

HOUSE BILL NO. 1507

Introduced by

Representative Vollmer

1 A BILL for an Act to create and enact a new chapter to title 6 of the North Dakota Century Code,
2 relating to the establishment and organization of cooperative financial institutions; and to amend
3 and reenact sections 6-01-02, 6-01-15, 6-01-17.1, 6-02-02, 6-02-03, 6-03-02, 6-03-11,
4 6-03-13.1, 6-03-34, 6-05-01, 6-06-35, 6-07.2-09, 6-07.2-19, and 6-08-08.1 of the North Dakota
5 Century Code, relating to the application, powers, payment of claims, liquidation, and sale of
6 cooperative financial institutions.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

8 **SECTION 1. AMENDMENT.** Section 6-01-02 of the North Dakota Century Code is amended
9 and reenacted as follows:

10 **6-01-02. Definitions.**

11 As used in this title, unless the context or subject matter otherwise requires:

- 12 1. "Association", "banking association", or "state banking association" means any
13 corporation organized under the laws of this state covering state banking associations,
14 and all corporations, limited liability companies, partnerships, firms, or associations
15 whose business in whole or in part consists of the taking of money on deposit, except
16 national banks, trust companies, and the Bank of North Dakota.
- 17 2. "Bank" means any national bank, national banking association, corporation, state
18 bank, cooperative financial institution, state banking association, or savings bank,
19 whether organized under the laws of this state or of the United States, engaged in the
20 business of banking.
- 21 3. "Bank holding company" means bank holding company as defined in 12 U.S.C.
22 1841(a)(1).

- 1 4. "Banking" means the business of receiving deposits, making loans, discounting
2 commercial paper, issuing drafts, traveler's checks, and similar instruments, handling
3 and making collections, cashing checks and drafts, and buying and selling exchange.
4 5. "Banking department" means the state department of financial institutions.
5 6. "Banking institution" means any bank, trust company, or bank and trust company
6 organized under the laws of this state.
7 7. "Branch" means a place of business where deposits are received, checks paid, or
8 money lent as a result of a bank that was merged into another bank pursuant to an
9 interstate merger.
10 8. "Commissioner" means the commissioner of financial institutions.
11 9. "Cooperative financial institution" means an institution without capital stock organized
12 under section 10 of this Act and operated for mutual purposes and without profit, and
13 which is subject by law to supervision and examination by the department and federal
14 authority which have supervision over such institutions.
15 10. "Corporate central credit union" means a credit union operated for the primary purpose
16 of serving corporate accounts. A credit union is deemed to be a corporate central
17 credit union when its total dollar amount of outstanding corporate loans plus corporate
18 share and deposit holdings is equal to or greater than seventy-five percent of its
19 outstanding loans plus share and deposit holdings.
20 ~~40-11.~~ "Credit union" means a cooperative, nonprofit association organized for the purposes
21 of encouraging thrift among its members, creating a source of credit at a fair and
22 reasonable rate of interest, and providing an opportunity for its members to improve
23 their economic and social condition.
24 ~~44-12.~~ "Derivative transaction" means derivative transaction as defined in 12 U.S.C. 84(b)(3).
25 ~~42-13.~~ "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
26 optical, electromagnetic, or similar capabilities.
27 ~~43-14.~~ "Electronic communication" means any form of communication, not directly involving
28 the physical transmission of paper that creates a record that may be retained,
29 retrieved, and reviewed by a recipient of the communication and may be directly
30 reproduced in paper form by the recipient through an automated process.

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- 1 ~~44.15.~~ "Electronic record" means a record created, generated, sent, communicated, received,
2 or stored by electronic means.
- 3 ~~45.16.~~ "Electronic signature" means an electronic sound, symbol, or process attached to or
4 logically associated with a record and signed or adopted by a person with the intent to
5 sign the record.
- 6 ~~46.17.~~ "Financial corporation" means all entities regulated by the department of financial
7 institutions, excluding financial institutions and credit unions.
- 8 ~~47.18.~~ "Financial institution" means any bank, industrial loan company, or savings and loan
9 association organized under the laws of this state or of the United States.
- 10 ~~48.19.~~ "Market value" means the highest price for which property can be sold in the open
11 market by a willing seller to a willing purchaser, neither acting upon compulsion and
12 both exercising reasonable judgment.
- 13 ~~49.20.~~ "Merger" or "merge" means the merging or consolidation of two or more banks
14 including the purchase of all or substantially all of the assets and assumption of
15 liabilities of a bank, facility, or branch.
- 16 ~~20.21.~~ "Mutual investment corporation" or "mutual savings corporation" means a corporation
17 organized to engage in the investment or savings business, but having no capital
18 stock or a nominal capital stock.
- 19 ~~21.22.~~ "National bank" or "national banking association" means an institution chartered by the
20 comptroller of the currency under the National Bank Act [12 U.S.C. 24].
- 21 ~~22.23.~~ "Record" means information that is inscribed on a tangible medium or that is stored in
22 an electronic or other medium and is retrievable in perceivable form.
- 23 ~~23.24.~~ "Technology service provider" includes any person that provides services to a financial
24 institution, financial corporation, or credit union, including: core processing; information
25 and transaction processing and settlement activities that support banking functions
26 such as lending, deposit-taking, funds transfer, fiduciary, or trading activities;
27 internet-related services; security monitoring; and system development and
28 maintenance.
- 29 ~~24.25.~~ "Tier 1, tier 2, and tier 3 capital" means those terms as set under title 12, Code of
30 Federal Regulations, part 325, in effect on August 1, 2011.

1 ~~25-26.~~ "Trust company" means any corporation formed for the purpose of transacting
2 business as an annuity, safe deposit, surety, or trust company.

3 **SECTION 2. AMENDMENT.** Section 6-01-15 of the North Dakota Century Code is amended
4 and reenacted as follows:

5 **6-01-15. Officers and employees to be disinterested.**

- 6 1. No officer or employee of this department may have any interest, directly or indirectly,
7 in any financial corporation or financial institution within the jurisdiction of the
8 department of financial institutions, nor in any corporation or institution engaged wholly
9 or in part in the writing or issuing of bonds of or for any such corporation or institution
10 or any officer or employee thereof. Provided, however, this prohibition does not apply
11 to membership in a state-chartered credit union or ~~savings and loan-~~
12 ~~association~~cooperative financial institution.
- 13 2. For purposes of this section, "interest" means ownership of or investment in such
14 corporations or institutions.

15 **SECTION 3. AMENDMENT.** Section 6-01-17.1 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **6-01-17.1. Application fees - Cost of transcript.**

18 The following fees must accompany an application presented to the state banking board,
19 state credit union board, or commissioner and must be paid by the commissioner into the
20 financial institutions regulatory fund:

- 21 1. For a certificate of authority to organize a banking association, a fee of five thousand
22 dollars, paid by the applicants.
- 23 2. A banking association's application for authority to remove its business to some place
24 within the state other than the town in which it is presently located and to change its
25 name, a fee of two thousand five hundred dollars.
- 26 3. National bank conversion to a state bank, a fee of two thousand five hundred dollars.
- 27 4. Application by two or more banks to merge or consolidate, a fee of one thousand five
28 hundred dollars.
- 29 5. Application by a person to sell, dispose, or purchase an association, banking
30 institution, or holding company, a fee of five hundred dollars unless a hearing is held
31 before the board in which case the fee is two thousand dollars.

