

Chapter 33.40 RCW
INSOLVENCY, LIQUIDATION, MERGER

Sections

- 33.40.010 Voluntary liquidation, merger, etc., authorized—
Procedure.
- 33.40.020 Director may take possession of domestic association on
notice for delinquency.
- 33.40.030 Possession without notice.
- 33.40.040 Procedure on taking possession.
- 33.40.050 Involuntary liquidation—Procedure—Federal insurance
corporation as liquidator.
- 33.40.060 Procedure to be as in receivership.
- 33.40.070 Liquidator's powers.
- 33.40.075 Investment of liquidation funds—Use of income.
- 33.40.080 Disposition of records.
- 33.40.110 Voluntary liquidation—Disposition of unclaimed dividends
and records.
- 33.40.120 Removal of liquidator—Appellate review.
- 33.40.130 Payment of deposits accepted during economic emergency,
preference.
- 33.40.150 Appointment of provisional officers and directors.

**RCW 33.40.010 Voluntary liquidation, merger, etc., authorized—
Procedure.** Any domestic association may determine to enter upon
voluntary liquidation, to transfer its assets and liabilities to
another association, to merge with another association, to segregate
its assets into classes, to charge off its losses in excess of its
reserves.

Any such liquidation, transfer, merger, segregation, or charge-
off shall be effected by the vote of a majority in amount of the
members present, in person or by proxy, at any regular or special
meeting of the members called for such purpose. Notice of such
meeting, stating the purpose thereof, shall be given the director at
least thirty days prior to the meeting and to the members pursuant to
the provisions contained in RCW 33.20.010.

If such liquidation, transfer, merger, segregation, or charge-off
be authorized by the members at the meeting, the directors of the
association are authorized and shall effect such action, and the
officers of the association shall execute all proper conveyances,
documents, and other papers necessary or proper thereunto. [1994 c 92
s 454; 1949 c 20 s 9; 1945 c 235 s 102; Rem. Supp. 1949 s 3717-221.
Prior: 1935 c 171 s 4; 1933 c 183 ss 60, 78; 1919 c 169 s 17.]

**RCW 33.40.020 Director may take possession of domestic
association on notice for delinquency.** Whenever it appears to the
director that any domestic association is in an unsound condition or
is conducting its business in an unsafe manner or is refusing to
submit its books, papers, or concerns to lawful inspection, or that
any director or officer thereof refuses to submit to examination on
oath touching its concerns and affairs or that it has failed to carry
out any authorized order or direction of the director, the director
may give notice to the association so offending or delinquent or whose
director or officer is thus offending or delinquent to correct such

offense or delinquency and, if such association or such director or officer fails to correct the condition, offense, or delinquency within a reasonable time, as determined by the director, the director may take possession of the association. [1994 c 92 s 455; 1982 c 3 s 66; 1945 c 235 s 103; Rem. Supp. 1945 s 3717-222. Prior: 1933 c 183 ss 68, 71.]

Severability—1982 c 3: See note following RCW 33.04.002.

RCW 33.40.030 Possession without notice. Whenever it shall appear to the director that any association is in an unsound or unsafe condition to continue business or is insolvent, the director may take possession thereof without notice. [1994 c 92 s 456; 1945 c 235 s 104; Rem. Supp. 1945 s 3717-223. Prior: 1933 c 183 ss 68, 71.]

RCW 33.40.040 Procedure on taking possession. Upon the director taking possession of any domestic association, the director shall proceed to liquidate the association unless, in the director's discretion, the director shall determine to call a meeting of the members to consider either a proportionate charge-off against the deposit accounts to permit the association thereafter to continue in business, or whether the association should proceed to voluntary liquidation under the management of its board of directors. In such event, if the director approves the decision of a majority in amount of the members present and voting, the director shall order such action to be taken.

During any period of voluntary liquidation, the director may take possession of the association and its assets and complete the liquidation whenever, in the director's discretion, this seems advisable. [1994 c 92 s 457; 1982 c 3 s 67; 1945 c 235 s 105; Rem. Supp. 1945 s 3717-224. Prior: 1935 c 171 s 4; 1933 c 183 ss 70, 72, 78; 1919 c 169 s 13; 1913 c 110 s 20.]

