

## CHAPTER 220

## BANKING

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**220.01 Definitions.** As used in chs. 220 to 224:

(1) Unless the context requires otherwise, the term “bank” means any banking institution incorporated under the laws of this state.

(1e) “Department” means the department of financial institutions.

(1m) “Division” means the division of banking.

(2) The term “lawful money” means all forms of money issued by or under the authority of the United States as a circulating medium, and includes any form of certificate declared to be lawful money by any law of the United States.

**History:** 1983 a. 189; 1991 a. 221; 1993 a. 213; Stats. 1993 s. 220.01; 1995 a. 27; 1997 a. 191.

**220.02 Division; duties.** (2) The division shall enforce all laws relating to banks and banking in this state, and shall enforce and cause to be enforced every law relating to the supervision and control thereof, including those relating to:

(a) State banks under this chapter and ch. 221 and trust company banks under ch. 223.

(b) The lending of money under s. 138.09 or those relating to finance companies, motor vehicle dealers, adjustment service companies, community currency exchanges and collection agencies under ch. 218.

(c) Sellers of checks under ch. 217.

(d) Fiduciary operations of organizations under ss. 220.04 (7) and 223.105.

(e) Savings banks under ch. 214.

(f) Savings and loan associations under ch. 215.

(g) Mortgage bankers, loan originators, and mortgage brokers under subch. III of ch. 224.

**NOTE:** Par. (g) was created as par. (h) by 2005 Wis. Act 215 and renumbered by the revisor under s. 13.93 (1) (b).

(h) Nondepository small business lenders under subch. IV of ch. 224.

(i) Insurance premium finance companies under s. 138.12.

**NOTE:** Par. (i) was created as par. (g) by 2005 Wis. Act 215 and renumbered by the revisor under s. 13.93 (1) (b).

(3) It is the intent of sub. (2) to give the division jurisdiction to enforce and carry out all laws relating to banks or banking in this state, including those relating to state banks, savings banks, savings and loan associations, and trust company banks, and also all laws relating to small loan companies or other loan companies or agencies, finance companies, insurance premium finance companies, motor vehicle dealers, adjustment service companies, community currency exchanges, mortgage bankers, loan originators, mortgage brokers, and collection agencies and those relating to sellers of checks under ch. 217, whether doing business as cor-

porations, individuals, or otherwise, but to exclude laws relating to credit unions.

(5) Except for acts and decisions of the division under chs. 138, 217 and 218, any interested person or any bank or banking corporation aggrieved by an act, order or determination of the division may, within 10 days from the date thereof, apply to the banking review board to review the same. All such applications for review shall be considered and disposed of as speedily as possible. The banking review board may require the division to submit any of the division's actions subject to such review to said board for its approval.

**History:** 1971 c. 239, 307; 1973 c. 3, 243; 1975 c. 65; 1977 c. 196 s. 131; 1977 c. 418; 1981 c. 390; 1985 a. 127; 1987 a. 399; 1989 a. 31; 1991 a. 221, 316; 1995 a. 27 ss. 52c, 5979 to 5984; 1995 a. 55, 216; 1997 a. 27; 2003 a. 33; 2005 a. 158, 215; s. 13.93 (1) (b).

**Cross Reference:** See also DFI–Bkg, Wis. adm. code.

**220.035 Banking review board.** (1) (a) The banking review board shall advise the division and others in respect to improvement in the condition and service of banks and banking business in this state and shall review the acts and decisions of the division with respect to banks, except for such acts and decisions of the division under chs. 138, 217 and 218, and shall perform such other review functions in relation to banking as are provided by law. The banking review board may require the division to submit any of the division's actions to it for its approval. The board may make rules of procedure as provided in ch. 227.

(b) Any interested person aggrieved by any act, order or determination of the division may apply for review thereof by filing a petition with the secretary of the board within 10 days after the act, order or determination to be reviewed, which petition shall state the nature of the petitioner's interest, facts showing that petitioner is aggrieved and directly affected by the act, order or determination to be reviewed and the ground or grounds upon which petitioner claims that the act, order or determination should be modified or reversed. The issues raised by the petition for review shall be considered by the board upon giving at least 10 days' written notice of the time and place when said matter will be heard to the division and the person applying for review or that person's attorney and upon any other person who participated in the proceedings before the division or that other person's attorney. Notice of hearing may be given by registered mail, return receipt requested, and the return receipt signed by the addressee or the addressee's agent shall be presumptive evidence that such notice was received by the addressee on the day stated on the receipt. Any other interested party shall have the right to appear in any proceeding before the board.

(c) The board shall base its determination upon the record made by the division and may also receive additional evidence to supplement such record if it finds it necessary. The board shall

affirm, modify or reverse the act, order or determination under review. The burden of overcoming the act, order or determination of the division under review shall be on the person seeking the review. Any findings of fact made by the division shall be sustained if supported by substantial evidence in the record made by the division or in such record supplemented by evidence taken by the board. The board shall have the powers granted by s. 885.01

(4) Any person causing a witness to be subpoenaed shall advance and pay the fees and mileage of such witness which shall be the same as in circuit court. The fees and mileage of witnesses who are called at the instance of the division shall be paid by the state in the same manner that other expenses are audited and paid upon presentation of properly verified vouchers approved by at least one member of the board and charged to the appropriation of the division.

(d) Each member of the board and all employees of the board shall, with respect to the disclosure of information concerning banks, be subject to the same requirements and penalties as the employees of the division.

(2) The banking review board may make rules and regulations to safeguard the interest of depositors and stockholders generally in emergencies.

(3) Any final order or determination of the banking review board shall be subject to review in the manner provided in ch. 227.

(4) The board shall have an office in the quarters of the division. The board's secretary shall keep a record of the meetings of the board and of all hearings, decisions, orders and determinations of the board. The board may make reasonable rules not inconsistent with law as to the time of meetings, time of hearings, notice of hearings and manner of conducting same and of deciding the matters presented. The board may direct that hearings and testimony be taken by any member of the board or by an examiner designated by the board.

(5) The board may employ assistance necessary in the performance of its work and fix reasonable compensation therefor, subject to any statutes applicable thereto.

(6) Any bank whose assets, upon the basis of a fair valuation, are equal to or in excess of its liabilities exclusive of capital stock, preferred stock, capital notes and debentures, shall be deemed to be safe and solvent. The banking review board may prescribe schedules, rules and regulations for arriving at a fair valuation of various classes of assets of banks.

**History:** 1971 c. 307; 1991 a. 316; 1995 a. 27; 1997 a. 27.

**Cross Reference:** See also ch. DFI-Bkg 10, Wis. adm. code.

The remedy under sub. (3) is exclusive when contested issues of public interest and constitutionality could have been remedied on administrative review. *First National Bank of Wisconsin Rapids v. M & I Peoples Bank of Coloma*, 82 Wis. 2d 529, 263 N.W.2d 196 (1978).