- 1 6. A banking association's application to establish and operate a separate facility, a fee of
- 2 one thousand five hundred dollars. A banking institution that discontinues a facility
- 3 established for the purpose of providing educational opportunities to a high school is
- 4 entitled to a refund of any application fee paid.
- 5 7. A banking association's application to establish customer electronic funds transfer
- 6 centers, a fee not to exceed five hundred dollars.
- 7 8. For a certificate of authority to organize an annuity, safe deposit, surety, or trust
- 8 company, a fee of five thousand dollars.
- 9 9. A banking association's application for authority to exercise trust powers, a fee of one
- 10 thousand five hundred dollars.
- 11 10. Application to organize a credit union, a fee of three hundred dollars, paid by the
- 12 applicants.
- 13 11. Application for a credit union to establish a branch, a fee of three hundred dollars.
- 14 12. Application by a credit union to expand its field of membership, a fee of one hundred
- 15 fifty dollars.
- 16 13. Application by a federal credit union to convert to a state credit union, a fee of three
- 17 hundred dollars.
- 18 14. For a certificate of authority to organize a ~~savings and loan association~~cooperative
- 19 financial institution, a fee of five thousand dollars.
- 20 15. A ~~savings and loan association's~~cooperative financial institution's application to
- 21 establish and operate a branch office, a fee of one thousand five hundred dollars.
- 22 16. A trust company's application or notification to establish an operating subsidiary or
- 23 branch office, a fee of five hundred dollars.
- 24 17. Application by two or more credit unions to merge, a fee of three hundred dollars.
- 25 18. A banking institution, credit union, or other financial institution to convert to a
- 26 cooperative financial institution, a fee of five thousand dollars.

27 The commissioner may cause a certified transcript to be prepared for any hearing conducted on
28 an application. The costs for the original and up to six copies of the transcript must be paid by
29 the applicant.

30 **SECTION 4. AMENDMENT.** Section 6-02-02 of the North Dakota Century Code is amended
31 and reenacted as follows:

1 **6-02-02. Banking corporations - Who may form.**

2 An association for carrying on the business of banking under this title may be formed by any
3 number of natural persons, not less than three, at least two-thirds of whom must be residents of
4 this state. They shall enter into articles of association which must specify in general terms the
5 object for which the association is formed and which may contain any other provisions, not
6 inconsistent with law, which the association may see fit to adopt for the regulation of its
7 business and the conduct of its affairs. These articles must be signed and acknowledged by the
8 persons uniting to form the association and must be filed in the office of the secretary of state.
9 This section does not apply to a cooperative financial institution.

10 **SECTION 5. AMENDMENT.** Section 6-02-03 of the North Dakota Century Code is amended
11 and reenacted as follows:

12 **6-02-03. Capital stock, surplus, and federal deposit insurance requirements.**

13 1. The capital stock of any banking association organized after June 30, 1987, must be
14 not less than one hundred thousand dollars. In addition to such capital requirements,
15 there must be subscribed and paid in at the time of organization a surplus of not less
16 than fifty thousand dollars. This subsection does not apply to cooperative financial
17 institutions.

18 2. The state banking board may require such additional capital, surplus, and undivided
19 profits as it may determine necessary to properly serve the area and to protect the
20 public interest.

21 3. All of the capital stock and surplus of every association must be paid in before it is
22 authorized to commence business and evidence of such payment either in actual
23 money or a deposit in a previously approved correspondent bank must be furnished to
24 the commissioner before the certificate of authority may be delivered to it.

25 4. A banking association shall secure federal deposit insurance corporation insurance of
26 deposits before it is authorized to commence business. Evidence of securing such
27 insurance must be furnished to the commissioner before the certificate of authority
28 may be delivered to the banking association.

29 **SECTION 6. AMENDMENT.** Section 6-03-02 of the North Dakota Century Code is amended
30 and reenacted as follows:

1 **6-03-02. Powers.**

2 After an association has made and filed articles of association and an organization
3 certificate, it becomes a body corporate, and as such, and in the name designated in the
4 certificate, it, subject to section 6-03-01, has the power to:

- 5 1. Have a perpetual existence, unless it is sooner dissolved according to the provisions
6 of this title, or unless its franchise becomes forfeited by a violation of law.
- 7 2. Make contracts.
- 8 3. Sue and be sued.
- 9 4. Elect or appoint directors, such board to consist of any number of members, not less
10 than three nor more than twenty-five, at least two-thirds of whom must be citizens of
11 the United States, and, by such board of directors, to appoint a president, who must
12 be a member of said board, and such other employees as may be required, to define
13 their duties, to require bonds of them and fix the penalty thereof, and to dismiss such
14 officers and employees, or any of them, and appoint others to fill their places. This
15 subsection does not apply to a cooperative financial institution.
- 16 5. Provide, by its board of directors, bylaws not inconsistent with the laws of this state to
17 regulate the manner in which its directors and officers must be elected or appointed.
18 Vacancies in the board of directors, not exceeding one-third of the whole membership
19 thereof in any calendar year, must be filled by a majority vote of the remaining
20 members. The bylaws must provide a method for filling vacancies exceeding that
21 number. This subsection does not apply to a cooperative financial institution.
- 22 6. Provide, by its board of directors, bylaws not inconsistent with the laws of this state to
23 regulate the manner in which its stock and property must be transferred, its business
24 conducted, and the privileges granted to it by law exercised and enjoyed. This
25 subsection does not apply to a cooperative financial institution.
- 26 7. Exercise, as determined by the board by order or rule, all the incidental powers as are
27 necessary to carry on the business of banking, including discounting and negotiating
28 promissory notes, bills of exchange, drafts, and other evidences of debt; receiving
29 deposits; buying and selling exchange, coin, and bullion; loaning money upon real or
30 personal security, or both; soliciting and receiving deposits in the nature of custodial
31 accounts for the purpose of health savings or similar health care cost funding

1 accounts, retirement fund contracts, or pension programs, and such custodial
2 accounts are exempt from chapter 6-05; and providing services to its customers
3 involving electronic transfer of funds to the same extent that other financial institutions
4 chartered and regulated by an agency of the federal government are permitted to
5 provide those services within this state. A bank that provides electronic funds transfer
6 equipment and service to its customers, at premises separate from its main banking
7 house or duly authorized facility approved by the state banking board, must make the
8 equipment and service available for use by customers of any other bank upon the
9 request of the other bank to share its use and the agreement of the other bank to
10 share pro rata all costs incurred in connection with its installation and operation, and
11 the electronic operations are not deemed to be the establishment of a branch, nor of a
12 separate facility. The electronic operations at premises separate from its banking
13 house or duly authorized facility must be considered a customer electronic funds
14 transfer center and may be established subject to rules that the state banking board
15 adopts.

