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## STATE BANKS AND CREDIT UNIONS

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# State Banks and Credit Unions

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## I. Introduction

### A. Overview

The purpose of this Legislative Guide is to provide a general overview of statutory provisions governing state-chartered banks and credit unions in Iowa. The dual banking system in the United States provides banks and credit unions with the choice to organize under either federal or state law. This Guide focuses on banks and credit unions chartered under Iowa law.

Unless otherwise stated, references made to the Iowa Code in this Legislative Guide are to the 2018 Iowa Code. References to the Iowa Administrative Code and case law are to references published as of September 2017.

### B. Historical Background

#### 1. State Banks

Iowa's history frames the context of banking in its initial years of statehood. At the time that Iowa entered the Union in 1846, the regulation of banks was left to the individual states.<sup>1</sup> During this period of time referred to as the Free Banking Era, many states enacted free banking laws, which permitted almost anyone to establish a bank if the person met minimum capital requirements and deposited securities with the state government to guarantee the notes issued by the bank.<sup>2</sup> Lenient banking laws gave rise to the problem of "wildcat" banks, or banks that issued more notes than they could reasonably redeem.<sup>3</sup> To prevent the proliferation of wildcat banking in Iowa, Article IX of the Iowa Constitution of 1846 expressly prohibited the creation of corporations with banking privileges.<sup>4</sup>

Despite the constitutional prohibition against banking in Iowa, a high demand for banking services motivated early bankers to establish unauthorized private banking houses.<sup>5</sup> Iowa banker Hoyt Sherman once described the complex role of the early Iowa banker as such:

The sale of exchange, care of deposits, discounts and collections, all afforded too little business in themselves to furnish even a modest living, and their time was pieced out by acting as a real estate agent, a conveyancer, practicing law, serving as justice of the peace, a notary public, keeping a general store, or other branch of trade or profession, according to the taste of the individual banker, or the needs of trade.<sup>6</sup>

One of the primary activities for these early bankers was "entering land on time," or buying government land and reselling the land to settlers on credit at high interest rates, usually 40 percent.<sup>7</sup>

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<sup>1</sup> Federal Reserve Bank of Philadelphia, *The State and National Banking Eras*, p. 3 (2016), [www.philadelphiafed.org/-/media/publications/economic-education/state-and-national-banking-eras.pdf](http://www.philadelphiafed.org/-/media/publications/economic-education/state-and-national-banking-eras.pdf) (last visited November 29, 2018).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 5-6.

<sup>4</sup> Howard Hall Preston, *History of Banking in Iowa*, 46-47 (Benjamin F. Shambaugh ed., 1922).

<sup>5</sup> *Id.* at 48.

<sup>6</sup> Hoyt Sherman, *Early Banking in Iowa*, 5 *Annals of Iowa* 1, 4-5 (1901).

<sup>7</sup> *Id.* at 2.

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In 1857, the people of Iowa voted to hold a constitutional convention so as to amend the Iowa Constitution in order to legalize banking.<sup>8</sup> This decision was fueled by the attitude that the total prohibition against banking did not prevent the problems caused by banks.<sup>9</sup> The constitutional convention of 1857 adopted Article VIII of the Iowa Constitution, authorizing the establishment of a State Bank and the enactment of a free banking law if approved by vote of the people.<sup>10</sup> Subsequently, the people of Iowa voted in favor of a free banking bill at a special election in 1858.<sup>11</sup> However, due to the restrictive provisions of the law, not a single bank was established under the law and it was eventually repealed in 1870.<sup>12</sup>

A bill to establish the State Bank of Iowa was introduced in the Iowa General Assembly at the same time as the Iowa free banking law.<sup>13</sup> The bill passed the General Assembly and the people of Iowa voted to approve the bill at a special election in 1858.<sup>14</sup> The primary purpose of the State Bank of Iowa was to establish a sound currency in Iowa and to supervise currency circulating in the state.<sup>15</sup> The State Bank was organized as a federation of branches, “each having its own capital, stockholders, directors, and corporate charter.”<sup>16</sup> The overall control of the State Bank rested in a board of directors comprised of “one director from each branch and three directors representing the state.”<sup>17</sup>

The State Bank of Iowa circulated a large volume of notes in Iowa and elsewhere, over \$1.5 million at its maximum in 1864, despite competition from notes issued from banks in other states.<sup>18</sup> The State Bank was also a source of “considerable profit” to its owners in the form of dividends.<sup>19</sup> Despite its success, as with the state banks of other states, the passage of the National Bank Act led to the dissolution of the State Bank of Iowa and the retirement of its currency.<sup>20</sup>

