

## PROPOSED AMENDMENTS TO

### 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.

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- 1       3. "Bank holding company" means bank holding company as defined in 12 U.S.C.  
2       1841(a)(1).
- 3       4. "Banking" means the business of receiving deposits, making loans, discounting  
4       commercial paper, issuing drafts, traveler's checks, and similar instruments, handling  
5       and making collections, cashing checks and drafts, and buying and selling exchange.
- 6       5. "Banking department" means the state department of financial institutions.
- 7       6. "Banking institution" means any bank, trust company, or bank and trust company  
8       organized under the laws of this state.
- 9       7. "Branch" means a place of business where deposits are received, checks paid, or  
10      money lent as a result of a bank that was merged into another bank pursuant to an  
11      interstate merger.
- 12      8. "Commissioner" means the commissioner of financial institutions.
- 13      9. "Cooperative financial institution" means an institution without capital stock organized  
14      under section 10 of this Act and operated for mutual purposes and without profit, and  
15      which is subject by law to supervision and examination by the department and federal  
16      authority which have supervision over such institutions.
- 17      10. "Corporate central credit union" means a credit union operated for the primary purpose  
18      of serving corporate accounts. A credit union is deemed to be a corporate central  
19      credit union when its total dollar amount of outstanding corporate loans plus corporate  
20      share and deposit holdings is equal to or greater than seventy-five percent of its  
21      outstanding loans plus share and deposit holdings.
- 22      ~~40-11.~~ "Credit union" means a cooperative, nonprofit association organized for the purposes  
23      of encouraging thrift among its members, creating a source of credit at a fair and  
24      reasonable rate of interest, and providing an opportunity for its members to improve  
25      their economic and social condition.
- 26      ~~41-12.~~ "Derivative transaction" means derivative transaction as defined in 12 U.S.C. 84(b)(3).
- 27      ~~42-13.~~ "Electronic" means relating to technology having electrical, digital, magnetic, wireless,  
28      optical, electromagnetic, or similar capabilities.
- 29      ~~43-14.~~ "Electronic communication" means any form of communication, not directly involving  
30      the physical transmission of paper that creates a record that may be retained,

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- 1           retrieved, and reviewed by a recipient of the communication and may be directly  
2           reproduced in paper form by the recipient through an automated process.
- 3 ~~44.15.~~ "Electronic record" means a record created, generated, sent, communicated, received,  
4           or stored by electronic means.
- 5 ~~45.16.~~ "Electronic signature" means an electronic sound, symbol, or process attached to or  
6           logically associated with a record and signed or adopted by a person with the intent to  
7           sign the record.
- 8 ~~46.17.~~ "Financial corporation" means all entities regulated by the department of financial  
9           institutions, excluding financial institutions and credit unions.
- 10 ~~47.18.~~ "Financial institution" means any bank, industrial loan company, or savings and loan  
11          association organized under the laws of this state or of the United States.
- 12 ~~48.19.~~ "Market value" means the highest price for which property can be sold in the open  
13          market by a willing seller to a willing purchaser, neither acting upon compulsion and  
14          both exercising reasonable judgment.
- 15 ~~49.20.~~ "Merger" or "merge" means the merging or consolidation of two or more banks  
16          including the purchase of all or substantially all of the assets and assumption of  
17          liabilities of a bank, facility, or branch.
- 18 ~~20.21.~~ "Mutual investment corporation" or "mutual savings corporation" means a corporation  
19          organized to engage in the investment or savings business, but having no capital  
20          stock or a nominal capital stock.
- 21 ~~24.22.~~ "National bank" or "national banking association" means an institution chartered by the  
22          comptroller of the currency under the National Bank Act [12 U.S.C. 24].
- 23 ~~22.23.~~ "Record" means information that is inscribed on a tangible medium or that is stored in  
24          an electronic or other medium and is retrievable in perceivable form.
- 25 ~~23.24.~~ "Technology service provider" includes any person that provides services to a financial  
26          institution, financial corporation, or credit union, including: core processing; information  
27          and transaction processing and settlement activities that support banking functions  
28          such as lending, deposit-taking, funds transfer, fiduciary, or trading activities;  
29          internet-related services; security monitoring; and system development and  
30          maintenance.