16 8. Enter into contracts, incur obligations, and generally to perform all acts necessary or
17 appropriate to take advantage of any and all memberships, loans, subscriptions,
18 contracts, grants, rights, or privileges which may be or become available or may inure
19 to banking institutions or to their depositors, creditors, stockholders, conservators,
20 receivers, or liquidators under the provisions of the federal Act creating the federal
21 deposit insurance corporation or under any other Act or regulation of Congress to aid,
22 regulate, or safeguard banking institutions and their depositors, including any
23 amendments thereto or substitution therefor, when authorized so to do by its board of
24 directors.

25 9. Subscribe for and acquire any stock, debentures, bonds, or other types of securities of
26 the federal deposit insurance corporation and to comply with the lawful regulations and
27 requirements from time to time issued or made by such corporation.

28 10. Take, receive, and hold United States postal savings deposits and to take any action
29 necessary to procure the deposit of the same.

30 11. Enter into the business of dealing in securities and stock for the purpose of purchasing
31 and selling such securities and stock without recourse, solely upon the order, and for

- 1 the account of individual and institutional customers and to provide portfolio
2 investment advisory, management, information, forecasting, and research services to
3 such customers in combination with or separate from such purchases and sales.
- 4 12. Exercise fiduciary powers upon application as provided under section 6-05-01 as the
5 board may prescribe by rule.
- 6 13. Invest all moneys received by it in a trust, in authorized securities, and be responsible
7 to the owner or a third-party beneficiary for the validity, regularity, quality, value, and
8 genuineness of these investments and securities at the time made and for the
9 safekeeping of these securities and the evidences of the securities. When special
10 directions are given in any order, judgment, decree, will, or other written instrument as
11 to the particular manner or the particular class or kind of securities or property in which
12 any investment may be made, a bank shall follow this direction and, in such case, it is
13 not further responsible by reason of the performance of the trust. A bank may retain
14 and continue any investment and security or securities coming into its possession in
15 any fiduciary capacity. For the faithful discharge of its duties and the discharge of its
16 trust, it is entitled to reasonable compensation or an amount as has been or may be
17 agreed upon by the parties and all necessary expenses, with legal interest on those
18 amounts. The trustee may acquire and retain securities of any open-end or closed-end
19 management type investment company or investment trust registered under the
20 Federal Investment Company Act of 1940 [Pub. L. 76-686; 54 Stat. 789; 15 U.S.C.
21 80a-1 - 80a-52]. The fact that the banking institution, or an affiliate of the banking
22 institution, is providing services to the investment company or trust as investment
23 advisor, sponsor, broker, distributor, custodian, transfer agent, registrar, or otherwise
24 and receiving compensation for the services does not preclude the trustee from
25 investing in the securities of that investment company or trust. The banking institution
26 and trust shall disclose to all current income beneficiaries of the trust the rate, formula,
27 and method of the compensation, and the relationship of ownership. No compensation
28 or commission paid or agreed to be paid to it for the negotiation of a loan or the
29 execution of a trust may be deemed interest within the meaning of the law, nor may
30 any excess thereof over the legal rate be deemed usury.

1 **SECTION 7. AMENDMENT.** Section 6-03-11 of the North Dakota Century Code is amended
2 and reenacted as follows:

3 **6-03-11. Conversion, consolidation, or merger.**

4 1. Any two or more banking institutions upon making application to the commissioner or
5 the state banking board may consolidate or merge if authorized by the commissioner
6 or board into one banking institution under the charter of either existing banking
7 institution on such terms and conditions as lawfully may be agreed upon by a majority
8 of the board of directors of each banking institution proposing to consolidate or merge
9 subject to rules adopted by the state banking board.

10 2. Before becoming final, such consolidation or merger must be ratified and confirmed by
11 the vote:

12 a. Vote of the shareholders of each such banking institution owning at least
13 two-thirds of its capital stock outstanding at a meeting to be held on the call of the
14 directors. Notice of such meeting and of the purpose thereof must be given to
15 each shareholder of record by registered or certified mail at least ten days prior to
16 the meeting. The shareholders may unanimously waive such notice and may
17 consent to such meeting and consolidation or merger in writing; or

18 b. Vote of the members of a cooperative financial institution.

19 (1) The proposition for a merger first must be approved by the board of
20 directors, and on a date set for a vote by the members either at a meeting or
21 by written ballot filed on or before the date, by a majority of the directors of
22 the organization which seeks the merger. Written notice of the proposition
23 and the date set for the vote must be delivered in person to each member or
24 mailed to each member at the address appearing on the records of the
25 organization. The notice must be mailed between seven and thirty days
26 before the date of the merger. Approval of the proposition for merger must
27 be made by the affirmative vote of two-thirds of the members participating in
28 the meeting.

29 (2) Each member of the cooperative financial institution is entitled to one vote
30 during a regular or special meeting of the membership. Voting rights for a
31 banking institution or financial institution are determined by applicable law.

1 (3) Forty-five days before consideration of a merger, the membership and board
2 acting upon the proposed change must be made aware of the merger under
3 consideration and day and time of the meeting the change will be acted
4 upon.

5 (4) Promptly after the vote, and in no event later than ninety days thereafter, if
6 the proposition for merger was approved, the organization seeking the
7 merger shall provide the state banking board with the results of the vote,
8 verified by the affidavits of the president or vice president and secretary.

9 3. The capital stock and surplus of such consolidated banking institution must not be less
10 than that required under this title for the organization of a banking institution of the
11 class of the largest consolidating banking institution.

12 4. Immediately after the consolidation or merger a full report thereof, including a
13 statement of the assets and liabilities of the consolidated banking institution, must be
14 made to the commissioner by the surviving banking institution.

15 5. Any banking institution may without approval by any state authority convert into or
16 merge or consolidate with a national banking association as provided by federal law.

17 6. A national bank proposing to merge into a state-chartered bank shall grant the
18 commissioner discretionary authority to conduct an examination. The commissioner
19 shall set fees for such examination at an hourly rate sufficient to cover all reasonable
20 expenses of the department of financial institutions associated with the examination.
21 Fees must be collected by the commissioner and deposited in the financial institutions
22 regulatory fund.

23 **SECTION 8. AMENDMENT.** Section 6-03-13.1 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **6-03-13.1. Separate facilities authorized.**

26 Upon compliance with section 6-03-13.3, any bank organized under chapter 6-02 or
27 section 10 of this Act and under the supervision of the state banking board, and any national
28 bank doing business in this state, may maintain and operate separate and apart from its
29 banking house facilities, in addition to such service at its main banking house. Any activity
30 incidental to the business of banking may be transacted at a separate facility, including
31 receiving deposits of every kind and nature, cashing checks or orders to pay, issuing exchange,

1 making loans, renting safe deposit boxes, exercising fiduciary powers if authorized by the
2 board, and receiving payments payable at the bank. Whenever any banking institution that has
3 been granted approval to establish and maintain a facility deems it advisable to discontinue the
4 maintenance of the facility, the banking institution may apply to the commissioner or state
5 banking board for cancellation and the commissioner or board may order the cancellation
6 approval within the time the board specifies. The banking institution shall provide notice of the
7 application as required by the board by rule.