The Civil War served as the catalyst for the creation of the dual banking system operating in the United States to this day.<sup>21</sup> The National Acts of 1863 and 1864 established a permanent federal role in the banking system, creating a uniform national currency and a system of nationally chartered banks.<sup>22</sup> After the passage of the National Act of 1863, banks could choose either a national or a state charter, where state-chartered banks operate under state law and national chartered banks operate under federal law.<sup>23</sup> The First National Bank of Davenport, Iowa, was the first

<sup>8</sup> Howard Hall Preston, *History of Banking in Iowa*, 71 (Benjamin F. Shambaugh ed., 1922).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 74.

<sup>11</sup> *Id.* at 75.

<sup>12</sup> *Id.* at 82.

<sup>13</sup> *Id.* at 84.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 94, 115.

<sup>16</sup> *Id.* at 85.

<sup>17</sup> *Id.* at 86.

<sup>18</sup> *Id.* at 114.

<sup>19</sup> *Id.* at 121.

<sup>20</sup> *Id.* at 114-118.

<sup>21</sup> Comptroller of the Currency Administrator of National Banks, *National Banks and the Dual Banking System*, p. 6 (2003), [www.occ.gov/publications/publications-by-type/other-publications-reports/national-banks-and-the-dual-banking-system.pdf](http://www.occ.gov/publications/publications-by-type/other-publications-reports/national-banks-and-the-dual-banking-system.pdf) (last visited November 29, 2018).

<sup>22</sup> Christine E. Blair and Rose M. Kushmeider, *Challenges to the Dual Banking System: The Funding of Bank Supervision*, 18 FDIC Banking Rev., no. 1, 2006 at 2.

<sup>23</sup> *Id.*



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national chartered bank in the country established after the passage of the National Banking Act.<sup>24</sup>

Following the passage of the National Banking Acts—and the subsequent demise of Iowa’s state bank and free banking law—provisions regulating state-chartered banks were incorporated into the Iowa Code of 1873.<sup>25</sup> In 1917, the Iowa General Assembly enacted a law establishing the “Banking Department of Iowa” as a separate department for the regulation of Iowa’s state banks, to be headed by the Superintendent of Banking.<sup>26</sup> The Iowa Banking Act of 1969 reorganized the Iowa Code provisions relating to the regulation of state banks into a single chapter of general application.<sup>27</sup> The department was reorganized as the Division of Banking within the Department of Commerce (DOC) in 1986. Iowa Code chapter 524, the Iowa Banking Act, contains the current provisions relating to the regulation of state banks.

### 2. State Credit Unions

The development of credit unions in the United States has its origins in mid-19th century Europe, where credit cooperative societies were established to serve small groups of farmers.<sup>28</sup> Unlike banks, these financial institutions were organized as nonprofit cooperatives.<sup>29</sup> The distinguishing characteristics of these early cooperative societies, which later became integrated into the model for modern-day credit unions, included having democratic governance, assigning one vote per member regardless of the size of that member’s deposits, having members select the boards of directors, and being volunteer-based.<sup>30</sup>

The credit union movement took off in the United States at the start of the 20th century.<sup>31</sup> The first credit union in the United States opened in New Hampshire in 1909.<sup>32</sup> That same year, Massachusetts became the first state to enact state credit union legislation.<sup>33</sup> In the 1920s, the credit union movement gained momentum in the United States by providing families with a source of inexpensive credit in order to afford new products of the time, such as automobiles and washing machines.<sup>34</sup> In 1934, Congress enacted the Federal Credit Union Act, establishing a national credit union system to regulate national credit unions.<sup>35</sup> Similar to the dual banking system, the Act allowed credit unions to be chartered under either federal or state law.

The Iowa General Assembly passed the Iowa Credit Union Act in 1925 to regulate state credit unions.<sup>36</sup> The Act made the Superintendent of Banking responsible for supervising and regulating state credit unions.<sup>37</sup> In 1979, the Iowa

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<sup>24</sup> Howard Hall Preston, *History of Banking in Iowa*, 130 (Benjamin F. Shambaugh ed., 1922).

<sup>25</sup> *Id.* at 137.

<sup>26</sup> *Id.* at 197-198.

<sup>27</sup> 1969 Iowa Acts, ch. 273.

