the court.

[26-1003, added 1979, ch. 41, sec. 2, p. 103.]

26-1004. BANK MAY BE PLACED IN DIRECTOR'S POSSESSION. Any bank may place its affairs and assets under the control and in the possession of the director after oral or written notice to the director by posting a notice on the front door of such bank, indicating that said bank is in his hands, which notice shall be signed, in their own handwriting, by a majority of the directors.

[26-1004, added 1979, ch. 41, sec. 2, p. 103.]

26-1005. EFFECT OF POSTING NOTICE. The posting of such notice by the directors of any bank, or of a like notice signed by the director, shall be sufficient to place all assets and property of such bank, of whatever nature and wherever situate, in possession of the director, and shall operate as a bar to any attachment or any other legal proceedings against such bank or its assets, and no valid lien or claim can be acquired or created, or transfer or assignment made in any manner, binding or affecting any of the assets of such bank after the posting of such notice or after taking possession of any bank by the director.

[26-1005, added 1979, ch. 41, sec. 2, p. 103.]

26-1006. TAKING POSSESSION OF BANK -- NOTICE. On taking possession of the assets and business of the bank, the director shall, in addition to posting notice thereof, on the front door of such bank, as aforesaid, also notify personally or by telephone or mail or by public announcement through the news media, all correspondent banks, and any and all persons or corporations known to him to be holding or in possession of, any of the estate of such bank.

[26-1006, added 1979, ch. 41, sec. 2, p. 103.]

26-1007. RESUMPTION AFTER CLOSING. After the director has taken possession of any bank, he may permit such bank to resume business upon such conditions as may be approved by him.

[26-1007, added 1979, ch. 41, sec. 2, p. 104.]

26-1008. POWERS OF DIRECTOR ON CLOSING BANK. Upon taking the assets and business of any bank into his possession, the director is authorized to collect all moneys due to such bank, assess the stock of such bank, and to do such other acts as are necessary to conserve its assets and business, and he shall proceed to liquidate the affairs thereof. He shall have general and inclusive power and authority, except as otherwise limited by the terms of this act, to do any and all acts, to take any and all steps necessary, or, in his discretion, desirable for the protection of the property and assets of such bank and the speedy and economical liquidation of the assets and affairs of

such bank and the payment of its creditors, or for the reopening and resumption of business by said bank, where that is in his discretion practicable or desirable.

The director may institute, in his own name as director, or in the name of the bank, such suits and actions and other legal proceedings as he deems expedient for such purposes, and by making application to the district court of the county in which such bank is located, or to the judge thereof, in chambers, may procure an order to sell, compromise or compound any bad or doubtful debt or claim, and to sell and dispose of any or all the assets, which sale may be made to stockholders, officers, directors, or others interested in such bank, on consent of the court. Any such application or petition by the director may be had at any time, either in term or vacation in court, or in chambers, as the court may order.

[26-1008, added 1979, ch. 41, sec. 2, p. 104; am. 1987, ch. 76, sec. 1, p. 147.]

26-1009. RECOURSE OF AGGRIEVED BANK. Any bank deeming itself aggrieved by the action of the director in taking possession of its assets or closing its doors may, within ten (10) days after such possession shall have been taken, apply to the district court of the county in which its principal place of business is located, or to the judge thereof in chambers, to enjoin further proceedings by the director, and the court or the judge thereof in chambers, after notifying the director to appear at a specified time and place to show cause why further proceedings should not be enjoined, and after hearing the allegations and proofs of the parties, and determining facts, may, on the merits, dismiss such application, or enjoin the director from further proceeding and direct him to surrender the business and assets of said bank. Such application for injunction may be heard at any time after five (5) days' notice from the time of service on said director in the discretion of the court, or the judge thereof, or at any time prior thereto by the consent of the director. Application therefor shall be made on the verified complaint of the bank, in the ordinary form used in civil actions in district court, and a copy of such complaint shall be served on the director with the order to show cause. The director shall, at least two (2) days before the time set for hearing, file in the cause, and serve upon counsel for plaintiff an answer to the complaint, also in the ordinary form used in civil actions in the district court. Demurrers and motions directed to pleadings are not permissible in proceedings had under this section, but any questions raised by demurrer or motion in other actions may be raised in the answer. On the issues thus made on the complaint and answer, the court, or the judge thereof at chambers, at the time fixed for showing cause, or at such other time to which he, in his discretion, may continue the same, shall try the matter on the merits by hearing the allegations and proofs of the parties in the same manner as on the trial of ordinary civil actions in the district court, and the rules governing the trial of ordinary civil actions and for the production and taking of evidence and hearing the examinations of witnesses and the entry of findings and judgments therein, shall prevail. In the event the director makes no appearance in the time limited, the court shall enter his default and proceed to hear the proofs of the plaintiff in like manner as in civil actions under similar circumstances, and enter judgment accordingly. The judgment entered either after hearing on the merits or by default, shall be final judgment from which either party shall have the right, by notice filed

within twenty (20) days after entry, to appeal to the supreme court, in the same manner as from final judgment in a civil action.