**220.04 Powers of division.** (1) (a) The division shall examine at least once every 18 months the cash, bills, collaterals, securities, assets, books of account, condition and affairs of each bank and trust company bank doing business in this state, except national banks. For that purpose the division may examine on oath any of the officers, agents, directors, clerks, stockholders, customers or depositors thereof, touching the affairs and business of such institution. In making such examinations of banks, the division shall determine the fair valuation of all assets in accordance with the schedules, rules and regulations prescribed by the banking review board.

(b) In lieu of any examination required to be made by the division, the division may accept any examination that may have been made of any bank or trust company bank within a reasonable period by a bank supervisory agency, as defined in s. 221.0901 (2) (d), if a copy of the examination is furnished to the division.

(2) The division shall examine, or cause to be examined, any bank when requested by the board of directors of such bank. The division shall also ascertain whether such bank transacts its business at the place designated in the articles of incorporation, and whether its business is conducted in the manner prescribed by law.

(3) The division may, in the performance of official duties, issue subpoenas and administer oaths. In case of any refusal to obey a subpoena issued by the division, the refusal shall be reported at once to the circuit court of the circuit in which the bank is located. The court shall enforce obedience to the subpoena in the manner provided by law for enforcing obedience to subpoenas of the court.

(4) Whenever the division is of the opinion that the loaning, investing or other banking policies or practices of any officer or director of any bank have been prejudicial to the best interests of such bank or its depositors, or that such policies or practices, if put into operation or continued, will endanger the safety or solvency of said bank or impair the interests of its depositors, the division may, with the approval of the banking review board, request the removal of such officer or director. Such request shall be served on the bank and on such officer or director in the manner provided by law for serving a summons in a court of record or shall be transmitted to said bank and officer or director by registered mail with return receipt requested. If such request for removal is not complied with within a reasonable time fixed by the division, the division may by order, with like approval of the banking review board, remove such officer or director, but no order of removal shall be entered until after an opportunity for hearing before the banking review board is given to such officer or director upon not less than 10 days' notice. An order of removal shall take effect as of the date issued. A copy of such order shall be served upon the bank and upon such officer or director in the manner provided by law for service of a summons in a court of record or by mailing such copy to the bank or officer or director at the bank's or officer's or director's last-known post-office address. Any removal under this subsection shall be effective in all respects the same as if made by the board of directors or stockholders of said bank. Any officer or director removed from office under the provisions of this subsection shall not be reelected as an officer or director of any bank without the approval of the division and the banking review board. An order of removal under this subsection shall be deemed a final order or determination of the banking review board within the meaning and contemplation of s. 220.035 (3).

(5) The division, in connection with the liquidation of any bank or banking corporation or when called upon to approve any plan of reorganization and stabilization thereof or when the division is satisfied the interests of the depositors and creditors in assets held under any trust arrangement so require in connection with such reorganization and stabilization, may cause the bank or banking corporation or trust to be audited. The expense of the audit shall, upon the certificate of the division, be refunded forthwith to the division by the bank, banking corporation or the trustees out of the assets of the bank, banking corporation or trust. Such charges shall be a preferred claim against the assets.

(6) (a) The division, with the approval of the banking review board, may establish uniform savings rules which shall be adopted by every bank and trust company bank. Such rules may provide the conditions under which banks or trust company banks may accept deposits.

(b) In times of financial distress, the commissioner with the approval of the banking review board may by order restrict the withdrawal of any class of deposits in any bank or trust company bank. The pendency of any proceeding for review of such order shall not stay or suspend the operation of such order.

(d) The division, with the approval of the banking review board, may establish rules regulating the kind and amount of foreign bonds or bonds and securities offered for sale by the international bank for reconstruction and development, the inter-American development bank, the international finance corporation, the African development bank and the Asian development bank which state banks and trust company banks may purchase, except that such rules shall not apply to bonds and securities of the Canadian government and Canadian provinces, which are payable in American funds.

**(7)** (a) In this subsection:

1. “Fiduciary operation” has the meaning designated under s. 223.105 (1) (a).

2. “Fiduciary property” means that property held by an organization as trustee or in any fiduciary capacity requiring the issuance of letters by a court or probate registrar in this state.

3. “Organization” has the meaning designated under s. 223.105 (1) (b).

(b) The division may, with the approval of the banking review board, establish uniform rules regulating organizations engaging in fiduciary operations. Such rules may:

1. Authorize the division or any other state agency having jurisdiction over the organization to require the organization to submit periodic reports, in such form and containing such information as the division may prescribe, regarding the organization’s fiduciary operations.

2. Require the organization to maintain separate books of account for its fiduciary operations and to maintain fiduciary property separate from the property of the organization.

3. Require the organization to maintain reasonable safeguards to protect fiduciary property including the maintenance of an indemnity fund in the same manner as that required of trust company banks under s. 223.02 (1).

**(8)** Unless the division is expressly restricted by statute from acting under this subsection with respect to a specific power, right or privilege, the division by rule may, with the approval of the banking review board, authorize state banks to exercise any power under the notice, disclosure or procedural requirements governing national banks or to make any loan or investment or exercise any right, power or privilege permitted national banks under federal law, regulation or interpretation. Notice, disclosure and procedures prescribed by statute which may be modified by a rule adopted under this subsection include, but are not limited to, those provided under s. 138.056. A rule adopted under this subsection may not affect s. 138.041 or chs. 421 to 428 or restrict powers specifically granted state banks under this chapter or ch. 221 or 224.

**(9)** (a) *Definitions.* In this subsection:

1. “Official” means a director, officer, employee or agent of a regulated entity or any other person which participates in the conduct of the affairs of a regulated entity.

2. “Regulated entity” means a bank, universal bank, trust company bank, and any other entity that is described in s. 220.02 (2) or 221.0526 as under the supervision and control of the division.

(b) *Notice of hearing.* The division may serve a notice of a hearing which complies with s. 227.44 (1) and (2) on an official or regulated entity if, as a result of an examination or report made to the division, the division determines any of the following:

1. The official or regulated entity is violating or is about to violate the banking laws of this state or any rule or order issued by the division.

2. The regulated entity is being operated in an unsafe or unsound manner.

3. An official is violating or is about to violate a written condition which the division imposed in connection with granting an application or request by the regulated entity, or a written agreement entered into with the division.

(c) *Conduct of hearing.* A hearing under par. (b) shall be conducted in the manner specified for a contested case, as defined in s. 227.01 (3), under ss. 227.44 to 227.50.

(d) *Cease and desist order.* If the recipient of a notice of hearing fails to appear or if upon the record made at the hearing the division finds that a violation or unsafe or unsound practice has been established, the division may issue and serve on the official or regulated entity an order to cease and desist from the violation or practice. The order may require the official or regulated entity to correct the conditions resulting from the violation or practice. An order issued under this paragraph is effective upon service on

the official or regulated entity named in the order and may be appealed under s. 220.035.