<sup>28</sup> National Credit Union Administration, A Brief History of Credit Unions, [www.ncua.gov/About/Pages/history.aspx](http://www.ncua.gov/About/Pages/history.aspx) (last visited November 29, 2018).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Iowa Division of Credit Unions, About Us, [creditunions.iowa.gov/about-us](http://creditunions.iowa.gov/about-us) (last visited Nov. 15, 2018); 1925 Iowa Acts, ch. 176.

<sup>37</sup> Iowa Division of Credit Unions, About Us, [creditunions.iowa.gov/about-us](http://creditunions.iowa.gov/about-us) (last visited Nov. 15, 2018).





Legislature established the Department of Credit Unions, to be headed by the Superintendent of Credit Unions.<sup>38</sup> The department was reorganized as the Division of Credit Unions within the DOC in 1986.<sup>39</sup> Iowa Code chapter 533, the Iowa Credit Union Act, contains the provisions relating to the regulation of state credit unions.

## II. Regulation of State Banks — Iowa Code Chapter 524

### A. General Provisions

#### 1. Persons Authorized to Engage in Business of Banking

Only state banks chartered under Iowa Code chapter 524 or national banks chartered under federal law may engage in the business of banking in Iowa. The law broadly defines the “business of banking” to mean the business generally done by banks. A person doing business in the state cannot use any derivative of the term “bank” or “trust” in any manner which would give the impression that the person is authorized to engage in the business of banking, unless chartered as a state or national bank, bank holding company, or savings and loan holding company. This does not apply to “educational banks,” which are formed by accredited schools engaging in the receipt of deposits solely for educational purposes.<sup>40</sup>

#### 2. Bankers’ Banks

A state bank may be organized as a bankers’ bank, which refers to a bank whose shares are owned exclusively by another bank and which engages exclusively in providing services for banks. The rules applicable to a state bank apply to a bankers’ bank. A state bankers’ bank also has the same powers as a bankers’ bank chartered under federal law. A state bank may acquire the shares in one or more bankers’ banks in a total amount not to exceed 5 percent of the state bank’s aggregate capital. However, a state bank is prohibited from owning more than 5 percent of any class of voting shares of a bankers’ bank.<sup>41</sup>

### B. Banking Division

#### 1. Purpose

The Banking Division of the DOC is responsible for regulating state banks in Iowa.<sup>42</sup>

#### 2. Funding

All expenses required for the operation of the division are paid from fees provided under law and appropriations from the General Assembly, which are deposited into the DOC revolving fund. The Superintendent of Banking is responsible for the receipt and disbursement of fees and other moneys required for the operation of the division.<sup>43</sup>

<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> Iowa Code §§524.103(12), 524.107.

<sup>41</sup> Iowa Code §§524.103(9), 524.109.

<sup>42</sup> Iowa Code §524.206.

<sup>43</sup> Iowa Code §524.207(1), (2), (4).



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### 3. Superintendent of Banking

#### a. Appointment.

The Governor appoints a superintendent of banking to oversee the Banking Division, subject to Senate confirmation. The superintendent must have at least five years of experience as an executive officer in a bank. The superintendent serves a term of four years and receives a salary fixed by the Governor. If the position becomes vacant, the chief of the Bank Bureau of the division serves as acting superintendent until a new person is appointed.<sup>44</sup>

#### b. Duties.

The superintendent has the duty to regulate state banks and administer and execute all laws, rules, and regulations relating to state banks.<sup>45</sup> The superintendent has the power to adopt rules to carry out the requirements of Iowa Code chapter 524.<sup>46</sup> In addition, Iowa Code chapter 524 provides the superintendent with the following powers and duties:

- Appoint examiners and other employees for the Banking Division as deemed necessary.<sup>47</sup>
- Acquire insurance and surety bonds to insure against liability pursuant to Iowa Code chapter 64.<sup>48</sup>
- Subpoena witnesses and examine persons under oath on any subject relating to the superintendent's oversight.<sup>49</sup>
- Prepare and submit an annual report to the Governor summarizing the division's work from the previous year.<sup>50</sup>
- Undertake examinations of state banks as deemed necessary.<sup>51</sup>
- Establish fees based on the costs and expenses incurred in the discharge of the division's operations.<sup>52</sup>
- Call meetings of the board of directors of any state bank whenever deemed necessary.<sup>53</sup>
- Issue orders and hold hearings whenever the superintendent believes that a state bank has or will engage in an unsafe or unlawful manner.<sup>54</sup>
- Take over the management of a state bank if the superintendent finds that the state bank has engaged in an unsafe or unlawful manner.<sup>55</sup>

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<sup>44</sup> Iowa Code §§524.201-524.203.