8 **SECTION 9. AMENDMENT.** Section 6-03-34 of the North Dakota Century Code is amended
9 and reenacted as follows:

10 **6-03-34. Surplus fund required - Dividends only out of earnings not required for**
11 **surplus.**

12 The board of directors of any association organized under this title may declare and pay
13 dividends out of the net profits of the association subject to the limitations of this chapter.
14 ~~Every~~Except for cooperative financial institutions, every such association, as its board of
15 directors deems advisable, shall ascertain, set apart, and convert into a surplus fund at least
16 fifty percent of its net earnings until such surplus fund equals one hundred percent of its
17 common stock, and no dividend may be declared upon its stock except from the remaining fifty
18 percent of its net earnings.

19 **SECTION 10.** A new chapter to title 6 of the North Dakota Century Code is created and
20 enacted as follows:

21 **Definitions.**

- 22 1. "Converted organization" means the banking institution, credit union, or other financial
23 institution previously authorized by the commissioner to engage in the business of
24 banking under the laws of this state and has been converted into a cooperative
25 financial institution under this chapter.
- 26 2. "Member" means a holder of a cooperative financial institution savings, demand, or
27 other authorized account.
- 28 3. "Originating member" means an individual who seeks to form a cooperative financial
29 institution under this chapter.

1 **Formation.**

2 Fifteen or more originating members who intend to associate themselves by written
3 agreement and a cooperative financial institution may, upon compliance with this title, become a
4 cooperative financial institution, with all the powers and privileges and subject to the duties,
5 restrictions, and liabilities under section 6-03-02.

6 **Capital structure.**

7 A cooperative financial institution formed under this chapter shall have a capital structure
8 the state banking board or commissioner determines is adequate. The cooperative financial
9 institution shall comply with prompt corrective actions requirements of section 6-01-04.4. A
10 cooperative financial institution is not authorized to issue capital stock, common stock, preferred
11 stock, or other forms of equity ownership authorized by this title for other types of banking
12 associations.

13 **Contents of agreement of association.**

14 1. Before the formation of a cooperative financial institution under this chapter, the
15 originating members of the proposed cooperative financial institution shall execute a
16 written agreement of association to form a cooperative financial institution. The written
17 agreement of association must identify and comply with the capital structure required
18 by the state banking board and must specifically state:

- 19 a. That the originating members of the cooperative financial institution intend to
20 associate themselves with the intention of forming a cooperative financial
21 institution;
22 b. The name of the cooperative financial institution;
23 c. The location of the principal office of the cooperative financial institution;
24 d. The purposes for which the cooperative financial institution is formed and the
25 nature of the business the cooperative financial institution is to conduct; and
26 e. The names and addresses of each originating member of the financial institution.

27 2. Each originating member shall subscribe to the agreement of association before
28 submission to the state banking board.

1 **Organization certificate - Contents.**

2 Before formation of a cooperative financial institution under this chapter, originating
3 members who wish to associate themselves in a cooperative financial institution shall sign and
4 execute an organization certificate on a form prescribed by the commissioner, which must state:

5 1. The name of the cooperative financial institution. The name may not be the name of
6 any other bank, credit union, or financial intuition previously incorporated within the
7 this state;

8 2. The location of the principal office of the cooperative financial institution at which
9 business will be conducted;

10 3. The names and places of residence of the originating members; and

11 4. The respective dates on which the cooperative financial institution will commence
12 business.

13 **Acknowledgment of organization certificate - Application for certificate of authority -**
14 **Notice of hearing.**

15 The organization certificate must be notarized. The authenticated certificate must be
16 transmitted to the state banking board with a request for permission to present the certificate to
17 the secretary of state, with application for the issuance of a certificate of authority, as well as
18 payment of an application fee. The commissioner shall establish the application by rule. After
19 receipt of the proposed organization certificate, application, and application fee, the board shall
20 publish the application in the official newspaper of the county the cooperative financial institution
21 is proposed to be established. The notice must contain a statement of a time and place at which
22 the board will hear the application and must specify that any individual objecting the application
23 may appear and show cause why the application should not be approved.

24 **Hearing by board - Conclusions - Management - Confidentiality.**

25 1. At the hearing, the board shall inquire whether the originating members have the
26 character, integrity, reputation, and financial standing shown by a detailed financial
27 statement, to demonstrate the establishment of the proposed cooperative financial
28 institution will be beneficial to the public welfare of the community where the
29 cooperative financial institution will be located. The board shall keep financial
30 statement furnished by the originating members confidential.

- 1 2. The board shall inquire into the qualifications of the management of the proposed
2 cooperative financial institution, including any experience with financial institutions and
3 other related experience. The board shall keep any inquiry into the qualifications of the
4 proposed management confidential.
- 5 3. The board shall hear any reasons advanced by the originating members as to why the
6 members should be permitted to organize the cooperative financial institution.
- 7 4. At the conclusion of the hearing, the board shall make a statement in writing of its
8 conclusions and conditions, if any, and if it finds the proposed cooperative financial
9 institution may not be permitted to organize, the board shall state the reasons why. If
10 approval is granted, a copy of the board's order must be attached to the organization
11 certificate and both must be presented to the secretary of state. A determination to
12 approve the organization of the cooperative financial institution must be joined by a
13 majority of all the members of the board.

14 **Determination of board - Recording of organization certificate.**

- 15 1. If the state banking board votes to approve the application to organize a cooperative
16 financial institution, the organization certificate and permission of the board must be
17 recorded in the county where the cooperative financial institution will be established
18 and must be transmitted to the secretary of state.
- 19 2. The secretary of state shall certify the facts to the state banking board and record the
20 document in the secretary of state's office. The secretary of state shall issue a
21 certificate of authority to the cooperative financial institution.
- 22 3. The secretary of state shall send the certificate to the commissioner. The
23 commissioner may not issue the certificate until an examination is made and the
24 certificate of the commissioner stating the capital structure as required by the state
25 banking board has been acquired, federal deposit insurance corporation insurance of
26 deposits has been secured, and all conditions of the law have been complied with
27 strictly.
- 28 4. If the determination of the state banking board is against the organization of the
29 cooperative financial institution, the organization certificate may not be recorded in the
30 office of recorder and may not be accepted by the secretary of state.