(e) *Temporary order.* 1. If the division finds that a violation or practice described in par. (b) is likely to cause insolvency or substantial dissipation of assets or earnings of the regulated entity or seriously prejudice the interests of its depositors, the division may issue a temporary order requiring the official or regulated entity named in the notice of hearing to cease and desist from the violation or practice and to take affirmative action to prevent insolvency, dissipation of assets or earnings or prejudice to depositors pending completion of the proceedings. The temporary order is effective upon service on the official or regulated entity named in the notice of hearing and remains effective and enforceable pending completion of the administrative proceedings unless suspended, set aside or limited by a court as provided in subd. 2.

2. Within 20 days after an official or regulated entity is served with a temporary order under subd. 1., the official or regulated entity may apply to the circuit court for the county within which the regulated entity is located for an injunction setting aside, limiting or suspending the enforcement of the order pending the completion of the administrative proceeding.

(f) *Forfeitures.* 1. As part of an order issued under par. (d), the division may impose a forfeiture of up to \$10,000 for each violation or practice under par. (b).

2. An official or regulated entity who violates an order issued under par. (d) shall, for each violation, forfeit not more than \$1,000 per day for each day the violation continues. Assessment of a forfeiture under this subdivision shall commence on the latest of 10 days after the date of delivery of the order or, if an appeal is taken under s. 220.035, 10 days after the date of the decision of the banking review board.

(g) *Enforcement.* The division may institute proceedings to recover a forfeiture under par. (f) or to enjoin the violation of an order issued under par. (d) and, after notice and opportunity for a hearing as provided in sub. (4), may order the removal of an official who commits a violation or engages in a practice under par. (b) or who violates an order issued under par. (d), if the division finds that the practice or violation involves personal dishonesty resulting in financial gain to the official or demonstrates a willful or continuing disregard for the safety or soundness of the regulated entity, and the division finds any of the following:

1. As a result of the practice or violation the regulated entity has suffered or will probably suffer substantial financial loss or other damage.

2. The interests of the depositors could be seriously prejudiced by the violation or practice.

**(10)** If it appears to the division that a person has engaged or is about to engage in an act or practice constituting a violation of the laws of this state relating to banks and banking, including this chapter, chs. 217, 218 and 221 to 224 and ss. 138.09 and 138.12, or a rule promulgated or order issued under those laws, the division may bring an action in the name of the state in the circuit court of the appropriate county to enjoin the acts or practices and to enforce compliance with the laws, rules or orders, or the division may refer the matter to the district attorney of the appropriate county or, if the alleged violation may be enforced by the attorney general under sub. (12) or s. 220.12, 221.1005 or 224.06 (7) or is statewide in nature, to the attorney general. Upon a proper showing, the court may grant a permanent or temporary injunction or restraining order, appoint a receiver for the defendant or the defendant’s assets or order rescission of any acts determined to be unlawful. The court may not require the division to post a bond.

**(11)** In order to carry out ss. 220.07, 220.08 and 221.1005, the division may commence and maintain in the division’s name any and all actions necessary or proper to enforce any of said sections.

**(12)** If the division has information that causes the division to believe that any bank, trust company bank, or any other person subject in whole or in part to supervision or control by the division, or any officer, employee, member or manager thereof, has vio-

lated any law, rule or order that subjects the person to prosecution for a criminal offense or to a penalty, the division shall bring such information to the attention of the banking review board, with the division's recommendation in writing as to action to be taken. The banking review board shall, if in its judgment probable cause exists for believing that a criminal offense has been committed, or a penalty incurred, call the facts and information to the attention of the attorney general whose duty it shall be to cause prosecution or other action to be instituted if, in the attorney general's judgment, the facts warrant. This subsection does not prevent the institution of any prosecution by any district attorney of this state with or without any advice or act on the part of the attorney general. This subsection does not preclude the division, in any case where the division deems it important to act immediately, from causing any arrest and prosecution where the division is satisfied that there is reason to believe the offense has been committed and that prosecution should be immediately commenced.

**History:** 1971 c. 239; 1975 c. 65; 1981 c. 45; 1983 a. 119; 1987 a. 252; 1991 a. 221, 269, 315, 316; 1993 a. 213; 1995 a. 27, 55, 336; 1997 a. 35, 146; 2003 a. 63; 2005 a. 215.

**Cross Reference:** See also ch. DFI–Bkg 11, Wis. adm. code.

**220.05 Examination fees and assessments. (1)** The division shall assess each state bank and trust company bank for the cost of each examination made, which cost shall be determined by the division and shall include the salaries and expenses of all examiners and other employees of the division actively engaged in such an examination, the salaries and expenses of any other person whose services are required in connection with such examination and any reports thereof, and any other expenses which may be directly apportioned. Any charge so made shall be paid within 30 days from the time the bank receives notice of the assessment.

**(2)** On or before July 15 of each year, each state bank and trust company bank shall pay to the division an annual assessment for the maintenance of the functions of the division in an amount to be determined by the banking review board, but which shall not exceed 8 cents per \$1,000 of resources, or part thereof, for the first \$5,000,000 and shall not exceed 6 cents per \$1,000, or part thereof, for all resources over \$5,000,000.

**(5)** Whenever in the judgment of the division, the condition or conduct of any bank renders it necessary or expedient to make an extra examination or to devote any extraordinary attention to its affairs, the division shall have the authority to make any and all necessary extra examinations and audits or partial audits and to devote any necessary attention to the conduct of its affairs; and such bank shall pay for each additional examination, and for each audit or partial audit, the actual cost thereof. Where an audit or partial audit is ordered, the actual reasonable cost of auditors shall be charged. Before directing any examination in excess of 2 or any audit or partial audit, the division shall examine the audits and examinations of any clearing house association as to the bank in question which may be furnished to it and shall avoid duplication of examinations, audits or partial audits wherever reasonably possible. In case of audits or partial audits for which a charge may be made under the provisions of this section, the division shall promptly send a copy to the bank and the bank shall pay the reasonable cost thereof. When the division delivers to a bank a copy of any examination, audit or partial audit, the division may by letter accompanying same require the bank to have the receipt of same acknowledged in the record of the next meeting of directors of the bank and may require that there be sent to the division a certified copy of action by the directors showing that all the directors of the bank have read said copy and are familiar with its contents and have signed a statement to such effect on the copy received by the bank and may require that a duplicate of such signed statement signed by all directors to be sent to the division to be attached to and filed with the original of such examination, audit or partial audit on file with the division. Failure of the bank or its board of directors or any of them to comply with any such order or direction of the division within a reasonable time fixed by it shall be suffi-

cient ground for the taking of possession of said bank by the division and liquidating said bank under s. 220.08.

**(6) (a)** Any bank or trust company holding any property in trust or in any fiduciary capacity or as custodian or bailee shall pay in addition to the fees and assessments provided for in sub. (2) the actual reasonable cost of any examinations conducted by the division of the books, records and business of the bank or trust company insofar as they relate to the property held in trust or other fiduciary capacity or as custodian or bailee.

**(b)** The cost to be paid under par. (a) shall include a fair charge for time of assistants and office overhead. The cost shall be determined by the division within a reasonable time after each examination has been completed. A statement of the charge determined by the division shall be promptly sent to the bank or trust company. Each bank or trust company shall pay the charge within 10 days after receipt of the statement. The cost determined under this subsection shall include the cost of furnishing a copy of the statement to the bank or trust company.