<sup>45</sup> Iowa Code §524.213. In addition, the superintendent of banking has the duty to regulate other entities, such as real estate appraisal management companies in accordance with Iowa Code chapter 543E. Please note that this Guide only describes the superintendent's duties with respect to state banks.

<sup>46</sup> Iowa Code §524.213.

<sup>47</sup> Iowa Code §524.208.

<sup>48</sup> Iowa Code §524.210.

<sup>49</sup> Iowa Code §524.214.

<sup>50</sup> Iowa Code §524.216.

<sup>51</sup> Iowa Code §524.217.

<sup>52</sup> Iowa Code §524.219.

<sup>53</sup> Iowa Code §524.222.

<sup>54</sup> Iowa Code §524.223.

<sup>55</sup> Iowa Code §524.224.



- Enforce the Iowa Consumer Credit Code, Iowa Code chapter 537, with respect to state banks, and provide an annual report to the Administrator of the Consumer Credit Code.<sup>56</sup>
- Issue interim cease and desist orders if a state bank or any director, officer, employee, or shareholder is engaging or about to engage in an unsafe or dishonest act that is likely to cause a loss of assets or earnings.<sup>57</sup>
- Temporarily suspend any rules or laws to allow state banks to respond to emergencies.<sup>58</sup>

## 4. State Banking Council

The State Banking Council advises the superintendent. The council consists of the superintendent, who serves as an ex officio member and chairperson, and six other members appointed by the Governor. No more than five of the members can be engaged in the business of banking in an executive role. Each member, except for the superintendent, serves a staggered term of four years and does not receive a salary. The council must meet at least once each calendar quarter.<sup>59</sup>

## 5. Records of Banking Division

Records relating to the supervision and regulation of state banks are not public records or open for examination by the public. No such records can be offered in evidence in court or subject to subpoena, except in certain circumstances.<sup>60</sup>

## 6. Prohibitions

Banking Division employees are prohibited from obtaining certain loans or performing certain services. A division employee convicted of a felony must be immediately discharged from employment and is forever disqualified from employment in the division. Division employees are prohibited from disclosing information relating to the supervision and regulation of a state bank or person licensed by the division, except when ordered by a court.<sup>61</sup>

## C. State Bank Obligations

### 1. Payment of Fees

A state bank must pay fees established by the Banking Division when they are due.<sup>62</sup> Failing to do so within 10 days after the date of billing subjects the state bank to an additional charge equal to 5 percent of the amount of the fees for each day that payment is late.<sup>63</sup>

### 2. Reports to Superintendent

A state bank must provide a report of its condition to the superintendent within 30 days after the end of each calendar quarter, or whenever a special report is due

<sup>56</sup> Iowa Code §524.227.

<sup>57</sup> Iowa Code §524.228.

<sup>58</sup> Iowa Code §524.229.

<sup>59</sup> Iowa Code §524.205.

<sup>60</sup> Iowa Code §524.215.

<sup>61</sup> Iowa Code §§524.211-524.212.

<sup>62</sup> Iowa Code §524.219(1); For a list of the Banking Division's fees, effective as of August 15, 2018, see Iowa Division of Banking Application Fee Schedule, [www.idob.state.ia.us/bank/Docs/applica/pdf/fees-bb1.pdf](http://www.idob.state.ia.us/bank/Docs/applica/pdf/fees-bb1.pdf) (last visited November 29, 2018).

<sup>63</sup> Iowa Code §524.219(3).