1 ~~24-25.~~ "Tier 1, tier 2, and tier 3 capital" means those terms as set under title 12, Code of  
2 Federal Regulations, part 325, in effect on August 1, 2011.

3 ~~25-26.~~ "Trust company" means any corporation formed for the purpose of transacting  
4 business as an annuity, safe deposit, surety, or trust company.

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

7 **6-01-15. Officers and employees to be disinterested.**

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

15 2. For purposes of this section, "interest" means ownership of or investment in such  
16 corporations or institutions.

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

19 **6-01-17.1. Application fees - Cost of transcript.**

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

- 23 1. For a certificate of authority to organize a banking association, a fee of five thousand  
24 dollars, paid by the applicants.
- 25 2. A banking association's application for authority to remove its business to some place  
26 within the state other than the town in which it is presently located and to change its  
27 name, a fee of two thousand five hundred dollars.
- 28 3. National bank conversion to a state bank, a fee of two thousand five hundred dollars.
- 29 4. Application by two or more banks to merge or consolidate, a fee of one thousand five  
30 hundred dollars.

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

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

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

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

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

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

17 **6-02-03. Capital stock, surplus, and federal deposit insurance requirements.**

- 18 1. The capital stock of any banking association organized after June 30, 1987, must be  
19 not less than one hundred thousand dollars. In addition to such capital requirements,  
20 there must be subscribed and paid in at the time of organization a surplus of not less  
21 than fifty thousand dollars. This subsection does not apply to cooperative financial  
22 institutions.
- 23 2. The state banking board may require such additional capital, surplus, and undivided  
24 profits as it may determine necessary to properly serve the area and to protect the  
25 public interest.
- 26 3. All of the capital stock and surplus of every association must be paid in before it is  
27 authorized to commence business and evidence of such payment either in actual  
28 money or a deposit in a previously approved correspondent bank must be furnished to  
29 the commissioner before the certificate of authority may be delivered to it.
- 30 4. A banking association shall secure federal deposit insurance corporation insurance of  
31 deposits before it is authorized to commence business. Evidence of securing such

1 insurance must be furnished to the commissioner before the certificate of authority  
2 may be delivered to the banking association.

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

5 **6-03-02. Powers.**

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

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

1 promissory notes, bills of exchange, drafts, and other evidences of debt; receiving  
2 deposits; buying and selling exchange, coin, and bullion; loaning money upon real or  
3 personal security, or both; soliciting and receiving deposits in the nature of custodial  
4 accounts for the purpose of health savings or similar health care cost funding  
5 accounts, retirement fund contracts, or pension programs, and such custodial  
6 accounts are exempt from chapter 6-05; and providing services to its customers  
7 involving electronic transfer of funds to the same extent that other financial institutions  
8 chartered and regulated by an agency of the federal government are permitted to  
9 provide those services within this state. A bank that provides electronic funds transfer  
10 equipment and service to its customers, at premises separate from its main banking  
11 house or duly authorized facility approved by the state banking board, must make the  
12 equipment and service available for use by customers of any other bank upon the  
13 request of the other bank to share its use and the agreement of the other bank to  
14 share pro rata all costs incurred in connection with its installation and operation, and  
15 the electronic operations are not deemed to be the establishment of a branch, nor of a  
16 separate facility. The electronic operations at premises separate from its banking  
17 house or duly authorized facility must be considered a customer electronic funds  
18 transfer center and may be established subject to rules that the state banking board  
19 adopts.