**History:** 1985 a. 127; 1991 a. 221, 316; 1995 a. 27; 1997 a. 254.

**220.06 Not to disclose information. (1)** In this section, "licensee" means a person licensed by the division under ch. 138, 217 or 218 or under s. 224.92 or registered by the division under s. 224.72.

**(1m)** No division employee may examine a bank or licensee in which that person is interested as a stockholder, officer or employee. No division employee may examine a bank or licensee located in the same village, city or county with any bank or licensee in which that person is so interested. Employees in the division, and each member and employee of the banking review board, shall keep secret all facts and information obtained in the course of examinations or from reports not under s. 221.1002 (1) filed by a bank or licensee with the division, except so far as the public duty of the person requires reporting upon or taking special action regarding the affairs of any bank or licensee, and except when called as a witness in any criminal proceeding or trial in a court of justice. The division may furnish to the federal deposit insurance corporation or to any regulatory authority for state or federal financial institutions, insurance or securities a copy of any examination made of any such bank or licensee or of any report made by such bank or licensee and may give access to and disclose to the corporation or to any regulatory authority for state or federal financial institutions, insurance or securities any information possessed by the division with reference to the conditions or affairs of any such insured bank or licensee if the regulatory authority agrees to treat all information received with the same degree of confidentiality as applies to reports of examination that are in the custody of the division.

**(2)** If any employee in the division or any member of the banking review board or any employee thereof discloses the name of any debtor of any bank or licensee, or anything relative to the private account or transactions of such bank or licensee, or any fact obtained in the course of any examination of any bank or licensee, except as herein provided, that person is guilty of a Class I felony and shall be subject, upon conviction, to forfeiture of office or position.

**(3) (a)** Examination reports possessed by a bank or licensee are confidential, remain the property of the division and are returnable immediately on request of the division.

**(b)** Officers and employees of a bank or licensee may not disclose information in the examination reports. A person violating this paragraph may be fined not less than \$100 nor more than \$1,000 or imprisoned not more than 6 months or both.

**History:** 1977 c. 418; 1979 c. 102; 1983 a. 27; 1985 a. 127, 325; 1987 a. 252; 1995 a. 27, 336; 1997 a. 283; 1999 a. 9; 2001 a. 109; 2005 a. 215.

**220.065 Immunity.** Employees of the division shall not be subject to any civil liability or penalty, nor to any criminal prosecution, for any error in judgment or discretion made in good

faith and upon reasonable grounds in any action taken or omitted by the division in the division's official capacity under the provisions of chs. 220 to 224.

**History:** 1991 a. 316; 1995 a. 27.

**220.07 Banks; impairment of capital.** (1) **CAPITAL IMPAIRED; DEFICIENCY.** Whenever the division determines that the capital of any bank is impaired or reduced below the amount required by law or the articles of incorporation, or below the amount certified to the division as paid in, the division may require such bank to make good such impairment or deficiency within 60 days after the date of such requisition. In any case, where the capital of a bank becomes impaired or reduced below the amount required by law or the articles of incorporation, the board of directors of such bank may make a proportional assessment upon all of the stock of the bank to make good such deficiency, and may provide that the amount of such deficiency shall be due and payable at a time to be fixed by such board of directors, which time shall be not less than 10 days after notice of the assessment. Notice to stockholders residing in another state shall be given by registered mail and a return receipt demanded. If any stockholder fails or neglects to pay the amount of the assessment against his or her stock for 10 days after the assessment becomes due and payable, the directors of the bank may offer the stock for sale, and sell the stock at public sale upon 10 days' notice to be given by posting copies of the notice of sale in 5 public places in the town, village or city where the bank is located. Upon the sale, the purchaser shall forthwith pay the amount of the assessment against the stock. The amount received from the sale of the stock, less the cost and expenses of the sale, shall be paid to the original owner of the stock.

(2) **REVIEW OF ORDER.** In any case where the division has made an order requiring capital to be made good, the bank may within 10 days after the making of said order secure a review of same by the banking review board by filing with the division a statement requesting such review and stating the grounds of objection to the order of the division. Said board shall promptly conduct a hearing thereon after affording reasonable notice to the bank and shall affirm, modify or set aside the order of the division. No such review or hearing shall extend the time for compliance with the order of the division unless the banking review board shall so direct.

**History:** 1979 c. 110; 1995 a. 27.

**220.08 Delinquent banks; division may take possession.** (1) Whenever it shall appear to the division that any bank or banking corporation to which this chapter is applicable has violated its charter or any law of the state, or is conducting its business in an unsafe or unauthorized manner, or if the capital of any such bank or banking corporation is impaired, or if any such bank or banking corporation shall refuse to submit its books, papers, and concerns to the inspection of any examiner, or if any officer thereof shall refuse to be examined upon oath touching the concerns of any such bank or banking corporation, or if any such bank or banking corporation shall suspend payment of its obligations, or if from any examination or report provided for by this chapter the division shall have reason to conclude that such bank or banking corporation is in an unsound or unsafe condition to transact the business for which it is organized, or that it is unsafe and inexpedient for it to continue business, or if any such bank or banking corporation shall neglect or refuse to observe an order of the division, specified in s. 220.07, or if the division shall find that the management of the bank or the manner in which the work of any of its officers or employees is done, if continued, is such as to endanger the safety or solvency of the bank and the division shall have made written recommendations for change in management or officers and employees and such recommendation shall not have been complied with after the expiration of a reasonable time therefor fixed by the division, the division may take possession of the property and business of such bank or banking corporation, and retain such possession until such bank or banking corporation shall

resume business, or its affairs be finally liquidated as herein provided. Whenever facts have come to the attention of the division which cause the division to believe that it may be necessary or advisable to take possession of a bank, or if the division has reasonable cause to believe that any of the grounds for taking possession of a bank, specified in this section, exist, the division shall bring the matter to the attention of the banking review board, reporting to them in writing the situation and the division's recommendation as to action to be taken. The banking review board shall promptly consider the matter and promptly decide whether or not the division should take possession of the bank. If the review board decides that the division should take possession, the division shall forthwith take possession as hereinbefore provided. If at any time the division is confronted with an emergency situation where in the division's opinion it is imperative in order to protect the public or for other reasons that possession of the bank be at once taken, the division may do so forthwith without referring the matter to the banking review board.

(2) On taking possession of the property and business of any such bank or banking corporation, the division shall forthwith give notice of such fact to any and all banks or banking corporations holding or in possession of any assets of such bank or banking corporation. No bank or banking corporation knowing of such taking possession by the division, or notified as aforesaid, shall have a lien or charge for any payment, or advance, thereafter made, or liability thereafter incurred, against any of the assets of the bank or banking corporation of whose property and business the division shall have taken possession as aforesaid, except that all drafts issued and delivered against existing balances on deposit in any drawee banks or banking corporations shall be paid on presentation, if they correspond by number and amount to a list to be certified to them by the division, and if there be insufficient funds in deposit such drafts shall be preferred claims. Such bank or banking corporation may, with the consent of the division, resume business upon such conditions as may be approved by the division.