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as requested by the superintendent. The report must be verified by the oath of two of the state bank's officers and attested by at least two of its directors.<sup>64</sup>

### 3. Preservation of Records

A state bank is not required to preserve its records for longer than seven years from the time that the record was made or filed. However, account records showing unpaid balances due to depositors cannot be destroyed. A copy of an original record can be kept in lieu of the original and is treated the same as an original record in judicial or administrative proceedings.<sup>65</sup>

### 4. Accounts Insurance

A state bank, as a condition of maintaining its privilege of organization, must maintain insurance to protect each depositor against loss. A state bank must obtain insurance from the Federal Deposit Insurance Corporation (FDIC) or another approved insurance plan.<sup>66</sup>

### 5. Taxation

A state bank must pay an annual franchise tax equal to 5 percent of the state bank's net income received or accrued during the taxable year.<sup>67</sup> State credit unions are not subject to the franchise tax imposed on state banks, but instead must pay a moneys and credits tax.<sup>68</sup>

## D. Incorporation

### 1. Articles of Incorporation

A state bank may be incorporated or organized as a limited liability company (LLC) by one or more people 18 years of age or older, a majority of whom must be U.S. citizens and residents of Iowa. The articles of incorporation must include the state bank's name, location, number of shares and par value of such shares, information about the initial board of directors, information about the incorporators, the specific month when the annual meeting will be held, and verification that the state bank is incorporating for the purpose of conducting the business of banking in perpetual duration.<sup>69</sup>

### 2. Incorporation Process

The following steps are taken for a proposed state bank to become incorporated or organized:<sup>70</sup>

- The incorporators or organizers of the proposed state bank must submit an application to the superintendent, which includes the articles of incorporation and any applicable fees.
- The incorporators or organizers must publish a notice once each week for 2 consecutive weeks in an applicable newspaper within 30 days of the acceptance of the application. Within 30 days of the second notice, interested

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<sup>64</sup> Iowa Code §524.220.

<sup>65</sup> Iowa Code §524.221(1).

<sup>66</sup> Iowa Code §524.816(1).

<sup>67</sup> Iowa Code §422.63.

<sup>68</sup> See Iowa Code §533.329.

<sup>69</sup> Iowa Code §§524.301-524.302A.

<sup>70</sup> See Iowa Code §§524.303-524.306.



parties may submit comments about the application to the superintendent or request a hearing on the application.

- After receiving the application, the superintendent must conduct an investigation. The superintendent must approve or deny the application within 180 days after the application is accepted and must notify the incorporators or organizers of the approval or denial of the application.
- If the application is approved, the articles of incorporation are filed with the Secretary of State. The Secretary of State's filing marks the corporate or organizational existence of the state bank.

### 3. Authorization to Do Business

Once a state bank is incorporated or organized, its initial board of directors must hold an organizational meeting to elect officers, adopt bylaws, and conduct any other business brought before the board. However, the state bank cannot engage in the business of banking until it receives authorization to do business from the superintendent upon a finding that the state bank has complied with all of the requirements of Iowa Code chapter 524. Within two weeks after the authorization to do business is issued, the state bank must publish a notice in an applicable newspaper. Proof that this notice was published must be provided to the superintendent.<sup>71</sup>

### 4. Name

The name of a state bank must include the word "bank," and may include the word "trust" or "state." A state bank may apply to the Secretary of State to reserve the exclusive use of its name. If the name is available, the Secretary of State will reserve the name for the state bank's exclusive use for a nonrenewable 120-day period. A state bank may also use a fictitious name to transact business by filing the fictitious name with the Secretary of State.<sup>72</sup>

### 5. Location

The location of a state bank's principal place of business must be within city limits. A state bank may change the location of its principal place of business by submitting an application with the superintendent. The state bank must also amend its articles of incorporation to reflect the change and publish a notice of the change in an applicable newspaper. The superintendent must start an investigation regarding the state bank's application within 30 days of its acceptance and make a decision within 180 days.<sup>73</sup>

### 6. Offices

A state bank can open any number of bank offices in Iowa with the approval of the superintendent. A state bank may also establish bank offices in other states, subject to the approval of the superintendent. The superintendent is responsible for regulating and supervising all out-of-state offices of a state bank. An out-of-state bank office may engage in activities authorized for a bank office under the laws of

<sup>71</sup> Iowa Code §§524.307-524.309.

<sup>72</sup> Iowa Code §524.310.

<sup>73</sup> Iowa Code §524.312.