1 **Conversion to or from a cooperative financial institution.**

- 2 1. Any banking institution, credit union, or financial institution authorized by the
3 commissioner to engage in the business of banking under the laws of this state, laws
4 of the United States, or laws another state may be converted into a cooperative
5 financial institution.
- 6 2. A cooperative financial institution may convert to a federal savings association by
7 complying with the following requirements:
- 8 a. The proposition for conversion must be approved by a majority of the directors of
9 the organization that seeks conversion. If approved by a majority of the directors,
10 the directors shall set a date for a vote by the members either at a meeting or by
11 written ballot to be filed on or before the date. Written notice of the proposition
12 and the date set for the vote must be delivered in person to each member or
13 mailed to each member at the address for the member appearing on the records
14 of the organization, between seven and thirty days before the date. Conversion
15 must be approved by two-thirds of the members participating in the vote.
- 16 b. Each member of the credit union is entitled to one vote during regular or special
17 meetings of the membership.
- 18 c. The voting rights for a banking institution or financial institution are determined by
19 applicable law.
- 20 d. Forty-five days before consideration of a conversion, the membership or board
21 acting on the proposed change must be notified of the bylaw change under
22 consideration and of date and time of the meeting the change will be acted on.
- 23 e. Promptly after the vote is taken, but no more than ninety days after, if the
24 proposition for conversion was approved, the organization seeking conversion
25 shall provide the state banking board with the results of the vote, verified by the
26 affidavits of the president or vice president and secretary.
- 27 f. A cooperative financial institution converting to a federal savings association shall
28 provide notice of completion of subdivisions a, b, c, d and e, and may not be
29 subject to any other provision of this chapter. The converted cooperative financial
30 institution shall provide notice to the state banking board upon commencement of

1 operations as a federal savings association, at which time the state charter must
2 be terminated.

3 3. If a cooperative financial institution converts to a state-chartered credit union, the
4 institution shall:

5 a. Obtain federal deposit insurance.

6 b. File with the commissioner an organization certificate as required in section
7 6-06-02 and all other documentation necessary as determined by the
8 commissioner.

9 c. Obtain approval from the state credit union board.

10 **Application for conversion.**

11 1. A banking institution, credit union, or financial institution may be converted to a
12 cooperative financial institution under this chapter through submission of an
13 application, which must include:

14 a. A statement of the results of the vote to approve the conversion, along with
15 affidavits of the president or vice president and secretary;

16 b. A completed form, prescribed by the commissioner, requesting an amendment to
17 the organization certificate;

18 c. A copy of the executed bylaws to establish the cooperative financial institution;

19 d. An application fee, as established by the commissioner by rule; and

20 e. An affirmation from the organization granting discretionary authority to the
21 commissioner to conduct an examination before the conversion date.

22 2. The commissioner shall set fees for an examination at an hourly rate sufficient to
23 cover all reasonable expenses of the department associated with the examination.
24 Fees must be collected by the commissioner, transferred to the state treasurer, and
25 deposited in the financial institution regulatory fund.

26 3. When the commissioner determines all requirements have been met, the
27 commissioner shall notify the applicant and the state banking board. The board shall
28 instruct the secretary of state to issue an amended organization certificate for the
29 converted organization to operate as a cooperative financial institution. After issuance
30 of the amended organization certificate, the organization becomes a cooperative
31 financial institution and ceases to operate as originally organized. The cooperative

1 financial institution is vested with all assets of the prior organization and is responsible
2 for all of the obligations of the converted organization to the same extent as though
3 the conversion had not taken place.

4 **Benefit to directors or management.**

5 1. A director or senior management official of a converted organization may not receive
6 any economic benefit in connection with a conversion of the converted organization
7 other than reasonable director fees, compensation, and other benefits paid to the
8 directors or senior management officials in the ordinary course of business.

9 2. For purposes of this section "senior management official" means a chief executive
10 officer, an assistant chief executive officer, a chief financial officer, and any other
11 senior executive officer as may be defined by the state bank board.

12 **Adoption of rules.**

13 The commissioner may adopt rules necessary to carry out the conversion of a banking
14 institution, credit union, or other financial institution to or from a cooperative financial institution
15 under this chapter.

16 **Review by commissioner.**

17 The commissioner shall review the process for the conversion member vote and
18 procedures applicable to the member vote. The commissioner shall report the commissioner's
19 findings to the state banking board. If the commissioner or the state banking board disapproves
20 of the methods by which the conversion member vote was taken or procedures applicable to
21 the member vote, the member vote must be retaken as directed by the commissioner or the
22 state banking board.

23 **Membership, voting, meetings, and bylaws.**

24 1. Each member of the cooperative financial institution is entitled to one vote during
25 regular or special meetings of the membership.

26 2. Voting may be conducted in-person or digital as outlined in the bylaws. Proxy voting is
27 not permitted.

28 3. Changes to a cooperative financial institution's charter or bylaws require a majority
29 vote of the membership at an annual or special membership meeting or a two-thirds
30 majority vote of the board of directors. Fifteen days before consideration of a bylaw
31 change, the membership or board acting upon the proposed change must be made

1 aware of the bylaw change under consideration and day and time of the meeting the
2 change will be acted upon. No amendment to the bylaws are effective until reviewed
3 for appropriateness and compliance with applicable law and approved by the state
4 banking board.

5 4. A cooperative financial institution shall conduct at least one meeting of the
6 membership annually. Meetings:

7 a. Must be noticed at least fifteen days before the meeting date and include the
8 time, place, and agenda for any items considered at the meeting.

9 b. May be conducted virtually if permitted within the bylaws.

10 5. At the annual meeting the membership shall:

11 a. Fill any vacancies on the board of directors; and

12 b. Review the financial conditions of the cooperative financial institution, financial
13 performance since the prior annual meeting, and the projection for the upcoming
14 year.

15 6. Special meetings of the membership may be called by the board of directors as
16 outlined the bylaws.

17 7. The board of directors:

18 a. May exercise powers of the cooperative financial institution not expressly
19 reserved for the members.

20 b. May not be fewer than five or more than fifteen members as outlined in the
21 bylaws.

22 c. Must be elected to terms of one to three years and until their successors are
23 elected, and shall serve staggered terms with approximately one-third of the
24 board positions up for consideration at any given annual meeting, as outlined in
25 the bylaws.

26 d. Must be elected from the membership of the cooperative financial institution, and
27 nomination shall be made of any member in good standing following a
28 nomination process outlined in the bylaws.

29 e. Must set the time and place of meetings as outlined in the bylaws, with a
30 minimum of twenty-four hours' notice required unless waived by all members of
31 the board.

- 1 f. Shall elect from among the elected board members, officers, including the
2 positions of chair, vice chair, treasurer, and recorder, with duties and
3 responsibilities as outlined in the bylaws.
- 4 g. Must be independent and the majority of board of directors may not be
5 employees of the cooperative financial institution.
- 6 h. Must be made up of at least two-thirds citizens of the United States.
- 7 i. May remove a board member as outlined in the bylaws.
- 8 8. The board of directors may terminate membership in a cooperative financial institution
9 for cause as outlined in the bylaws.

10 **SECTION 11. AMENDMENT.** Section 6-05-01 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **6-05-01. Who may form - Corporation has perpetual existence.**

13 Any number of persons, not less than nine, at least three of whom must be residents of this
14 state, may associate themselves and form a corporation for the purpose of transacting business
15 as an annuity, safe deposit, and trust company. Its existence shall be perpetual.