(2a) The division on taking possession of a bank for liquidation shall, with the approval of the circuit court, withdraw from the general fund of such bank an amount of money deemed adequate by the division and the circuit court for the payment of current monthly expenses and set up a working fund. Such working fund shall be deposited by the division in one or more state banks in an account known as "bank liquidation account" together with like funds from other banks in liquidation. Once each month the expenses so paid from the working fund shall be approved by the circuit court. Upon such approval, the working fund of each liquidating bank shall be reimbursed from the general fund of said liquidating bank so that the balance of each working account in said bank liquidation account shall always be the amount approved by the circuit court. When a liquidating bank is ready to pay the final dividend and final expenses, the working fund assigned to the bank liquidation account shall be reassigned back to the general account of such bank.

(3) Upon taking possession of the property and business of such bank or banking corporation, the division is authorized to collect moneys due to such bank or banking corporation, and do such other acts as are necessary to conserve its assets and business, and shall proceed to liquidate the affairs thereof, as hereinafter provided. The division shall collect all debts due and claims belonging to it, and, upon the order of the circuit court, may sell or compound all bad or doubtful debts, and on like order may sell all the real and personal property of such bank or banking corporation on such terms as the court shall direct.

(3a) That in addition to the authority conferred by sub. (3), the division with the approval of the banking review board may, for purposes of collection or liquidation, sell, assign, convey and transfer or approve the sale, assignment, conveyance and transfer of the assets of a closed bank or bank operating under a stabilization and readjustment agreement to any other bank or trust company under such terms and conditions as the division may deem

for the best interests of the depositors and unsecured creditors of such bank.

**(3am)** On taking possession of a bank for liquidation, the division may transfer the trust accounts of the bank to another entity with fiduciary powers. Neither the division nor the fiduciary to whom the trust accounts are transferred is liable for the past acts of the bank relating to the trust accounts.

**(3b)** The acts of any special deputy under sub. (4) shall be binding on the division to the same extent and with like effect as if such acts were done by said division.

**(4)** The division may appoint one or more special deputies, as agent or agents, to assist the division in the duty of reorganization, consolidation, liquidation and distribution, the certificate of appointment to be filed with the division and a certified copy in the office of the clerk of the circuit court for the county in which such bank or banking corporation is located. Such special deputies may execute, acknowledge and deliver any and all deeds, assignments, releases or other instruments necessary and proper to effect any sale and transfer or encumbrance of real estate or personal property after the same has been approved by the division, and an order obtained from the circuit court of the county in which the bank concerned is located. The division may from time to time authorize a special deputy to perform such duties connected with such reorganization, consolidation, liquidation and distribution as the division deems proper. The division may employ such counsel and procure such expert assistance and advice as may be necessary in the reorganization, consolidation, liquidation and distribution of the assets of such banks or banking corporations. The division may retain such of the officers or employees of such banks or banking corporations as necessary.

**(5)** The division shall give notice, in such newspapers as the division may direct, by publication of a class 3 notice, under ch. 985, calling on all persons who may have claims against such bank or banking corporation, to present the same to the division, within 3 months after the date of first insertion. Such notice shall also fix a place and time (not less than 3 months after the date of first insertion) to make legal proof thereof. The division shall mail a similar notice to all persons whose names appear as creditors upon the books of the bank or banking corporation. Any creditor of such bank or banking corporation holding security of any nature, shall file a claim as a general creditor only for the amount by which the debt exceeds the value of such security. The value of said security and the amount to be allowed on the claim so filed shall, upon application of such creditor or the division and upon at least 20 days' notice to the opposing party, be determined by the circuit court of the county wherein such bank or banking corporation is located. If the division doubts the justice and validity of any claim, the division may reject the same, and serve notice of such rejection upon the claimant either by mail or personally. An affidavit of the service of such notice, which shall be prima facie evidence thereof, shall be filed with the division. An action upon a claim so rejected must be brought within 6 months after such service. Claims presented after the expiration of the time fixed in the notice to creditors shall be entitled to receive only liquidating dividends declared after presentation, unless otherwise ordered by the court.

**(6)** Upon taking possession of the property and assets of such bank or banking corporation, the division shall make an inventory of the assets of such bank or banking corporation, in duplicate, one to be filed with the division, and one in the office of the clerk of circuit court for the county in which such bank or banking corporation is located; upon the expiration of the time fixed for the presentation of claims, the division shall make in duplicate a full and complete list of the claims presented, including and specifying such claims as have been rejected by it, one to be filed with the division, and one in the office of the clerk of circuit court for the county in which such bank or banking corporation is located. Such inventory and list of claims shall be open at all reasonable times to inspection.

**(7)** The compensation of the special deputies, counsel, and other employees and assistants, and all expenses of supervision and liquidation, shall be fixed by the division subject to the approval of the circuit court for the county in which such bank or banking corporation is located, on notice of such bank or banking corporation, and shall upon the certificate of the division be paid out of the funds of such bank or banking corporation in the hands of the division. Expenses of supervision and liquidation shall include the cost of services rendered by the division to the bank or banking corporation being liquidated and the division shall the first of each month determine such cost in the manner hereinafter provided, which cost shall be charged to each bank in liquidation and the same shall be paid to the division as other expenses of liquidation are paid. The amount of the aforesaid supervision cost to be paid by each bank in liquidation shall be determined by taking that portion of the total supervision cost of all banks in liquidation for the preceding month, which the total book value of the unliquidated book assets of each said bank bears to the total book value of all the unliquidated book assets of every bank in liquidation. In making computations for each month the total supervision cost and all book values of unliquidated assets shall be determined as of the last business day of the preceding month. The moneys collected by the division shall be from time to time deposited in one or more state banks, and, in case of the suspension or insolvency of the depository, such deposits shall be preferred before all other deposits.

**(8)** At any time after the expiration of the date fixed for the presentation of claims, the division may out of the funds remaining in the division's possession after the payment of expenses declare one or more dividends, and after the expiration of one year from the first publication of notice to creditors, the division may declare a final dividend, such dividends to be paid to such persons, and in such amounts, and upon such notice, as may be directed by the circuit court for the county in which such bank or banking corporation is located. Objections to any claim not rejected by the division may be made by any party interested by filing a copy of such objections with the division, which shall present the same to the circuit court at the time of the next application to declare a dividend. The court may if deemed advisable provide for the setting aside of a sum sufficient to pay all or any part of the dividends due on any unproved or unclaimed deposits.