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

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



- 1       10.   Take, receive, and hold United States postal savings deposits and to take any action  
2            necessary to procure the deposit of the same.
- 3       11.   Enter into the business of dealing in securities and stock for the purpose of purchasing  
4            and selling such securities and stock without recourse, solely upon the order, and for  
5            the account of individual and institutional customers and to provide portfolio  
6            investment advisory, management, information, forecasting, and research services to  
7            such customers in combination with or separate from such purchases and sales.
- 8       12.   Exercise fiduciary powers upon application as provided under section 6-05-01 as the  
9            board may prescribe by rule.
- 10      13.   Invest all moneys received by it in a trust, in authorized securities, and be responsible  
11           to the owner or a third-party beneficiary for the validity, regularity, quality, value, and  
12           genuineness of these investments and securities at the time made and for the  
13           safekeeping of these securities and the evidences of the securities. When special  
14           directions are given in any order, judgment, decree, will, or other written instrument as  
15           to the particular manner or the particular class or kind of securities or property in which  
16           any investment may be made, a bank shall follow this direction and, in such case, it is  
17           not further responsible by reason of the performance of the trust. A bank may retain  
18           and continue any investment and security or securities coming into its possession in  
19           any fiduciary capacity. For the faithful discharge of its duties and the discharge of its  
20           trust, it is entitled to reasonable compensation or an amount as has been or may be  
21           agreed upon by the parties and all necessary expenses, with legal interest on those  
22           amounts. The trustee may acquire and retain securities of any open-end or closed-end  
23           management type investment company or investment trust registered under the  
24           Federal Investment Company Act of 1940 [Pub. L. 76-686; 54 Stat. 789; 15 U.S.C.  
25           80a-1 - 80a-52]. The fact that the banking institution, or an affiliate of the banking  
26           institution, is providing services to the investment company or trust as investment  
27           advisor, sponsor, broker, distributor, custodian, transfer agent, registrar, or otherwise  
28           and receiving compensation for the services does not preclude the trustee from  
29           investing in the securities of that investment company or trust. The banking institution  
30           and trust shall disclose to all current income beneficiaries of the trust the rate, formula,  
31           and method of the compensation, and the relationship of ownership. No compensation

1 or commission paid or agreed to be paid to it for the negotiation of a loan or the  
2 execution of a trust may be deemed interest within the meaning of the law, nor may  
3 any excess thereof over the legal rate be deemed usury.

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

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

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

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

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

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

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

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

4           (3) ~~Forty-five~~At least forty-five days before consideration of a merger, the  
5           membership and board acting upon the proposed change must be made  
6           aware of the merger under consideration and day and time of the meeting  
7           the change will be acted upon.

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

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

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

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

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

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

28          **6-03-13.1. Separate facilities authorized.**

29          Upon compliance with section 6-03-13.3, any bank organized under chapter 6-02 or  
30          section 10 of this Act and under the supervision of the state banking board, and any national  
31          bank doing business in this state, may maintain and operate separate and apart from its

1 banking house facilities, in addition to such service at its main banking house. Any activity  
2 incidental to the business of banking may be transacted at a separate facility, including  
3 receiving deposits of every kind and nature, cashing checks or orders to pay, issuing exchange,  
4 making loans, renting safe deposit boxes, exercising fiduciary powers if authorized by the  
5 board, and receiving payments payable at the bank. Whenever any banking institution that has  
6 been granted approval to establish and maintain a facility deems it advisable to discontinue the  
7 maintenance of the facility, the banking institution may apply to the commissioner or state  
8 banking board for cancellation and the commissioner or board may order the cancellation  
9 approval within the time the board specifies. The banking institution shall provide notice of the  
10 application as required by the board by rule.

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

13 **6-03-34. Surplus fund required - Dividends only out of earnings not required for**  
14 **surplus.**

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

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

24 **Definitions.**

- 25 1. "Converted organization" means the banking institution, credit union, or other financial  
26 institution previously authorized by the commissioner to engage in the business of  
27 banking under the laws of this state and has been converted into a cooperative  
28 financial institution under this chapter.  
29 2. "Member" means a holder of a cooperative financial institution savings, demand, or  
30 other authorized deposit account.

1       3. "Originating member" means an individual who seeks to form a cooperative financial  
2       institution under this chapter.