16 At the time and place stated, and through any sources of information at its command, the
17 board shall examine and consider all relevant factors, including whether the place where such
18 company is proposed to be located is in need of a further annuity, safe deposit, and trust
19 company, whether the proposed institution is adapted to the filling of such need, and whether
20 the proposed incorporators are possessed of such character, integrity, reputation, and financial
21 standing as shown by a detailed financial statement to be furnished by them, that their
22 connection with the company will be beneficial to the public welfare of the community in which
23 such company is proposed to be established. The board shall hear any reasons advanced by
24 the applicants why they should be permitted to organize the proposed institution and any
25 reasons advanced by any person why such institution should not be permitted to be organized.
26 At the termination of such hearing, the board shall make a brief statement in writing of its
27 conclusions, and if it finds that the proposed institution should not be permitted to organize, it
28 shall state briefly the reasons why. A copy of such conclusions either shall be endorsed upon or
29 attached to the organization certificate, together with the refusal or grant of permission to the
30 proposed incorporators to present the said organization certificate to the secretary of state. A

1 determination in favor of such organization must be joined in by a majority of the members of
2 the board.

3 Any banking association organized under chapter 6-02 or section 10 of this Act may apply
4 to the board for an order authorizing the applicant to exercise fiduciary powers. If the
5 determination of the board is in favor of the applicant, the board shall make its order authorizing
6 the applicant to engage in the business of a trust company upon its showing full compliance
7 with sections 6-05-03, 6-05-04, and 6-05-05 except the capital stock of the banking association
8 shall not be required to be divided in shares of one hundred dollars each as provided by section
9 6-05-03. Sections 6-05-06 and 6-05-07 are not applicable to banking associations granted
10 authority to engage in the business of a trust company by the board. Thereafter, such banking
11 association must be subject to the jurisdiction of the board as to its trust company operations
12 the same as trust companies organized under chapter 6-05.

13 Any corporation organized and authorized to transact the business of fidelity insurance and
14 corporate suretyship prior to July 1, 1983, pursuant to the former sections 6-05-08 and 6-05-19
15 through 6-05-24 and sections 6-05-30 through 6-05-33 may continue to operate under the
16 provisions of those sections as they existed on June 30, 1983.

17 **SECTION 12. AMENDMENT.** Section 6-06-35 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **6-06-35. Conversion from state to federal credit union and from federal to state credit**
20 **union and from state credit union to ~~building and loan association~~ cooperative financial**
21 **institution.**

22 1. A state credit union may be converted into a federal credit union under the laws of the
23 United States by complying with the following requirements:

24 a. The proposition for such conversion must first be approved, and a date set for a
25 vote thereon by the members either at a meeting to be held on such date or by
26 written ballot to be filed on or before such date, by a majority of the directors of
27 the state credit union. Written notice of the proposition and of the date set for the
28 vote must then be delivered in person to each member or mailed to each
29 member at the address for such member appearing on the records of the credit
30 union, not more than thirty nor less than seven days prior to such date. Approval

1 of the proposition for conversion must be by the affirmative vote of two-thirds of
2 the members present at the meeting.

3 b. A statement of the results of the vote, verified by the affidavits of the president or
4 vice president and the secretary, must be filed with the state credit union board
5 within ten days after the vote is taken.

6 c. Promptly after the vote is taken and in no event later than ninety days thereafter,
7 if the proposition for conversion was approved by such vote, the credit union shall
8 take such action as may be necessary under the applicable federal law to make it
9 a federal credit union, and within ten days after receipt of the federal credit union
10 charter there must be filed with the state credit union board a copy of the charter
11 thus issued. Upon such filing, the credit union must cease to be a state credit
12 union.

13 d. Upon ceasing to be a state credit union, such credit union is no longer subject to
14 any of the provisions of the North Dakota credit union law. The successor federal
15 credit union is vested with all of the assets and shall continue to be responsible
16 for all of the obligations of the state credit union to the same extent as though the
17 conversion had not taken place.

18 2. a. A federal credit union, organized under the laws of the United States may be
19 converted into a state credit union by:

20 (1) Complying with all federal requirements requisite to enabling it to convert to
21 a state credit union or to cease being a federal credit union;

22 (2) Filing with the state credit union board proof of such compliance,
23 satisfactory to the commissioner;

24 (3) Filing with the commissioner an organization certificate and bylaws, both in
25 triplicate, as required by section 6-06-02; and

26 (4) Granting discretionary authority to the commissioner to conduct an
27 examination prior to the conversion date.

28 The commissioner shall set fees for such examination at an hourly rate sufficient
29 to cover all reasonable expenses of the department of financial institutions
30 associated with the examination. Fees must be collected by the commissioner,

1 transferred to the state treasurer, and deposited in the financial institutions
2 regulatory fund.

3 b. When the commissioner has been satisfied that all of such requirements and all
4 other requirements of the North Dakota law have been complied with, the
5 commissioner shall notify the applicants and the state credit union board of that
6 fact, and the board shall instruct the secretary of state to issue a charter in
7 accordance with section 6-06-02. Upon issuance of the charter, the federal credit
8 union shall become a state credit union and ceases to be a federal credit union.
9 The state credit union is vested with all of the assets and shall continue to be
10 responsible for all of the obligations of the federal credit union to the same extent
11 as though the conversion had not taken place.

12 3. ~~After July 31, 2009, a state credit union may convert to a building and loan association~~
13 ~~by complying with the following requirements:~~

14 a. ~~The proposal for a conversion first must be approved and a date set for a vote on~~
15 ~~the proposal by the members either at a meeting to be held on such date or by~~
16 ~~written ballot to be filed on or before such date by a majority of the directors of~~
17 ~~the credit union. Approval of the proposal for the conversion must be by the~~
18 ~~affirmative vote of two thirds of the members voting.~~

19 b. ~~A state credit union that proposes to convert to a building and loan association~~
20 ~~shall submit notice to each of the credit union's members who are eligible to vote~~
21 ~~on the matter of the credit union's intent to convert:~~

22 (1) ~~Ninety days before the date of the member vote on the conversion;~~

23 (2) ~~Sixty days before the date of the member vote on the conversion; and~~

24 (3) ~~Thirty days before the date of the member vote on the conversion.~~

25 e. ~~A state credit union that proposes to convert to a building and loan association~~
26 ~~shall submit a notice to the state credit union board of the credit union's intent to~~
27 ~~convert at least ninety days before the date of the completion of the conversion.~~

28 d. ~~Upon completion of a conversion, the state credit union is no longer subject to~~
29 ~~any of the provisions of this chapter.~~

30 e. ~~A director or senior management official of a state credit union may not receive~~
31 ~~any economic benefit in connection with a conversion of the state credit union~~

1 other than reasonable director fees and reasonable compensation and other
2 benefits paid to directors or senior management officials of the converted
3 institution in the ordinary course of business. As used in this subdivision, the term
4 senior management official means a chief executive officer, an assistant chief
5 executive officer, a chief financial officer, and any other senior executive officer as
6 may be defined by the state credit union board.