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that other state if approved by the superintendent. All transactions of a bank office must be immediately transmitted to the state bank's principal place of business.<sup>74</sup>

### E. Capital Structure

#### 1. Minimum Capital Requirements

A state bank existing on July 1, 1995, must maintain a minimum capital structure required by law prior to that date.<sup>75</sup> A state bank incorporated after July 1, 1995, or organized after July 1, 2004, must maintain a minimum capital structure required by the FDIC or a greater amount if the superintendent determines a greater amount is necessary.<sup>76</sup> Prior to receiving authorization to do business, a state bank must establish paid-in surplus and undivided profits as required by the superintendent.<sup>77</sup>

#### 2. Capital Notes and Debentures

A state bank doing business for at least five years following its original authorization may issue capital notes and debentures if it receives the approval of the superintendent and the affirmative vote of a majority of the state bank's shares entitled to vote. The terms and conditions of the capital notes and debentures must be clearly set forth and must receive the prior approval of the superintendent. The aggregate amount of all capital notes and debentures issued cannot exceed, at any one time, 25 percent of the state bank's aggregate capital. Any payment of principal on a capital note or debenture requires the superintendent's approval.<sup>78</sup>

#### 3. Change in Capital Structure

##### a. Increase in Capital Structure.

A state bank incorporated as a stock corporation may increase its capital structure by the sale of authorized but unissued shares, the transfer of surplus or undivided profits to capital for authorized but unissued shares, the transfer of undivided profits to surplus, or the issuance of common shares, preferred shares, or capital notes or debentures. The superintendent may also require an increase in the capital structure of a state bank incorporated as a stock corporation if it is necessary for the safety of its deposits.<sup>79</sup>

A state bank incorporated as a mutual corporation may increase its capital structure by accepting payments on savings and demand accounts and any other means authorized by the superintendent. The superintendent may also require an increase in the capital structure of this type of state bank if it is necessary for the safety of its deposits.<sup>80</sup>

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<sup>74</sup> Iowa Code §§524.1201, 524.1205.

<sup>75</sup> Iowa Code §§524.103(15), 524.401(1); "*capital structure*" is defined as the capital, surplus, and undivided profits of a state bank and includes the sum of any outstanding capital notes and debentures issued.

<sup>76</sup> Iowa Code §524.401(2); see 12 C.F.R. §324.10.

<sup>77</sup> Iowa Code §§524.103(45), (47), 524.401(3); "*surplus*" is defined as the aggregate of the amount originally paid in; "*undivided profits*" means the accumulated undistributed net profits of a state bank after payment of taxes and operation expenses, transfers to reserves, sustained or estimated losses, transfers to surplus and capital, and amounts declared as dividends to shareholders.

<sup>78</sup> Iowa Code §524.404.

<sup>79</sup> Iowa Code §524.405(1)-(2).

<sup>80</sup> Iowa Code §524.405(4).



## **b. Decrease in Capital Structure.**

A state bank may only decrease its capital structure or surplus with the approval of the superintendent.<sup>81</sup>

## **F. Shares, Shareholders, and Voting**

### **1. Shares**

#### **a. Authorized Shares.**

A state bank incorporated as a stock corporation must describe each class of authorized shares in its articles of incorporation. The articles of incorporation must authorize classes of shares that have unlimited voting rights and classes of shares that are entitled to receive the net assets of the state bank upon its dissolution. The articles of incorporation may authorize any classes of shares which have limited or no voting rights, are redeemable, entitle the holders to distributions, or have preference over any other class with respect to distributions. A state bank can acquire its own shares with the prior approval of the superintendent.<sup>82</sup>

#### **b. Redeemable Shares.**

Preferred shares are redeemable only by board resolution and after approval from the superintendent. If preferred shares are redeemed, the shares are canceled and are not to be reissued. A state bank which has redeemed preferred shares must file a statement of cancellation.<sup>83</sup>

#### **c. Certificates.**

Each issued share must be represented by a signed certificate. The certificate must include the state bank's name, the name of the person to whom the shares are issued, the number and class of shares and designation, if any, which the certificate represents, and the par value of each share. Additional information is required on the certificate of a state bank authorized to issue different classes or series within a class of shares. A certificate cannot be issued until the share is fully paid.<sup>84</sup>

#### **d. Subscriptions for Shares.**

A subscription for shares entered into before the state bank's incorporation is irrevocable for six months unless the agreement provides otherwise or all subscribers agree to revoke. The payment terms of subscriptions, as determined by the board of directors, must be uniform as to all shares of the same class, unless the agreement specifies otherwise. Upon the default in payment of a subscription, a state bank may either collect the amount owed as any other debt or rescind the subscription agreement and sell the shares if the debt remains unpaid after 20 days of a written demand for payment.<sup>85</sup>

<sup>81</sup> Iowa Code §524.405(3).

<sup>82</sup> Iowa Code §§524.521, 524.530.

<sup>83</sup> Iowa Code §524.521(3)(c)-(d).

<sup>84</sup> Iowa Code §524.523.