3       **Formation.**

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

8       **Capital structure.**

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

15      **Contents of agreement of association.**

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

- 21      a. That the originating members of the cooperative financial institution intend to  
22      associate themselves with the intention of forming a cooperative financial  
23      institution;
- 24      b. The name of the cooperative financial institution;
- 25      c. The location of the principal office of the cooperative financial institution;
- 26      d. The purposes for which the cooperative financial institution is formed and the  
27      nature of the business the cooperative financial institution is to conduct; and
- 28      e. The names and addresses of each originating member of the financial institution.
- 29      2. Each originating member shall subscribe to the agreement of association before  
30      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 institution 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 the  
3 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 cooperative financial  
27 institution's bylaws. Proxy voting is not permitted as authorized withinin the  
28 cooperative financial institution's bylaws. A quorum for a meeting must be defined  
29 withinin the cooperative financial institution's bylaws.

30 3. Changes to a cooperative financial institution's charter or bylaws require a majority  
31 vote of the membership at an annual or special membership meeting or a two-thirds

1 majority vote of the board of directors. Fifteen days before consideration of a bylaw  
2 change, the membership or board acting upon the proposed change must be made  
3 aware of the bylaw change under consideration and day and time of the meeting the  
4 change will be acted upon. No amendment to the bylaws are effective until reviewed  
5 for appropriateness and compliance with applicable law and approved by the state  
6 banking board.

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

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

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

12 5. At the annual meeting the membership shall:

13 a. Fill any vacancies on the board of directors as outlined in the bylaws; and

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

17 6. Special meetings of the membership may be called by the board of directors as  
18 outlined in the bylaws.

19 7. The board of directors:

20 a. May exercise powers of the cooperative financial institution not expressly  
21 reserved for the members.

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

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

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

- 1           e. Must set the time and place of meetings as outlined in the bylaws, with a  
2                   minimum of twenty-four hours' notice required unless waived by all members of  
3                   the board.
- 4           f. Shall elect from among the elected board members, officers, including the  
5                   positions of chair, vice chair, treasurer, and recorder, with duties and  
6                   responsibilities as outlined in the bylaws.
- 7           g. Must be independent and the majority of board of directors may not be  
8                   employees of the cooperative financial institution.
- 9           h. Must be made up of at least two members with appropriate banking experience.
- 10          i. Must be made up of at least two-thirds members who are both citizens of the  
11                   United States and North Dakota residents.
- 12          i. May remove a board member as outlined in the bylaws.
- 13          8. The board of directors may terminate membership in a cooperative financial institution  
14                   for cause as outlined in the bylaws.

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

17           **6-05-01. Who may form - Corporation has perpetual existence.**

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

21           At the time and place stated, and through any sources of information at its command, the  
22 board shall examine and consider all relevant factors, including whether the place where such  
23 company is proposed to be located is in need of a further annuity, safe deposit, and trust  
24 company, whether the proposed institution is adapted to the filling of such need, and whether  
25 the proposed incorporators are possessed of such character, integrity, reputation, and financial  
26 standing as shown by a detailed financial statement to be furnished by them, that their  
27 connection with the company will be beneficial to the public welfare of the community in which  
28 such company is proposed to be established. The board shall hear any reasons advanced by  
29 the applicants why they should be permitted to organize the proposed institution and any  
30 reasons advanced by any person why such institution should not be permitted to be organized.  
31 At the termination of such hearing, the board shall make a brief statement in writing of its

1 conclusions, and if it finds that the proposed institution should not be permitted to organize, it  
2 shall state briefly the reasons why. A copy of such conclusions either shall be endorsed upon or  
3 attached to the organization certificate, together with the refusal or grant of permission to the  
4 proposed incorporators to present the said organization certificate to the secretary of state. A  
5 determination in favor of such organization must be joined in by a majority of the members of  
6 the board.

7 Any banking association organized under chapter 6-02 or section 10 of this Act may apply  
8 to the board for an order authorizing the applicant to exercise fiduciary powers. If the  
9 determination of the board is in favor of the applicant, the board shall make its order authorizing  
10 the applicant to engage in the business of a trust company upon its showing full compliance  
11 with sections 6-05-03, 6-05-04, and 6-05-05 except the capital stock of the banking association  
12 shall not be required to be divided in shares of one hundred dollars each as provided by section  
13 6-05-03. Sections 6-05-06 and 6-05-07 are not applicable to banking associations granted  
14 authority to engage in the business of a trust company by the board. Thereafter, such banking  
15 association must be subject to the jurisdiction of the board as to its trust company operations  
16 the same as trust companies organized under chapter 6-05.