**(9)** Whenever any such bank or banking corporation, of whose property and business the division has taken possession, as aforesaid, deems itself aggrieved thereby, it may, at any time within 10 days after such taking possession, apply to the circuit court for the county in which such bank or banking corporation is located to enjoin further proceedings; and said court, after citing the division to show cause why further proceedings should not be enjoined and hearing the allegations and proofs of the parties and determining the facts may, upon the merits dismiss such application or enjoin the division from further proceedings, and direct the division to surrender such business and property to such bank or banking corporation. Said bank or banking corporation may, if it desires so to do, within 10 days after taking possession apply to the banking review board to review the action of the division in taking possession. The banking review board shall act speedily on such application. Within 10 days after notice of the decision of the banking review board, said bank or banking corporation may apply to said circuit court of the county in which such bank or banking corporation is located to enjoin further proceedings. The proceedings on such application shall be on notice to the division and shall be the same as where the application to the court is made as above provided without application to the review board.

**(10)** Whenever the division has paid to every depositor and creditor of such bank or banking corporation (not including stockholders), whose claims as such creditor or depositor have been duly proved and allowed, the full amount of such claims, and has made proper provision for unclaimed and unpaid deposits or dividends, and has paid all the expenses of the liquidation, the division

shall call a meeting of the stockholders of such bank or banking corporation by giving notice thereof by certified mail and by publication of a class 2 notice, under ch. 985, in the county where such bank or banking corporation is located. At such meeting the stockholders shall determine whether the division shall be continued as liquidator and shall wind up the affairs of such bank or banking corporation, or whether an agent or agents shall be elected for that purpose, and in so determining the said stockholders shall vote by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the majority of the stock shall be necessary to a determination.

(11) In case it is determined to continue the liquidation under the division, the division shall complete the liquidation of the affairs of such bank or banking corporation, and after paying the expenses thereof, shall distribute the proceeds among the stockholders in proportion to the several holdings of stock in such manner and upon such notice as may be directed by the circuit court. In case it is determined to appoint an agent or agents to liquidate, the stockholders shall thereupon select such agent or agents by ballot, a majority of the stock present and voting, in person or by proxy, being necessary to a choice. Such agent or agents shall execute and file with the division a bond to the people of the state in such amount, with such sureties and in such form as shall be approved by the division, conditioned for the faithful performance of all the duties of the agent's or the agents' trust, and thereupon the division shall transfer and deliver to such agent or agents all the undivided or uncollected or other assets of such bank or banking corporation then remaining in the division's possession; and upon such transfer and delivery, the division shall be discharged from any and all further liability to such bank or banking corporation and its or their creditors.

(12) Such agent or agents shall convert the assets coming into the agent's or agents' possession into cash, and shall account for and make distribution of the property of said bank or banking corporation, as is herein provided in the case of distribution by the division, except that the expenses thereof shall be subject to the direction and control of the circuit court. In case of the death, removal, or refusal to act of any such agent or agents, the stockholders, on the same notice, to be given by the division upon proof of such death, removal, or refusal to act being filed with it, and by the same vote hereinbefore provided, may elect a successor, who shall have the same powers and be subject to the same liabilities and duties as the agent originally elected.

(13) The division shall deposit dividends and unclaimed deposits which have been provided for and which remain unpaid in the hands of the division for 6 months after the order for final distribution in one or more state banks, to the credit of the division, in trust for the several depositors with and creditors of the liquidated bank or banking corporations from which they were received. The division's annual report under s. 220.14 shall include the names of banks or banking corporations so taken possession of and liquidated and the sums of unclaimed and unpaid deposits or dividends with respect to each of them respectively.

(14) The division may pay the moneys held by the division to the persons entitled to them, upon being furnished satisfactory evidence of their right to the same. In cases of doubt or conflicting claims, the division may require an order of the circuit court authorizing and directing the payment thereof. The division may apply the interest earned towards defraying the expenses in the payment and distribution of such unclaimed deposits or dividends to the depositors and creditors entitled to receive them, and if necessary may draw on the fund to defray such expenses. After one year from the time of the order for final distribution, the division shall report and deliver all unclaimed funds to the state treasurer as provided in ch. 177. All claims subsequently arising shall be presented to the division. If the division determines that any claim should be allowed, the division shall certify to the department of administration the name and address of the person entitled to payment and the amount thereof and shall attach the claim to the cer-

tificate. The secretary of administration shall certify the claim to the state treasurer for payment.

(15) Whenever the division, with a view of restoring the solvency of any bank of which the division has taken charge pursuant to law, shall approve a reorganization plan entered into between the depositors and unsecured creditors of such bank and the bank or reorganizers thereof, which represent 80 per cent of the amount of deposits and unsecured claims of such banks, then and in such case all other depositors and unsecured creditors shall be held to be subject to such agreement to the same extent and with the same effect as if they had joined in the execution thereof, and their claims shall be treated in all respects as if they had joined in the execution of such articles or reorganization plan in the event of restoration of such bank to solvency, and the reopening of the same for business. The investment board and the governing board of any county, city, village, town, drainage district, power district, school district, sewer district, or other governmental subdivision, or any commission, committee, board or officer thereof, having any funds on deposit at the time of the closing of the bank are authorized to join in any reorganization plan, if, in the judgment of such investment board or other governing board, the reorganization plan is in the best interests of all persons concerned. All deposits made in any state bank subsequent to June 3, 1927 shall be subject to the conditions hereof.

(16) Whenever the division is informed, within 10 days after the division has taken charge of a bank pursuant to law, that a plan for the reorganization of such bank is being considered, the division may refrain from complying with any or all of the provisions of this section for such time as the division deems advisable, but for not more than 40 days after the division has taken charge of said bank. The approval by the division and the acceptance by the depositors and unsecured creditors of a reorganization plan within the time specified as provided in sub. (15), shall operate to relieve the division of the duties and liabilities provided by this section in the case of liquidation of banks.

(17) Whenever it shall appear to the division that the books and records of any liquidated bank or banking corporation or segregated trust are no longer required by the division, the division may make application to the circuit court having jurisdiction of such liquidated bank or banking corporation or segregated trust for an order determining what books and records are to be kept and what destroyed, stating in such application the division's recommendations thereon. Said circuit court shall thereupon enter an order determining what books and records shall be kept and what shall be destroyed. The books and records ordered preserved shall be delivered to the clerk of such court to be kept by him or her until further order of the court. Following the expiration of the retention period provided in SCR chapter 72, the circuit court shall submit to the historical society copies of the division's application and the court order determining what books and records have been kept. On subsequent application of the historical society the court may order delivery to the society of such books and records as the society deems of permanent historical significance and the destruction of the balance, whether or not any such records have been photographed or microphotographed.

(18) Whenever any bank or banking corporation has been completely liquidated, the division shall and is hereby authorized to cancel the charter of such bank or banking corporation.

(19) Segregated trusts heretofore or hereafter created in connection with the stabilization and readjustment or reorganization of a bank shall be administered and liquidated under the supervision of the division and the circuit court of the county in which the bank is located.

(a) The trustees shall be confirmed by the circuit court of the county wherein such bank is located and shall be subject to removal by said court.

(b) The administration and liquidation of such trust shall be subject to the supervision of the division and as far as practicable

shall be subject to the approval of the circuit court of the county wherein such bank is located in the same manner and to the same extent as is the administration of banks in liquidation under the provisions of this section.