7 f. ~~Before January 1, 2009, the state credit union board shall adopt rules applicable~~
8 ~~to state credit union conversion to a building and loan association which are~~
9 ~~consistent with the conversion rules of the national credit union administration.~~

10 g. ~~The commissioner shall review the methodology by which the conversion~~
11 ~~member vote was taken and procedures applicable to the member vote. The~~
12 ~~commissioner shall report the commissioner's findings to the state credit union~~
13 ~~board. If the commissioner or the state credit union board disapproves of the~~
14 ~~methods by which the conversion member vote was taken or procedures~~
15 ~~applicable to the member vote, the member vote must be retaken as directed by~~
16 ~~the commissioner or the state credit union board.~~A credit union may convert to a
17 cooperative financial institution following the procedures outlined in section 10 of
18 this Act.

19 **SECTION 13. AMENDMENT.** Section 6-07.2-09 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **6-07.2-09. Payment of claims.**

- 22 1. All claims against the institution's estate, proved to the receiver's satisfaction or
23 approved by the circuit court, must be paid in the following order:
- 24 a. Administration expenses, including compensation of each regular officer or
25 employee of the receiver for the time actually devoted to the liquidation of the
26 institution at an amount not to exceed the compensation paid to the officer or
27 employee for the performance of the officer's or employee's regular duties; actual
28 expenses of each regular officer and employee necessarily incurred in the
29 performance of the officer's or employee's duties; compensation and expenses of
30 any special representative, assistant, accountant, agent, or attorney employed by
31 the receiver; court costs; and if the commissioner is acting as receiver, such

1 reasonable general overhead expenses as may be incurred by the commissioner
2 in the liquidation of the affairs of the institution which shall be ascertained,
3 determined, and fixed by the commissioner.

4 b. Claims given priority under other provisions of state or federal law.

5 c. Deposit obligations, except that notwithstanding sections 6-03-67 and 41-04-31,
6 if a depositor is indebted to an insolvent bank, the insolvent bank has a right to
7 setoff against the depositor's account.

8 d. Other general liabilities.

9 e. Debt subordinated to the claims of depositors and general creditors.

10 f. Equity capital securities.

11 g. For credit unions and cooperative financial institutions, pro rata distribution to
12 members computed based on the total amount in each member's account as of
13 the date of liquidation.

14 2. Interest on a claim may not be paid until all claims within the same class have
15 received the full principal amount of claim.

16 **SECTION 14. AMENDMENT.** Section 6-07.2-19 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **6-07.2-19. Voluntary liquidation of a credit union or cooperative financial institution.**

19 1. A credit union or cooperative financial institution may go into voluntary liquidation
20 following a vote of the majority of the board of directors and approval by the majority of
21 its members in writing or by a vote in favor of the liquidation by a majority of the
22 members of the credit union or cooperative financial institution at a regular meeting of
23 the members or at a special meeting called for that purpose.

24 a. When authorization for liquidation is to be obtained at a meeting of members:

25 (1) Notice in writing must be given to each member at least ten days before the
26 meeting and the notice must inform members they have the right to vote on
27 the proposed liquidation.

28 (2) The minutes of the meeting must show the number of members present and
29 the number that voted for and against liquidation.

30 b. If approval by a majority of all members of a credit union is not obtained at the
31 meeting of members, authorization for voluntary liquidation may be obtained by

1 having a majority of members sign a statement in substantially the following form:
2 We the undersigned members of the _____ Credit Union, Charter No. _____,
3 hereby request the dissolution of our credit union.

4 c. If approval by a majority of all members of a cooperative financial institution is not
5 obtained at the meeting of members, authorization for voluntary liquidation may
6 be obtained by having a majority of members sign a statement in substantially
7 the following form: We the undersigned members of the _____ cooperative
8 financial institution, Charter No. _____, hereby request the dissolution of our
9 cooperative financial institutions.

10 2. The board of directors of a credit union or cooperative financial institution in voluntary
11 liquidation:

- 12 a. Is responsible for conserving the assets, for expediting the liquidation, and for
13 equitably distributing the assets to members.
- 14 b. Shall determine all persons handling or having access to funds of the credit union
15 or cooperative financial institution are adequately covered by surety bond.
- 16 c. Shall appoint a custodian for the credit union's or cooperative financial
17 institution's records that are to be retained for five years after the charter is
18 canceled.
- 19 d. May appoint a liquidating agent and delegate part or all of these responsibilities
20 to the agent and may authorize reasonable compensation for the agent's
21 services. A liquidating agent must be adequately bonded for faithful performance
22 of the agent's duties, and the coverage must remain in effect or the discovery
23 period extended for at least four months after the final distribution of assets.

24 3. The supervisory committee, a certified public accountant hired by the supervisory
25 committee, or if the bylaws do not establish a supervisory committee, a certified public
26 accountant hired by the board of directors, is responsible for making periodic audits of
27 the credit union's or cooperative financial institution's records, at least quarterly, during
28 the period of liquidation.

29 4. Within three days after the decision of the board of directors to submit the question of
30 liquidation to the members, the president shall notify the commissioner and the

- 1 regional director of the national credit union administration or federal deposit insurance
2 corporation as appropriate in writing, setting forth in detail:
- 3 a. The reasons for the proposed action;
4 b. The previous month-end balance sheet and income statement; and
5 c. A written plan for the liquidation of assets, payment of creditors, and payment of
6 shares to be completed within one year of the date of membership approval to
7 liquidate.
- 8 5. Within three days after the action of the members on the question of liquidation, the
9 president shall notify the commissioner and the regional director of the national credit
10 union administration or federal deposit insurance corporation as appropriate in writing
11 as to whether a majority of the members approved the proposed liquidation.
- 12 6. Within ten days of the decision to liquidate by the board of directors, a notice of the
13 decision must be handed to each member, electronically distributed, or mailed to the
14 member's last-known address to confirm in writing the shares and deposits held by the
15 member in the credit union or cooperative financial institution and the loans owed by
16 the member to the credit union or cooperative financial institution.
- 17 7. Within ten days of the approval of a majority of the members of a credit union or
18 cooperative financial institution of a proposal to liquidate, the board of directors of the
19 credit union or cooperative financial institution shall have prepared and mailed to all
20 creditors a notice of liquidation containing instructions to present claims to the credit
21 union or cooperative financial institution within ninety days for payment. New creditor
22 claims subsequent to this notice which are necessary for the continued operation of
23 the credit union during liquidation must continue to be paid upon authorization of the
24 board of directors or liquidating agent.
- 25 8. Immediately upon the decision of the membership to liquidate, the credit union or
26 cooperative financial institution may continue to do all things under the original
27 corporate name of the institution, to sue and be sued, to execute conveyances and
28 other instruments, to take, hold, and own property, and to do all other things as may
29 be necessary to realize upon the institution's remaining assets for the benefit of the
30 institution's members, but not to engage or continue in any new or other business
31 under the institution's charter or otherwise. At the discretion of the board of directors or

1 the liquidating agent, transactions upon membership transactional accounts may
2 continue to be honored up to the federal insurance limit until the accounts are sold or
3 otherwise liquidated.