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

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

23 **6-06-35. Conversion from state to federal credit union and from federal to state credit**  
24 **union and from state credit union to ~~building and loan association~~ cooperative financial**  
25 **institution.**

- 26 1. A state credit union may be converted into a federal credit union under the laws of the  
27 United States by complying with the following requirements:
- 28 a. The proposition for such conversion must first be approved, and a date set for a  
29 vote thereon by the members either at a meeting to be held on such date or by  
30 written ballot to be filed on or before such date, by a majority of the directors of  
31 the state credit union. Written notice of the proposition and of the date set for the

- 1           vote must then be delivered in person to each member or mailed to each  
2           member at the address for such member appearing on the records of the credit  
3           union, not more than thirty nor less than seven days prior to such date. Approval  
4           of the proposition for conversion must be by the affirmative vote of two-thirds of  
5           the members present at the meeting.
- 6           b.    A statement of the results of the vote, verified by the affidavits of the president or  
7           vice president and the secretary, must be filed with the state credit union board  
8           within ten days after the vote is taken.
- 9           c.    Promptly after the vote is taken and in no event later than ninety days thereafter,  
10          if the proposition for conversion was approved by such vote, the credit union shall  
11          take such action as may be necessary under the applicable federal law to make it  
12          a federal credit union, and within ten days after receipt of the federal credit union  
13          charter there must be filed with the state credit union board a copy of the charter  
14          thus issued. Upon such filing, the credit union must cease to be a state credit  
15          union.
- 16          d.    Upon ceasing to be a state credit union, such credit union is no longer subject to  
17          any of the provisions of the North Dakota credit union law. The successor federal  
18          credit union is vested with all of the assets and shall continue to be responsible  
19          for all of the obligations of the state credit union to the same extent as though the  
20          conversion had not taken place.
- 21          2.    a.    A federal credit union, organized under the laws of the United States may be  
22          converted into a state credit union by:
- 23               (1)   Complying with all federal requirements requisite to enabling it to convert to  
24               a state credit union or to cease being a federal credit union;
- 25               (2)   Filing with the state credit union board proof of such compliance,  
26               satisfactory to the commissioner;
- 27               (3)   Filing with the commissioner an organization certificate and bylaws, both in  
28               triplicate, as required by section 6-06-02; and
- 29               (4)   Granting discretionary authority to the commissioner to conduct an  
30               examination prior to the conversion date.

- 1           The commissioner shall set fees for such examination at an hourly rate sufficient  
2           to cover all reasonable expenses of the department of financial institutions  
3           associated with the examination. Fees must be collected by the commissioner,  
4           transferred to the state treasurer, and deposited in the financial institutions  
5           regulatory fund.
- 6           b. When the commissioner has been satisfied that all of such requirements and all  
7           other requirements of the North Dakota law have been complied with, the  
8           commissioner shall notify the applicants and the state credit union board of that  
9           fact, and the board shall instruct the secretary of state to issue a charter in  
10          accordance with section 6-06-02. Upon issuance of the charter, the federal credit  
11          union shall become a state credit union and ceases to be a federal credit union.  
12          The state credit union is vested with all of the assets and shall continue to be  
13          responsible for all of the obligations of the federal credit union to the same extent  
14          as though the conversion had not taken place.
- 15          3. ~~After July 31, 2009, a state credit union may convert to a building and loan association~~  
16          ~~by complying with the following requirements:~~
- 17          a. ~~The proposal for a conversion first must be approved and a date set for a vote on~~  
18          ~~the proposal by the members either at a meeting to be held on such date or by~~  
19          ~~written ballot to be filed on or before such date by a majority of the directors of~~  
20          ~~the credit union. Approval of the proposal for the conversion must be by the~~  
21          ~~affirmative vote of two-thirds of the members voting.~~
- 22          b. ~~A state credit union that proposes to convert to a building and loan association~~  
23          ~~shall submit notice to each of the credit union's members who are eligible to vote~~  
24          ~~on the matter of the credit union's intent to convert:~~
- 25                 (1) ~~Ninety days before the date of the member vote on the conversion;~~  
26                 (2) ~~Sixty days before the date of the member vote on the conversion; and~~  
27                 (3) ~~Thirty days before the date of the member vote on the conversion.~~
- 28          c. ~~A state credit union that proposes to convert to a building and loan association~~  
29          ~~shall submit a notice to the state credit union board of the credit union's intent to~~  
30          ~~convert at least ninety days before the date of the completion of the conversion.~~