Severability—1982 c 3: See note following RCW 33.04.002.

RCW 33.40.050 Involuntary liquidation—Procedure—Federal insurance corporation as liquidator. Whenever the director determines to liquidate the affairs of a domestic association, the director shall cause the attorney general to present to the superior court of the county in which the association has its principal place of business a written petition setting forth the date of the taking of possession, the reasons therefor, and other material facts concerning the affairs of the association and, if the court determines that the association should be liquidated, it shall appoint the director, or other responsible person as recommended by the director, as the liquidator of the association and fix and require a bond to be given by the liquidator conditioned for the faithful performance of the duties as such liquidator, but if the association has the insurance protection provided by Title IV of the National Housing Act, as now or hereafter amended, the court upon the request of the director may tender to the federal savings and loan insurance corporation the appointment as liquidator.

Upon the filing with and approval by the court of the bond, the director or other person appointed shall enter upon the duties as liquidator of the affairs of the association, and, under the direction of the court, shall administer and liquidate the assets thereof and apply the same to the payment of the expenses of liquidation and the debts of the association, and distribute the remainder to the deposit accounts proportionately.

If the court tenders the appointment as liquidator to the federal savings and loan insurance corporation, and if the insurance corporation accepts the appointment, it shall have and possess all the powers and privileges provided by the laws of this state with respect to a liquidator of an association, its depositors and other creditors, and be subject to all the duties of such liquidator, except insofar as such powers, privileges, or duties are in conflict with the provisions of Title IV of the National Housing Act, as now or hereafter amended. In any liquidation proceeding in which the insurance corporation is the liquidator, it may proceed to liquidate without being subject to the control of the court and without bond. [1994 c 92 s 458; 1982 c 3 s 68; 1973 c 130 s 29; 1945 c 235 s 106; Rem. Supp. 1945 s 3717-225. Prior: 1935 c 171 s 4; 1933 c 183 ss 70, 72, 73, 74, 76, 77, 78; 1919 c 169 s 13; 1913 c 110 s 20.]

Severability—1982 c 3: See note following RCW 33.04.002.

Severability—1973 c 130: See note following RCW 33.24.350.

RCW 33.40.060 Procedure to be as in receivership. In any such liquidation proceeding, the court, except as otherwise in this title expressly provided, shall have the powers and proceed as in receivership proceedings. [1945 c 235 s 107; Rem. Supp. 1945 s 3717-226. Prior: 1935 c 171 s 4; 1933 c 183 ss 70, 72, 73, 75, 76, 77, 78; 1919 c 169 s 13; 1913 c 110 s 20.]

RCW 33.40.070 Liquidator's powers. The liquidator, upon the approval of the court, may sell, discount, or compromise debts of the association and claims against its debtors. The liquidator, with the approval of the court, may lease, operate, repair, exchange, or sell, either for cash or upon terms, the real and personal property of the association.

The liquidator, with the approval of the court, when funds are available, may pay savings members whose balances amount to not more than five dollars, the full amount of the balances.

Checks issued or payments held by the liquidator which remain undelivered for six months following the final liquidation dividend shall be deposited with the director, after which the liquidator shall be discharged by the court. During ten years thereafter, the director shall deliver the checks or payments, or the director's own checks in lieu thereof, to the payee, or his or her legal representative, upon receipt of satisfactory evidence of the payee's right thereto. After the ten years, the director shall cancel all such checks or payments remaining in the director's possession and issue a check against the account for the amount thereof, payable to the state treasurer, and deliver it to the state treasurer. Such payment shall escheat to the state, without further legal proceedings. [1994 c 92 s 459; 1982 c 3

s 69; 1953 c 71 s 10; 1945 c 235 s 108; Rem. Supp. 1945 s 3717-227. Prior: 1935 c 171 s 4; 1933 c 183 ss 70, 73, 74, 78.]

Severability—1982 c 3: See note following RCW 33.04.002.