[26-1009, added 1979, ch. 41, sec. 2, p. 104.]

26-1010. DIRECTOR MAY APPOINT AGENTS. The director may, under his hand and seal, appoint and authorize an agent to assist him or act for him in the performance of any powers or duties hereunder, the certificate of appointment to be filed in the office of said director, and a certified copy thereof delivered to such agent. Such agent and other employees hereinafter mentioned, shall receive a salary, to be fixed as hereinafter provided, for the time he is actually engaged in the performance of such duties. The director may also employ such attorneys and procure such expert accountants and other experts, assistants and employees as may be necessary in the liquidation and distribution of the assets of any such bank, and the performance of his duties hereunder, and may retain such of the officers or employees of such bank as he may deem necessary. He shall require from the agent appointed by him and from such of the assistants as will have charge of any of the assets of the bank such security for the faithful discharge of their duties as he may deem proper.

The director may also designate any one of the examiners of the department of finance as a general liquidating agent, with his office in the department of finance, for the purpose of liquidating any one or all state banks in the process of liquidation, and for the purpose of conducting such liquidation under the direction of said director; and may authorize the said liquidating agent to employ such clerical help as may be necessary.

Liquidating agents and experts and clerical assistants shall receive a salary to be fixed by the director and necessary traveling and hotel expenses incurred in the performance of official duties. The salary of the liquidating agent and experts and necessary clerical assistance [assistants] and other expenses incurred by the said liquidating agent shall be borne equally and ratably by the bank or banks in process of liquidation under such agent's charge in proportion to the total amount of resources of each of such banks. The funds for such expenses shall be raised by assessing each bank in ratio herein set forth and paying such expenses directly to the persons entitled thereto, without depositing any of such funds in the state treasury.

The compensation of the agents appointed by the director and of attorneys, expert accountants and other assistants, and all expenses of liquidation and distribution of a bank whose assets and business shall be taken possession of by the director, shall be fixed by the director, but subject to be approved by the judge of the district court of the county in which the bank is located, on notice to such bank. Except in cases of emergency, the compensation to be paid to attorneys and expert accountants shall be fixed and approved before services are rendered. When the compensation shall have been so fixed and approved and the services rendered, the same shall be paid out of the funds of such bank in the hands of the director, and shall be a proper charge and lien on the assets of such bank as herein provided.

[26-1010, added 1979, ch. 41, sec. 2, p. 105.]

26-1011. FEDERAL DEPOSIT INSURANCE CORPORATION -- RIGHT TO ACT AS RECEIVER OR LIQUIDATOR. The Federal Deposit Insurance Corporation created by section 8 of the federal "Banking Act of 1933" (section 12B of the Federal Reserve Act, as amended) is hereby authorized and empowered to be and act without bond as receiver or liquidator of any banking institution, the deposits

in which are to any extent insured by said corporation, and which shall have been closed on account of inability to meet the demands of its depositors, in lieu of the director of finance, but only if and when requested so to do by said director.

The director of the department of finance may, in his discretion, in the event of such closing tender to said corporation the appointment as receiver or liquidator of such banking institution, in his stead, and if the corporation accepts said appointment, the corporation shall have and possess all the rights, powers and privileges provided by the laws of this state with respect to the director of the department of finance acting as receiver or liquidator of a banking institution, and be subject to all the duties of such receiver or liquidator, except insofar as such rights, powers, privileges or duties are in conflict with the provisions of subsection (1) of section 12B of the Federal Reserve Act, as amended (section 8 of the "Banking Act of 1933").

The corporation shall not, however, without the consent of the director of the department of finance, continue to act as receiver or liquidator of any banking institution after the amount of the insured deposit liability of such banking institution, paid or assumed by the corporation, and the costs of liquidation paid or assumed by it have been repaid it, or after funds are available therefor.