- 1           d. ~~Upon completion of a conversion, the state credit union is no longer subject to~~  
2           ~~any of the provisions of this chapter.~~
- 3           e. ~~A director or senior management official of a state credit union may not receive~~  
4           ~~any economic benefit in connection with a conversion of the state credit union~~  
5           ~~other than reasonable director fees and reasonable compensation and other~~  
6           ~~benefits paid to directors or senior management officials of the converted~~  
7           ~~institution in the ordinary course of business. As used in this subdivision, the term~~  
8           ~~senior management official means a chief executive officer, an assistant chief~~  
9           ~~executive officer, a chief financial officer, and any other senior executive officer as~~  
10           ~~may be defined by the state credit union board.~~
- 11           f. ~~Before January 1, 2009, the state credit union board shall adopt rules applicable~~  
12           ~~to state credit union conversion to a building and loan association which are~~  
13           ~~consistent with the conversion rules of the national credit union administration.~~
- 14           g. ~~The commissioner shall review the methodology by which the conversion~~  
15           ~~member vote was taken and procedures applicable to the member vote. The~~  
16           ~~commissioner shall report the commissioner's findings to the state credit union~~  
17           ~~board. If the commissioner or the state credit union board disapproves of the~~  
18           ~~methods by which the conversion member vote was taken or procedures~~  
19           ~~applicable to the member vote, the member vote must be retaken as directed by~~  
20           ~~the commissioner or the state credit union board.~~A credit union may convert to a  
21           cooperative financial institution following the procedures outlined in section 10 of  
22           this Act.

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

25           **6-07.2-09. Payment of claims.**

- 26           1. All claims against the institution's estate, proved to the receiver's satisfaction or  
27           approved by the circuit court, must be paid in the following order:
- 28           a. Administration expenses, including compensation of each regular officer or  
29           employee of the receiver for the time actually devoted to the liquidation of the  
30           institution at an amount not to exceed the compensation paid to the officer or  
31           employee for the performance of the officer's or employee's regular duties; actual



1 expenses of each regular officer and employee necessarily incurred in the  
2 performance of the officer's or employee's duties; compensation and expenses of  
3 any special representative, assistant, accountant, agent, or attorney employed by  
4 the receiver; court costs; and if the commissioner is acting as receiver, such  
5 reasonable general overhead expenses as may be incurred by the commissioner  
6 in the liquidation of the affairs of the institution which shall be ascertained,  
7 determined, and fixed by the commissioner.

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

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

12 d. Other general liabilities.

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

14 f. Equity capital securities.

15 g. For credit unions and cooperative financial institutions, pro rata distribution to  
16 members computed based on the total amount in each member's ~~account~~deposit  
17 accounts as of the date of liquidation.

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

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

22 **6-07.2-19. Voluntary liquidation of a credit union or cooperative financial institution.**