4 9. At the commencement of voluntary liquidation of a credit union or cooperative financial
5 institution, the treasurer or agent conducting the liquidation shall file with the
6 commissioner a financial and statistical report and a schedule showing the name,
7 book number or account number, share balance, and loan balance of each member.

8 10. Credit unions or cooperative financial institution in the process of voluntary liquidation
9 shall file with the commissioner a financial and statistical report as of December thirty-
10 first or within thirty days after such date. Additional reports, as determined by the
11 commissioner to be necessary, must be furnished promptly on written request.

12 11. When deemed advisable by the commissioner, an examination of the books and
13 records of a credit union or cooperative financial institution may be made before,
14 during, or following completion of voluntary liquidation. The commissioner shall set
15 fees for the examination at an hourly rate sufficient to cover all reasonable expenses
16 of the department of financial institutions associated with the examination. Fees must
17 be collected by the commissioner and deposited in the financial institutions regulatory
18 fund.

19 12. If at any time during the liquidation of credit union assets or cooperative financial
20 institution, it is found the value of remaining assets will not be sufficient to cover the
21 claims of creditors and shareholders, the board of directors or, if appointed, the
22 liquidating agent shall immediately notify the commissioner and the regional director of
23 the national credit union administration or federal deposit insurance corporation as
24 appropriate. Further liquidation of credit union or cooperative financial institution
25 assets or distributions to shareholders after notice requires written approval from the
26 commissioner.

27 13. With the written approval of the commissioner, a partial distribution of the credit
28 union's or cooperative financial institution's assets may be made to its members from
29 cash funds available on authorization by its board of directors or by a duly authorized
30 liquidating agent whose appointment specifically includes the authority. Partial
31 distributions cannot exceed the national credit union share insurance limit.

- 1 14. When all assets of the credit union or cooperative financial institution have been
2 converted to cash or found to be worthless and all loans and debts owing to it have
3 been collected, sold, or found to be uncollectible and all obligations of the credit union
4 or cooperative financial institution have been paid, with the exception of amounts due
5 its members:
- 6 a. The books must be closed and the pro rata distribution to members computed.
7 This computation must be based on the total amount in each member's share
8 accounts as of the date the board of directors voted to voluntarily liquidate.
- 9 b. The amount of gain or loss must be entered in each member's share account and
10 should be entered in the member's passbook or statement of account.
- 11 c. Promptly, funds must be distributed to each member. The funds must be mailed
12 to such members at their last-known addresses, electronically transmitted to the
13 members designated account, or handed to them in person.
- 14 d. The passbooks or written confirmations submitted by members to verify balances
15 must be retained with the credit union or cooperative financial institution records.
- 16 e. Unclaimed share accounts subject to the escheat or abandoned property laws of
17 the state or the state of the members' residence must be paid to the state as
18 required by such laws.
- 19 f. The commissioner must be promptly notified of the date final distribution of
20 assets to the members is started.
- 21 g. In the event of a loss on members share accounts, a claim must be submitted by
22 the board of directors or the liquidating agent if appointed, to the national credit
23 union administration or federal deposit insurance corporation as appropriate,
24 private share insurance if available, and bonding company.
- 25 15. Within one hundred twenty days after the final distribution to members is started, the
26 credit union or cooperative financial institution shall furnish to the commissioner's
27 office a schedule of unpaid claims. The board of directors of the credit union or
28 cooperative financial institution or the liquidating agent if appointed shall report money
29 in the account of a member who failed to surrender their passbooks or confirm their
30 balances, final distribution checks not cashed within one hundred twenty days, and

1 any unpaid claims to the unclaimed property division of the board of university and
2 school lands pursuant to chapter 47-30.2.

3 **SECTION 15. AMENDMENT.** Section 6-08-08.1 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **6-08-08.1. Sale or purchase of associations, banking institutions, or holding**
6 **companies - Notification to commissioner - Hearing.**

- 7 1. No person, acting directly or indirectly or through or in concert with one or more other
8 persons, may purchase or otherwise acquire control of an association or banking
9 institution unless the state banking board or commissioner has been given prior written
10 notice by application of the proposed disposition or acquisition. The written application
11 must include such information as the state banking board shall specify. The
12 transaction may not be consummated before the board or commissioner has granted
13 approval.
- 14 2. The applicant shall publish notice of the application as required by the board by rule.
- 15 3. The commissioner shall determine if the application is complete and notify the
16 applicant of the determination. If the commissioner determines the application is
17 incomplete, the commissioner shall request additional information deemed necessary
18 to complete the application.
- 19 4. If not approved by the commissioner, the commissioner shall submit the application to
20 the board. The board may approve or disapprove the application if the board
21 determines that:
- 22 a. The character, reputation, general fitness, financial standing, and responsibility of
23 the persons proposed as new stockholders, directors, or officers is such that the
24 interests of the other stockholders, depositors, and creditors of the institution and
25 the public generally will be jeopardized by the change in control and
26 management.
- 27 b. The qualifications of management do not include adequate experience with
28 financial institutions or other approved related experience.
- 29 5. Within three business days after the board's decision to disapprove an application, the
30 board shall notify the applicant in writing of the disapproval. The notice must provide a
31 statement of the basis for the disapproval.

- 1 6. Within twenty days after receipt of the notice of disapproval, the applicant may request
2 a hearing on the disapproval. The board must conduct a hearing, if requested, under
3 the provisions of chapter 28-32. At the conclusion of the hearing, the board shall by
4 order approve or disapprove the application on the basis of the record at the hearing.
- 5 7. For purposes of this section, "control" means ownership or control, directly, indirectly,
6 or through the actions of one or more persons of the power to vote twenty-five percent
7 or more of any class of voting securities of an association, banking institution,
8 controlling bank holding company, or the direct or indirect power to control in any
9 manner the election of a majority of the directors of an association or banking
10 institution, or to direct the management or policies of an association or banking
11 institution, whether by individuals, corporations, limited liability companies,
12 partnerships, trusts, or other entities or organizations of any type.
- 13 8. The following acquisitions of voting securities of a North Dakota state chartered bank,
14 which would otherwise require submission of an application under this section, are not
15 subject to the application requirements if the acquiring person notifies the
16 commissioner within ninety days after the acquisition and provides any relevant
17 information requested by the commissioner: acquisition of voting securities through
18 inheritance; acquisition of voting securities as a bona fide gift; and acquisition of voting
19 securities in satisfaction of a debt previously contracted in good faith. This subsection
20 does not limit the authority of the commissioner to require a party to submit a written
21 application to the board under subsection 1.
- 22 9. This section does not apply to a cooperative financial institution.