[26-1011, added 1979, ch. 41, sec. 2, p. 106.]

26-1012. CLOSED BANK -- FEDERAL DEPOSIT INSURANCE CORPORATION FURNISHING FUNDS FOR PAYMENT OF INSURED DEPOSIT LIABILITIES -- SUBROGATION. Whenever any banking institution shall have been closed as aforesaid, and said Federal Deposit Insurance Corporation shall pay or make available for payment the insured deposit liabilities of such closed institution, the corporation, whether or not it shall have become receiver or liquidator of such closed banking institution, as herein provided, shall be subrogated to all rights against such closed banking institution, of the owners of such deposits, in the same manner and to the same extent as subrogation of the corporation is provided for in subsection (1) of section 12B of said Federal Reserve Act, as amended (being section 8 of said "Banking Act of 1933") in the case of the closing of a national bank, provided, that the rights of depositors and other creditors of such closed institution shall be determined in accordance with the applicable provisions of the laws of this state.

[26-1012, added 1979, ch. 41, sec. 2, p. 107.]

26-1013. CLOSED BANKS -- PLEDGE OR SALE OF ASSETS BY DIRECTOR OR LIQUIDATOR TO FEDERAL DEPOSIT INSURANCE CORPORATION -- COURT ORDER. With respect to any banking institution, which is now or may hereafter be closed on account of inability to meet the demands of its depositors or by action of the director of the department of finance or of a court or by action of its directors or in the event of its insolvency or suspension, the director of the department of finance and/or the receiver or liquidator of such institution with the permission of said director of finance may borrow from said corporation and furnish any part or all of the assets of said institution to said corporation as security for a loan from same, provided, that where said corporation is acting as such receiver or liquidator, the order of a court of record of competent jurisdiction shall be first obtained approving such loan. Said director upon the order of a court of record of competent jurisdiction, and upon a like order and with the permission of said director, the

receiver or liquidator of any such institution may sell to said corporation any part or all of the assets of such institution.

The provisions of this section shall not be construed to limit the power of any banking institution, the director of the department of finance or receivers or liquidators to pledge or sell assets in accordance with any existing law.

[26-1013, added 1979, ch. 41, sec. 2, p. 107.]

26-1014. FEDERAL DEPOSIT INSURANCE CORPORATION ACTING AS LIQUIDATOR -- POSSESSION AND CONTROL OF ASSETS AND BUSINESS OF BANK. Upon the acceptance of the appointment of receiver or liquidator aforesaid by said corporation, and during its continuance as such receiver or liquidator, the possession and control of all the assets, business and property of such banking institution of every kind and nature shall pass to and vest in said corporation and without the execution of any instruments of conveyance, assignment, transfer or endorsement, with the same force and effect and to the same extent as in the director of the department of finance under like circumstances.

[26-1014, added 1979, ch. 41, sec. 2, p. 108.]

26-1015. ENFORCEMENT OF INDIVIDUAL LIABILITY OF DIRECTORS OF CLOSED BANK. Among its other powers, said corporation, in the performance of its powers and duties as such receiver or liquidator, when acting as such in lieu of the director of the department of finance, shall have the right and power upon the order of the court of record of competent jurisdiction to enforce any individual liability of the directors of any such banking institution.

[26-1015, added 1979, ch. 41, sec. 2, p. 108.]

26-1016. NOTICE TO CREDITORS OF INSOLVENT BANK. The director shall cause notice to be given by advertisement in a newspaper of general circulation in the town or city in which said bank is situated, if there be one, and if not, then in such other newspaper published in the state of Idaho, as the director shall designate, once a week for six (6) consecutive weeks, calling on all persons who have claims against said bank to present the same to the director or his duly authorized agent at a place to be specified in said notice, and to make sworn proof thereof, in form to be fixed by him, within the time specified in said notice, not less than thirty (30) days from the date of the last publication thereof. A copy of such notice shall be mailed to all persons whose names appear as creditors upon the books of the bank.

[26-1016, added 1979, ch. 41, sec. 2, p. 108.]