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

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

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

- 1                   (2) The minutes of the meeting must show the number of members present and  
2                   the number that voted for and against liquidation.
- 3                   b. If approval by a majority of all members of a credit union is not obtained at the  
4                   meeting of members, authorization for voluntary liquidation may be obtained by  
5                   having a majority of members sign a statement in substantially the following form:  
6                   We the undersigned members of the \_\_\_\_\_ Credit Union, Charter No. \_\_\_\_\_,  
7                   hereby request the dissolution of our credit union.
- 8                   c. If approval by a majority of all members of a cooperative financial institution is not  
9                   obtained at the meeting of members, authorization for voluntary liquidation may  
10                   be obtained by having a majority of members sign a statement in substantially  
11                   the following form: We the undersigned members of the \_\_\_\_\_ cooperative  
12                   financial institution, Charter No. \_\_\_\_\_, hereby request the dissolution of our  
13                   cooperative financial institutions.
- 14                  2. The board of directors of a credit union or cooperative financial institution in voluntary  
15                  liquidation:
- 16                  a. Is responsible for conserving the assets, for expediting the liquidation, and for  
17                  equitably distributing the assets to members.
- 18                  b. Shall determine all persons handling or having access to funds of the credit union  
19                  or cooperative financial institution are adequately covered by surety bond.
- 20                  c. Shall appoint a custodian for the credit union's or cooperative financial  
21                  institution's records that are to be retained for five years after the charter is  
22                  canceled.
- 23                  d. May appoint a liquidating agent and delegate part or all of these responsibilities  
24                  to the agent and may authorize reasonable compensation for the agent's  
25                  services. A liquidating agent must be adequately bonded for faithful performance  
26                  of the agent's duties, and the coverage must remain in effect or the discovery  
27                  period extended for at least four months after the final distribution of assets.
- 28                  3. The supervisory committee, a certified public accountant hired by the supervisory  
29                  committee, or if the bylaws do not establish a supervisory committee, a certified public  
30                  accountant hired by the board of directors, is responsible for making periodic audits of

- 1           the credit union's or cooperative financial institution's records, at least quarterly, during  
2           the period of liquidation.
- 3           4. Within three days after the decision of the board of directors to submit the question of  
4           liquidation to the members, the president shall notify the commissioner and the  
5           regional director of the national credit union administration or federal deposit insurance  
6           corporation as appropriate in writing, setting forth in detail:
- 7           a. The reasons for the proposed action;  
8           b. The previous month-end balance sheet and income statement; and  
9           c. A written plan for the liquidation of assets, payment of creditors, and payment of  
10           shares to be completed within one year of the date of membership approval to  
11           liquidate.
- 12          5. Within three days after the action of the members on the question of liquidation, the  
13          president shall notify the commissioner and the regional director of the national credit  
14          union administration or federal deposit insurance corporation as appropriate in writing  
15          as to whether a majority of the members approved the proposed liquidation.
- 16          6. Within ten days of the decision to liquidate by the board of directors, a notice of the  
17          decision must be handed to each member, electronically distributed, or mailed to the  
18          member's last-known address to confirm in writing the shares and deposits held by the  
19          member in the credit union or cooperative financial institution and the loans owed by  
20          the member to the credit union or cooperative financial institution.
- 21          7. Within ten days of the approval of a majority of the members of a credit union or  
22          cooperative financial institution of a proposal to liquidate, the board of directors of the  
23          credit union or cooperative financial institution shall have prepared and mailed to all  
24          creditors a notice of liquidation containing instructions to present claims to the credit  
25          union or cooperative financial institution within ninety days for payment. New creditor  
26          claims subsequent to this notice which are necessary for the continued operation of  
27          the credit union during liquidation must continue to be paid upon authorization of the  
28          board of directors or liquidating agent.
- 29          8. Immediately upon the decision of the membership to liquidate, the credit union or  
30          cooperative financial institution may continue to do all things under the original  
31          corporate name of the institution, to sue and be sued, to execute conveyances and

1 other instruments, to take, hold, and own property, and to do all other things as may  
2 be necessary to realize upon the institution's remaining assets for the benefit of the  
3 institution's members, but not to engage or continue in any new or other business  
4 under the institution's charter or otherwise. At the discretion of the board of directors or  
5 the liquidating agent, transactions upon membership transactional accounts may  
6 continue to be honored up to the federal insurance limit until the accounts are sold or  
7 otherwise liquidated.

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

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

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

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

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

1 office a schedule of unpaid claims. The board of directors of the credit union or  
2 cooperative financial institution or the liquidating agent if appointed shall report money  
3 in the account of a member who failed to surrender their passbooks or confirm their  
4 balances, final distribution checks not cashed within one hundred twenty days, and  
5 any unpaid claims to the unclaimed property division of the board of university and  
6 school lands pursuant to chapter 47-30.2.

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

9 **6-08-08.1. Sale or purchase of associations, banking institutions, or holding**  
10 **companies - Notification to commissioner - Hearing.**

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

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