(c) The division shall make such examinations of the books, records and assets of such trust as the division deems necessary and shall submit copies of such examinations to the trustees and to the circuit court. The cost of such examinations and the cost of the supervision rendered by the division, which cost shall be determined by the division, shall be a charge against the trust and shall be paid as an expense of administration.

(d) The trustees of such trust shall be known collectively as “the trustees of the segregated trust of (name of bank)” and in that name may sue and be sued and perform the duties imposed on them by law and the provisions of the agreement or court order creating such trust. A certificate issued by the division shall be sufficient proof of the creation of such trust, of the appointment and qualification of the persons named therein to act as trustees and of the powers of the trustees.

(20) In the event the division, as statutory receiver of closed state banks or in connection with the division’s supervision of segregated trusts, shall have possession of any funds or property by reason of any recovery on an official bond or otherwise, and said funds shall not belong to or be attributable to any specific bank or banks in liquidation or to any specific segregated trust or trusts and it shall appear that all or a number of banks in liquidation or all or a number of the segregated trusts supervised by the division or the depositors or other creditors of such banks or trusts, may have an interest in such funds or property, the division may petition the circuit court for Dane County for an order directing the disposition of such funds or property. The court, upon presentation of such a petition, shall direct the division to give such notice of hearing thereon, by publication of a class 3 notice, under ch. 985, or otherwise, as appears reasonable under the circumstances. The expenses of the division in any such proceeding shall be paid out of such funds or property. If it shall appear to the court that the persons to whom such funds or property may ultimately belong cannot be found or ascertained or that the expense of such ascertainment would in the judgment of the court be excessive or unreasonable under all the circumstances, the court shall enter an order directing the division to transmit such funds or property to the state treasurer to become the property of the state. Any person claiming an interest in any such funds or property so ordered to be transmitted to the state treasury may within 5 years after the entry of such order bring suit against the state for recovery thereof without interest.

(20a) After liquidation of the assets of a delinquent bank, any remaining assets, including all unknown and undiscovered assets in the custody of the division, shall, after approval of the circuit court having jurisdiction thereof, be retained by the division which is authorized and empowered to hold such assets, claims and demands with the full right and power to compound, compromise, settle and assign the same with full authority to execute and deliver any legal instruments incidental thereto without further court approval. Any moneys or proceeds received therefrom shall be paid into the general fund of the state of Wisconsin after the division has first deducted therefrom the costs of the division’s services and other expenses incidental thereto.

**History:** 1983 a. 408, 524; 1985 a. 127; Sup. Ct. Order, 136 Wis. 2d xi (1987); 1991 a. 316; 1995 a. 27, 336.

**Cross-reference:** See ch. 177 for disposition of unclaimed funds.

**220.081 Closed insured banks; federal deposit insurance corporation may be receiver.** (1) The division may, in the event of the closing of any bank which is a member of the federal deposit insurance corporation or the deposits in which are to any extent insured by said corporation, tender to said corporation the appointment as statutory receiver of such bank and if the corporation accepts said appointment, the corporation shall have and possess all the powers and privileges given by the laws of this state to the division as statutory receiver of a closed bank and be

subject to all the duties of the division as such statutory receiver, except insofar as such powers, privileges, or duties are in conflict with the provisions of subsection 1 of section 8 of said banking act of 1933, or any other applicable federal laws.

(2) In the event said federal deposit insurance corporation shall accept the appointment as such receiver, it is hereby authorized and empowered to be and act without bond as such receiver.

(3) Upon the acceptance of the appointment as receiver of any delinquent bank by said federal deposit insurance corporation, the possession of and title to all the assets, business and property of such bank of every kind and nature shall pass to and vest in said corporation without the execution of any instruments of conveyance, assignment, transfer or endorsement.

(4) The division or the federal deposit insurance corporation being in possession of any delinquent bank may, as receiver of such bank and upon the order of the circuit court for the county in which such bank is located, borrow money from the federal deposit insurance corporation and secure the payment of such loan by the mortgage pledge, transfer in trust or hypothecation of any or all of the property and assets of such delinquent bank and upon like order may sell to said federal deposit insurance corporation any or all of the property and assets of such delinquent bank.

**History:** 1995 a. 27.

**220.082 Closed insured banks; subrogation of federal deposit insurance corporation.** Whenever any bank whose deposits are in whole or in part insured pursuant to any federal laws, shall have been closed on account of the inability to meet the demands of its depositors, and the federal deposit insurance corporation or its successors shall pay or make available for payment the insured deposit liabilities of such closed institution, the corporation or its successors, whether or not the same shall have become receiver or liquidator of such closed bank, shall be subrogated to all rights against such closed bank, or the owner of such insured deposits with like force and effect as if the closed bank were a national bank, to the extent now or hereafter necessary to enable said corporation, under federal law, to make insured payments available to depositors of closed insured banks.

**220.085 Federal aid to banks.** On approval of the banking review board, any state bank or trust company, or the receiver of any insolvent or delinquent state bank or trust company, may take advantage of any act that may be enacted by the congress of the United States for the relief of any state banks or trust companies.

**220.086 Receiver of delinquent bank may borrow from federal government agency; court order.** The division, having taken possession of any delinquent bank, may, as receiver of such bank, and upon the order of the circuit court for the county in which such bank is located, borrow money from any agency of the federal government, upon such terms and conditions as may be satisfactory to such federal agency, and issue evidences of indebtedness therefor, and secure the payment of such loan by the mortgage, pledge, transfer in trust, or hypothecation of any or all of the property and assets of such delinquent bank.

**History:** 1995 a. 27.

**220.09 Indemnity fund, national bank.** Every national bank which has authority under federal law to act in a fiduciary capacity shall comply with s. 223.02.

**History:** 1995 a. 27, 336.

**220.10 Books and accounts; division’s control.** Whenever it appears to the division that any bank does not keep books and accounts in such manner as to enable the division to readily ascertain the true condition of such bank, the division may require the officers of such bank to open and keep such books or accounts as the division prescribes for the purpose of keeping accurate and convenient records of the transactions and accounts of such bank. Any bank that refuses or neglects to open and keep such books or accounts as the division prescribes shall be subject to a penalty of

\$10 for each day it neglects and fails to open and keep such prescribed books and accounts.

**History:** 1991 a. 316; 1995 a. 27.

**220.12 Attorney general, duty of.** All proceedings by any bank to enjoin the division in the discharge of the division's duties shall be had in the county where said bank is located, or in the supreme court of this state. All suits and proceedings arising out of the provisions of the banking laws, in which the state, or any of its officers or agents shall be parties, shall be conducted under the direction and supervision of the attorney general.

**History:** 1991 a. 316; 1995 a. 27.

**220.13 Copies as evidence.** Copies of all records and papers held in the division and certified by the division shall be evidence in all cases equally and of like effect as the original.

**History:** 1991 a. 316; 1995 a. 27.

**220.14 Division's report.** The division shall publish an annual report and submit the report to the governor and the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2). The report shall:

(1) Exhibit the condition of the various banks of the state as of the day of the last report made to the division by such banks.