26-1017. CLAIMS -- ALLOWANCE AND REJECTION. The director shall reject or allow all claims in (the) whole or in part, and on each claim allowed shall designate the order of its priority. If a claim is rejected or an order of priority allowed lower than that claimed, notice shall be given the claimant personally or by certified mail with a return receipt requested and an affidavit of the service of such notice, which shall be prima facie evidence thereof, filed in the office of the director. The action of the director shall be final unless an action be brought by the claimant against the bank in the proper court of the county where the bank is located within ninety (90) days after such service to fix the amount of the claim and its order of priority or either. An appeal from the director's allowance, either as to priority or amount, may also be taken to the district court of such county by any party in interest by serving on the director notice thereof, stating

the grounds of objection and filing the same in said court within thirty (30) days after allowance. Within five (5) days after such notice, the director shall file in the court, and serve on the appellant, a copy of the claim and his reasons for allowance. The court or judge shall, after five (5) days' notice of time and place of hearing on the issues thus made, hear the proof of the parties and enter judgment reversing, affirming or modifying the director's action.

[26-1017, added 1979, ch. 41, sec. 2, p. 108.]

26-1018. PAYMENT OF CLAIMS. Claims presented to the director prior to the expiration of the time fixed in the notice to creditors therefor, and allowed by him, shall be paid in the order of priority hereinafter fixed. Those filed after such expiration and prior to one (1) year thereafter shall be entitled, after they have been allowed by the director, to share in the distribution of the assets of the bank only to the extent of the assets undistributed in the hands of the director and available for the payment of claims of their order of priority at the time such claims are filed, but as against other claims of their same order of priority, on which dividends have been paid, they shall be entitled to payment in a proportionate amount before further payments are made on such other claims. All claims filed after the expiration of one (1) year following the date fixed in the notice to creditors as the time for presentation of claims are not entitled to be allowed or paid unless all other creditors' claims of any kind or character, except claims of shareholders, based on stock or assessments paid on stock, shall have been fully paid and discharged, and a surplus remains in the hands of the director, and then only from such surplus.

[26-1018, added 1979, ch. 41, sec. 2, p. 109.]

26-1019. CLAIMS -- ORDER OF PAYMENT -- PRIORITIES. The order of payment of the debts of a bank liquidated by the director shall be as follows:

(1) The expense of liquidation, including compensation of agents, employees and attorneys.

(2) All funds held by bank in trust.

(3) Debts due depositors, holders of cashier's checks, certified checks, drafts on correspondent banks, including protest fees, paid by them on valid checks or drafts presented after closing of the bank, pro rata. All deposit balances of other banks or trust companies and all deposits of public funds of every kind and character (except those actually placed on special deposit under the statutes providing therefor) including those of the United States, the state of Idaho, and every county, district, municipality, political subdivision or public corporation of this state, whether secured or unsecured, or whether deposited in violation of law or otherwise, are included within the terms of this subdivision and take the same priority as debts due any other depositor, anything in the statutes of the state of Idaho to the contrary notwithstanding.

(4) All other contractual liabilities pro rata.

(5) Interest on all foregoing classes of claims without regard to the priority of the principal computed as follows:

Savings accounts at the same rate they bore at the time of the closing of the bank; time certificates of deposit at the rate fixed in the certificate; all other contractual obligations bearing interest at the rate they bore at the time of closing until due by their terms; no interest to be compounded.

(6) Unliquidated claims for damages and the like.

Provided, however, that the director may, in his discretion, without regard to the priorities herein fixed in subdivisions 3, 4, 5 and 6 of this section, or in preference to the payment of any claims of creditors within these subdivisions, pay off and discharge any lien, claim or charge against the assets or property of the bank in his hands and pay out and expend such sums as he deems necessary for the preservation, maintenance, conservation and protection of any such assets and property, and likewise property on which the bank has liens by mortgage or otherwise; and he may also, in his discretion, create a fund or retain in his hands in preference to the claim of any creditors in the subdivisions above-mentioned moneys for the aforesaid purposes.

Collateral which shall have been put up or pledged as security for the payment of bills payable by any bank, or any loans or discounts which shall have been outstanding as rediscounts of any bank prior to the closing thereof, shall not be available to the other creditors of such bank in whole or in part until such bills payable or rediscounts shall have been retired.

Deposits of any person, firm or corporation in a bank which is in the possession of the director, may be offset against any indebtedness, (subject to the conditions of the preceding paragraph of this section) due to such bank from such person, firm or corporation. All dividends when declared in favor of any creditor of the bank may be applied, in the discretion of the director, in satisfaction of the indebtedness, if any, due the bank from such creditor.

[26-1019, added 1979, ch. 41, sec. 2, p. 109.]