<sup>85</sup> Iowa Code §524.525.



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### e. Options for Shares.

A state bank operating as a stock corporation may grant options to its officers and employees to purchase unissued shares pursuant to a plan approved by the superintendent.<sup>86</sup>

### f. Change of Control.

Whenever a person proposes to acquire an amount of outstanding shares of a state bank that would result in control or a change in control of the state bank, the person must obtain a certificate of approval from the superintendent.<sup>87</sup>

## 2. Shareholders

### a. Liability.

A shareholder of a state bank incorporated as a stock corporation is not liable to the state bank, its creditors, or depositors except for paying the purchase price of the shares issued to that individual. A shareholder or member of a state bank incorporated as a mutual corporation cannot be held personally liable for the acts or debts of the state bank, its creditors, or depositors.<sup>88</sup>

### b. Preemptive Rights.

The shareholders of a state bank do not have a preemptive right to purchase the bank's unissued shares unless provided for in the articles of incorporation. Even if this right is authorized in the articles of incorporation, a shareholder may waive such right.<sup>89</sup>

There is no preemptive right for any shares issued to provide compensation to state bank personnel or any shares issued within six months from the state bank's date of incorporation. A shareholder without general voting rights but with preferential rights to distributions has no preemptive rights. A shareholder with general voting rights but no preferential rights has no preemptive rights unless the shares with preferential rights carry a right to subscribe for or acquire shares without preferential rights.<sup>90</sup>

Unissued shares subject to preemptive rights may be issued to any person within one year after being offered to shareholders at a price no lower than the price set for the exercise of preemptive rights. An offer at a lower price or after the one-year period is subject to the shareholders' preemptive rights.<sup>91</sup>

### c. Meetings.

Shareholder meetings must be held at the state bank's principal place of business if not otherwise specified in the articles of incorporation or bylaws. An annual shareholders meeting must be held in the month specified in the state bank's articles of incorporation. A special meeting may be called by a state bank's president, board of directors, holders of at least 10 percent of all shares entitled

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<sup>86</sup> Iowa Code §524.545.

<sup>87</sup> See Iowa Code §524.544(1); "control" is defined as the power to elect a state bank's board of directors.

<sup>88</sup> Iowa Code §524.527.

<sup>89</sup> Iowa Code §524.528(1), (2)(b).

<sup>90</sup> Iowa Code §524.528(2)(c)-(e).

<sup>91</sup> Iowa Code §524.528(2)(f).





to vote at the meeting, or anyone else as provided in the state bank's articles of incorporation or bylaws.<sup>92</sup>

A state bank must provide written notice of a shareholder meeting to each shareholder of record entitled to vote at least 10 days before the meeting, but no more than 60 days before such meeting. The notice must include the place, day, and hour of the meeting, as well as the purpose if it is a special meeting. A shareholder may waive notice requirements in writing.<sup>93</sup>

#### **d. Shareholder List.**

Each state bank must maintain an accurate list of the names and addresses of each officer, director, and shareholder, as well as the number of shares held by each. A copy of the list must be delivered to the superintendent within 10 days after the state bank's annual meeting.<sup>94</sup>

#### **e. Dividends and Distributions.**

The board of directors of a state bank may declare dividends on its outstanding shares from time to time. Dividends may be paid only out of undivided profits in cash or property. However, a dividend cannot be declared or paid if prohibited by the superintendent.<sup>95</sup>

The board of directors of a state bank may also make a pro rata distribution of unissued shares to shareholders if an amount equal to the total par value of the shares distributed is transferred to capital.<sup>96</sup>

### **3. Voting**

#### **a. Quorum.**

A majority of the shares entitled to vote present at a meeting, in person or by proxy, constitutes a quorum. If a quorum is present, the affirmative vote of a majority of the shares present and entitled to vote on the subject matter constitutes the vote of the shareholders, unless a different vote is required by law.<sup>97</sup>

#### **b. Voting of Shares.**

Each outstanding share is entitled to one vote on a matter submitted to a vote. The shares of a state bank purchased by the bank cannot be voted at any meeting. A shareholder may vote in person or by proxy as executed in writing. However, a proxy is valid only for 11 months from the date of its execution. In an election of directors, each shareholder entitled to vote has the right to vote the number of shares owned by the shareholder for as many persons as there are directors to be elected. Special rules apply to a state bank's vote of its own shares in an election of directors.<sup>98</sup>

<sup>92</sup> Iowa Code §524.532.