(2) Contain a statement of the condition of every bank from which reports have been received, with an abstract of the whole amount of capital returned by them, the whole amount of their liabilities, the total amount of resources, and specifying the amount of lawful money held by banks at the time of their several returns.

(3) Give a tabulated statement of the resources and liabilities of each bank.

(4) Contain a statement of the banks whose business has been closed during the year, the amount of their resources and liabilities, the amount paid to the creditors thereof and a statement of any banks organized during the year.

(5) Contain a statement of the total number of orders issued by the division during the year under s. 222.0203 (2).

(7) Give such other information as the division deems necessary.

**History:** 1977 c. 196 s. 131; 1983 a. 524; 1995 a. 27; 2003 a. 63.

**220.17 Effect of consolidating banks and trust companies.** (1) Whenever 2 or more banks or trust companies, including national banks, authorized to do a banking business in the state of Wisconsin, shall be consolidated under the charter of one of the consolidating banks or trust companies, or under a new charter issued to such consolidated institution, the rights, interests and franchises of any bank or trust company joining in or party to such consolidation in and to every species of property, real, personal and mixed and chooses in action thereto belonging, shall be deemed transferred to and vested in the consolidated bank or trust company without any deed, endorsement or other instrument of transfer, and the consolidated bank or trust company shall take, hold and enjoy the same and all rights of property, franchises and interests in the same manner and to the same extent as were held and enjoyed by such consolidating banks or trust companies or both at the time of such consolidation.

(2) All of the following apply to a consolidated bank or trust company described in sub. (1), if the consolidated bank or trust company is authorized to perform fiduciary services at the time of the consolidation:

(a) The consolidated bank or trust company shall succeed to all rights, obligations, relations, and trusts, and the duties and liabilities connected with the performance of fiduciary services, held by any bank or trust company party to the consolidation, and without further appointment shall act as trustee or personal representative or in any other fiduciary capacity in which any bank or trust company party to the consolidation was acting at the time of the consolidation.

(b) The consolidated bank or trust company shall execute and perform each trust or relation described in par. (a) in the same manner as if the consolidated bank or trust company itself had assumed the trust or relation, including the obligations and liabilities connected therewith.

(c) The consolidated bank or trust company shall be entitled to be appointed or to act as trustee or personal representative or other fiduciary to the same extent and with the same effect as would any bank or trust company party to the consolidation if prior to the consolidation any bank or trust company party to the consolidation has been designated as trustee or any other fiduciary in any trust deed or other writing, or has been named to act as personal representative in any will.

**History:** 1983 a. 36; 2001 a. 102.

**220.18 Bank or corporate notaries; permitted acts.** It shall be lawful for any notary public who is a stockholder, director, officer, member, manager or employee of a bank or other corporation or limited liability company to take the acknowledgment of any party to any written instrument executed to or by that entity, or to administer an oath to any other stockholder, director, officer, member, manager, employee or agent of that entity, or to protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes and other negotiable instruments which may be owned or held for collection by that entity, if such notary is not a party to such instrument, either individually or as a representative of the entity.

**History:** 1993 a. 112.

**220.28 Destruction of obsolete records by state banks.** Any state bank may destroy or dispose of such of its records as may have become obsolete after first obtaining the written consent of the division.

**History:** 1985 a. 127; 1995 a. 27.

**220.285 Reproduction and destruction of records; evidence.** (1) Any state bank, trust company bank, licensee under ss. 138.09, 138.12, 218.0101 to 218.0163, 218.02, 218.04 or 218.05 or ch. 217, or person registered under s. 224.72 may cause any or all records kept by such bank, licensee, or registered person to be recorded, copied or reproduced by any photostatic, photographic or miniature photographic process or by optical imaging if the process employed correctly, accurately and permanently copies, reproduces or forms a medium for copying, reproducing or recording the original record on a film or other durable material. A bank, licensee, or registered person may thereafter dispose of the original record after first obtaining the written consent of the division. This section, excepting that part of it which requires written consent of the division, is applicable to national banking associations insofar as it does not contravene federal law.

(2) Any photographic, photostatic or miniature photographic copy or reproduction or copy reproduced from a film record or any copy of a record generated from optical disk storage of a bank record or record of a licensee or registered person is considered to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any such photographic copy or reproduction, copy reproduced from a film record or copy generated from optical disk storage of a record shall, for all purposes, be considered a facsimile, exemplification or certified copy of the original record.

**History:** 1971 c. 239; 1973 c. 3; 1991 a. 39, 221; 1995 a. 27; 1997 a. 152; 1999 a. 31; 2005 a. 215.

**Cross Reference:** See also s. DFI-Bkg 9.01, Wis. adm. code.

**220.30 Closing in emergencies.** No liability shall be incurred by a bank because the bank is closed during an emergency. If a bank closes during an emergency, the closing shall be noted in the minutes of the next meeting of the bank's board of directors. A bank may not declare in default for nonpayment any

obligation which became due while the bank was closed during the emergency if timely payment on the obligation was tendered but not accepted because the bank was closed.

**History:** 1971 c. 120; 1987 a. 252.

**220.32 Transfer of trust business within bank holding company groups. (1) DEFINITIONS.** In this section:

(a) “Corporate fiduciary” means all of the following:

1. A trust company bank, state bank with trust powers, corporation or limited liability company, that is authorized under the laws of this state to accept and execute trusts.

2. A national bank or other federally chartered financial institution, if that bank or institution has its principal place of business in this state and is authorized by the appropriate federal agency to accept and execute trusts.

(b) “Subsidiary” of a bank holding company means any other corporation or limited liability company of which voting stock having a majority of the votes entitled to be cast is owned, directly or indirectly, by the bank holding company.

(c) “Trust business” includes self-declared trusts that are established and maintained by a corporate fiduciary, such as com-

mon trust funds and group trust funds, and all other activities in which a corporate fiduciary is acting as a fiduciary, as defined in s. 112.01 (1) (b), regardless of whether or not a portion of these activities could be undertaken by an entity that is not authorized to accept and execute trusts in this state.

(2) **TRANSFER TO SUCCESSOR FIDUCIARY.** If the board of directors of a bank holding company adopt a resolution directing one of its subsidiaries that is a corporate fiduciary to succeed to all or part of the existing or future trust business of another of its subsidiaries that is a corporate fiduciary, the successor corporate fiduciary shall succeed to the predecessor corporate fiduciary. The substitution shall be effective on the date specified in the resolution and no additional authorization is needed. The successor corporate fiduciary shall succeed to all capacities in which the predecessor corporate fiduciary had been acting with respect to the transferred trust business. If, or to the extent that, the resolution directs that one subsidiary shall succeed to future trust business of another subsidiary of the same bank holding company, the successor shall be considered to be named as fiduciary in all writings that named the predecessor corporate fiduciary as trustee, including all wills, trusts, court orders and similar documents and instruments.

**History:** 1997 a. 316.