26-1020. PARTIAL PAYMENT OF CLAIMS -- CALCULATION OF DIVIDENDS -- ASSIGNMENT OF CLAIMS -- CHECKS AGAINST CLOSED BANK. The director need not await the expiration of the time allowed for filing claims, as fixed in the notice to the creditors, for the payment of dividends, but he may, in his discretion, and if under the circumstances of the particular case he deems it expedient and safe, at any time after taking possession of said bank and prior to the expiration of such period fixed for filing of claims, if he has on hand in cash sufficient funds over and above the expenses of liquidation, make pro rata distribution to any class of creditors next entitled thereto, in the order of priority heretofore fixed, making such payment to said creditors as they appear on the books and records of the bank and determining the priority and basing his apportionment on the amount shown to be due by such books and records. At any time after the expiration of the date fixed for the presentation of claims against said bank and from time to time thereafter, when, in his discretion there are sufficient funds available therefor, the director shall, after making proper provision for the payment of expenses of liquidation, declare and pay dividends to all creditors of such bank pro rata in the order of their priority. If, after the time fixed for presentation of claims against the bank has expired, it appears that any person, prior to the expiration of said period, or at any other time, has been paid more than the pro rata amount due him as compared with the amounts then paid other creditors, nothing more shall be paid said creditor until such time as the payment made other creditors shall place them on equal footing. In calculating dividends, all disputed claims and deposits shall be taken into account and the amount of dividends upon such disputed claims or deposits shall be held by the director until the justice and validity of such claims or deposits shall have been finally determined. Claims against any bank in process of liquidation may be assigned as a whole, but partial assignments of such claims shall

not be valid against the director of the department of finance or his agents in charge of such bank, nor recognized by them. Assignments of claims shall be binding upon the director only after the same have been filed and allowed by the director but not before, and only then subject to the payment of the assignor's liabilities to the bank. Such assignment shall be made by filing written notice, signed by the original claimant, with the director or person in charge of said bank. No assigned claim may be offset against obligations due the bank. A check or draft drawn against any bank closed or taken possession of by the director, whether issued before or after closing thereof, shall not be recognized as a claim against said bank, or as an assignment of any amount, whether protested or not protested.

[26-1020, added 1979, ch. 41, sec. 2, p. 110.]

26-1021. STATEMENT OF CONDITION. The director of the department of finance shall, within sixty (60) days after taking possession of any bank or trust company under the provisions of this chapter and at intervals of every six (6) months thereafter during the liquidation thereof and until depositors' claims against said bank or trust company have been fully paid or the assets available for such claims exhausted, make public a statement of the condition of such bank or trust company.

[26-1021, added 1979, ch. 41, sec. 2, p. 111.]

26-1022. DEPOSIT OF FUNDS IN DIRECTOR'S HANDS. All funds in the hands of the director belonging to any bank in process of liquidation shall be deposited in his name as director in such banks within the state as may be selected and designated by him and subject to his checks as director of the department of finance. Provided, that any bank receiving such deposits shall file and keep on file with the director a surety bond, executed by some surety company authorized to transact business in the state of Idaho, in an amount not less than the amount of the sum on deposit, conditioned for the payment on demand of the full amount of such deposit, or in lieu of such bond, shall deposit with the director, securities in like amount to be approved by the director, as security for the payment of such deposits, but only approved securities as defined by the Public Depository Law, shall be accepted by the director. No deposit of such funds shall be made in any bank in excess of the penal amount of such bond or in excess of ninety per cent (90%) of the market value of such approved securities.

[26-1022, added 1979, ch. 41, sec. 2, p. 111.]

26-1023. DISPOSITION OF UNCLAIMED FUNDS. The director shall certify to the treasurer of the state a complete list of funds remaining in his hands uncalled for, which have been left in his hands in his official capacity, in trust for depositors in and creditors of any liquidated bank after they have been held by him for six (6) months from the date of the final liquidation of the institution. Along with this certificate, he shall transmit to the treasurer of the state the funds with accumulated interest thereon which he has so held in trust for six (6) months. A copy of such certificate shall also be filed with the state controller, who shall make a record thereof.

Any depositor or creditor of a liquidated bank who has not been paid the amount standing to his credit as thus certified to the state treasurer, may apply to the director for the amount due him, after it has been certified into the treasury of the state. The depositor or creditor shall make an affidavit and offer proof of his identity and of the amount due him by the liq-

uidated bank. When satisfied as to the correctness of the claim and of the identity of the person, the director shall approve the claim and forward it to the state controller, who shall audit the same and if found correct issue his warrant payable to the depositor or creditor for the amount shown by the records to be due such depositor or creditor which shall be paid by the treasurer.