RCW 33.40.075 Investment of liquidation funds—Use of income.

All funds received by the director from liquidations may be invested by the director. The earnings from the moneys so held may be applied toward defraying the expenses incurred in the liquidations. [1994 c 92 s 460; 1982 c 3 s 70; 1951 c 105 s 1.]

Severability—1982 c 3: See note following RCW 33.04.002.

RCW 33.40.080 Disposition of records. Upon the termination of any liquidation proceeding, any files, records, documents, books of account, or other papers in the possession of the liquidator shall be surrendered into the possession of the director, who, in his or her discretion at any time after the expiration of one year, may destroy any of such files, records, documents, books of account or other papers which appear to him or her to be obsolete or unnecessary for future reference. [1994 c 92 s 461; 1945 c 235 s 109; Rem. Supp. 1945 s 3717-228.]

RCW 33.40.110 Voluntary liquidation—Disposition of unclaimed dividends and records. In a voluntary liquidation of a domestic association, checks issued in the liquidation or funds representing liquidating dividends or otherwise which remain undelivered for six months following the final liquidating dividend, shall be deposited with the director, together with any files, records, documents, books of account, or other papers of the association. The director, at any time after one year from delivery, may destroy any of such files, records, documents, books of account, or other papers which appear to the director to be obsolete or unnecessary for future reference. During ten years thereafter, the director shall deliver such checks, or the director's own checks in lieu thereof, or portions of such funds to the payee, or the payee's legal representative, upon receipt of satisfactory evidence of the payee's right thereto. After the ten years, the director shall cancel all such checks remaining in the director's possession and issue a check payable to the state treasurer for the amount thereof together with any other liquidating funds, and deliver them to the state treasurer. Such payment shall escheat to the state without further legal proceedings. [1994 c 92 s 462; 1982 c 3 s 71; 1953 c 71 s 11; 1945 c 235 s 112; Rem. Supp. 1945 s 3717-231.]

Severability—1982 c 3: See note following RCW 33.04.002.

Revised uniform unclaimed property act: Chapter 63.30 RCW.

RCW 33.40.120 Removal of liquidator—Appellate review. The court, upon notice and hearing, may remove the liquidator for cause. Appellate review of the order of removal may be sought as in other civil cases.

During the pendency of any appeal, the director of financial institutions shall act as liquidator of the association, without giving any additional bond for the performance of the duties as such liquidator.

If such order of removal shall be affirmed, the director of financial institutions shall name another liquidator for the association, which nominee, upon qualifying as required for receivers generally, shall succeed to the position of liquidator of the association. [1994 c 92 s 463; 1988 c 202 s 34; 1982 c 3 s 72; 1971 c 81 s 86; 1945 c 235 s 113; Rem. Supp. 1945 s 3717-232.]

Rules of court: *Appeal procedures superseded by RAP 2.1, 2.2, 18.22.*

Severability—1988 c 202: See note following RCW 2.24.050.

Severability—1982 c 3: See note following RCW 33.04.002.

RCW 33.40.130 Payment of deposits accepted during economic emergency, preference. Savings deposits received by an association, during a period or periods of postponement of payment of withdrawals or of acute business depression, panic or economic emergency under authorization or declaration of the director as hereinbefore provided, shall be repaid to the depositors paying in such savings before any liquidation dividends shall be declared or paid if, during such period or periods or at the expiration thereof, the director takes charge of the association for liquidation, as provided in this title. [1994 c 92 s 464; 1982 c 3 s 73; 1945 c 235 s 100; Rem. Supp. 1945 s 3717-219.]

Severability—1982 c 3: See note following RCW 33.04.002.

RCW 33.40.150 Appointment of provisional officers and directors.

(1) The director of financial institutions, after exercising the authority granted in RCW 33.16.040, may appoint provisional officers and directors, in whole or in part, of an association.

(2) Notice of the appointment shall be served upon the association, and the appointment shall take effect immediately and shall remain in effect until a successor is chosen in accordance with the association's bylaws. [1994 c 92 s 465; 1985 c 239 s 2.]