[26-1023, added 1979, ch. 41, sec. 2, p. 112; am. 1994, ch. 180, sec. 43, p. 455.]

26-1024. DISPOSITION OF ASSETS REMAINING AFTER PAYMENT OF CLAIMS. Whenever the director has paid to each and every depositor and creditor of such bank whose claims shall have been duly approved and allowed as herein provided, the full amount thereof, and shall have made provisions for unclaimed and unpaid deposits and disputed claims and deposits, and shall have paid all the expenses of liquidation or, if the assets of said bank be insufficient for making said payments, then, whenever the director has liquidated all available assets and disbursed the same as herein provided, the director shall make application to the district court of the county in which such bank is located, or the judge thereof in chambers for an order authorizing the director, if there be remaining assets on hand, to surrender the same to the directors of said bank in office at the time of closing the same, as trustees for stockholders, or to such other person or persons, if any, as have been designated as trustees by the stockholders at a meeting lawfully called and assembled for such purpose, in like manner as any other stockholders' meeting. Said order shall also provide that upon the surrender of said assets, as in said order directed, and where there are no remaining assets, then, upon the entry of the order, the director shall be discharged from all further liability or responsibility in connection with the assets and affairs of said bank and that the charter of said bank shall be forfeited. The court may require such trustees to give bond in such amount as the court may fix, conditioned for the faithful performance of their duties. It shall be the duty of the said trustee or trustees to complete the liquidation of any remaining assets as rapidly as may be and to distribute the proceeds of the same among the stockholders according to their respective rights. On application for such order, the bank shall be made a party by notice issued on order of the court or judge, in lieu of summons, but served in like manner, and the hearing of any such application may be had at any time in court or in chambers, as the court may order, after five (5) days' notice of the hearing.

[26-1024, added 1979, ch. 41, sec. 2, p. 112.]

26-1025. BORROWING MONEY TO FACILITATE LIQUIDATION OR REOPENING OF BANK. The director of the department of finance, when he deems it to be for the best interest of the depositors of any closed bank, shall be and hereby is authorized and empowered in his official capacity, without personal liability, and under orders of the court, to borrow from any federal agency, or any corporation or person, for the purpose of facilitating the liquidation of such bank and making distribution to depositors, and/or for the purpose of reorganizing or reopening such bank, and as security for the payment of any money so borrowed, the director may pledge or otherwise hypothecate or mortgage all or any part of the assets of such bank and enter into all such contracts or agreements in connection therewith as he may deem prudent and advisable.

[26-1025, added 1979, ch. 41, sec. 2, p. 113.]

26-1026. REOPENING OF BANK -- UNSECURED DEPOSITORS AND CREDITORS -- ACCEPTANCE OF PLAN -- CERTIFICATE OF APPROVAL. Whenever the director of the department of finance believes it to be for the best interest of the unsecured depositors and creditors of any bank that any proposed plan for maintaining or restoring the solvency of such bank, or for effecting any merger or reorganization thereof, should be carried out and made effective, the director shall issue his certificate of approval, and thereupon all other unsecured depositors and unsecured creditors of such bank shall be held to be subject to the agreement and plan so approved by the director and all depositors and creditors shall be bound thereby and their deposits and claims shall be subject thereto to the same extent and effect as if they had joined in the execution thereof, and their deposits and claims shall be paid in the manner provided in the plan so approved, as aforesaid, and not otherwise.

[26-1026, added 1979, ch. 41, sec. 2, p. 113.]

26-1027. PUBLIC FUNDS ON DEPOSIT -- JOINDER OF OFFICIAL IN PLAN -- BONDS SECURING DEPOSITS UNAFFECTED. Public officers and governing boards having control of public funds on deposit in any such bank are authorized to join in any plan approved as provided in section 26-1026, Idaho Code, if, in the judgment of such officers or boards, the plan is for the best interest of all persons concerned, but no such agreement shall release any surety on any bond securing public deposits or public funds, or waive any security held for any preference given to such public funds under any law of this state, or relieve any officer, or the sureties of his official bond, of the liability, if any, for such deposit, and the time for the repayment of public funds shall in no event be extended for a longer period than six (6) months from the date of said certificate of the director of the department of finance.

[26-1027, added 1979, ch. 41, sec. 2, p. 114.]