<sup>93</sup> Iowa Code §524.533(1)-(2).

<sup>94</sup> Iowa Code §524.541.

<sup>95</sup> Iowa Code §524.542.

<sup>96</sup> Iowa Code §524.543.

<sup>97</sup> Iowa Code §524.537(1).

<sup>98</sup> See Iowa Code §524.538.



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### c. Voting by Members in a Mutual Corporation.

All holders of savings, demand, or other accounts of a state bank operating as a mutual corporation are members of the state bank. Each member is permitted to cast one vote for each \$100, or fraction thereof, of the member's account. However, no member may cast more than 1,000 member votes.<sup>99</sup>

### d. Voting Trusts.

Any number of shareholders of a state bank may enter into a voting trust agreement for the purpose of giving a trustee the right to vote or represent their shares. However, a voting trust cannot exceed a period of 10 years. To create a voting trust, the shareholders must deliver a counterpart of the voting trust agreement to the state bank and a copy to the superintendent, and transfer their shares to the named trustee.<sup>100</sup>

### e. Voting Agreements.

Two or more shareholders may sign a voting agreement to indicate how they will vote their shares. Such an agreement is subject to a judicial order for specific enforcement.<sup>101</sup>

## G. Board of Directors

### 1. Composition

A state bank must have at least five directors, a majority of whom are residents of Iowa and U.S. citizens. Shareholders may change the overall number of directors but a decision to decrease the number of directors cannot shorten the term of any incumbent director.<sup>102</sup>

### 2. Election and Term

A state bank's shareholders must elect directors at the annual meeting. Directors serve a term of one year or until their successors are elected. However, a state bank can authorize its directors to serve staggered three-year terms in the articles of incorporation. Any vacancy in the board can be filled by the affirmative vote of the majority of the directors then in office, even if no quorum is present, for the remaining unexpired term.<sup>103</sup>

### 3. Duties

The directors of a state bank have the following duties:<sup>104</sup>

- Attend at least 75 percent of all regular board meetings held during the year.
- Employ officers and determine their compensation.
- Periodically review original records or prepared summaries regarding loans, discounts, security interests, and investments.
- Review the adequacy of internal controls and audit requirements.

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<sup>99</sup> Iowa Code §524.538A.

<sup>100</sup> Iowa Code §524.539.

<sup>101</sup> Iowa Code §524.540.

<sup>102</sup> Iowa Code §524.601.

<sup>103</sup> Iowa Code §§524.602-524.603.

<sup>104</sup> See Iowa Code §524.604(1).



- Periodically review security measures.

## 4. Liability

### a. Personal Liability in Certain Cases.

A director will be held jointly and severally liable to the state bank for any of the following actions:<sup>105</sup>

- Willfully or negligently assenting to a declaration of dividends or other distribution.
- Assenting to any distribution during dissolution without first discharging all known debts and obligations.
- Willfully or negligently assenting to an unlawful loan or extension of credit.
- Willfully or negligently assenting to any unlawful investment of funds.

### b. Defenses and Contribution.

A director will not be held personally liable if the director relied and acted in good faith on information represented to the director to be correct by an officer of the state bank or stated in a report by a certified public accountant. Furthermore, a director will not be deemed to be negligent if the director in good faith exercised the diligence, care, and skill that an ordinarily prudent person would have exercised under similar circumstances.<sup>106</sup>

A director who is held personally liable for an unlawful distribution is entitled to contribution from any shareholders who knowingly accepted such unlawful distribution in proportion to the amount received. A director who is held personally liable is also entitled to contribution from any other director found liable.<sup>107</sup>

## 5. Removal

Individual directors or an entire board of directors may be removed, with or without cause, by the affirmative vote of the holders of a majority of shares entitled to vote at an election of directors. A vote for removal of directors must occur at a shareholder meeting called for that purpose. The shareholders may fill any vacancies created by the removal at the same meeting.<sup>108</sup>

The superintendent may also order the removal of a director engaging in unlawful behavior or unsafe practices with notice and an opportunity for a hearing.<sup>109</sup>

## 6. Board Meetings

### a. Regular Meetings.

A board of directors must hold at least nine regular meetings every year, with no more than one regular meeting in a single month. Directors may participate in a meeting through the use of any means of communication.<sup>110</sup>

<sup>105</sup> See Iowa Code §524.605(1). With respect to determining whether a director has assented to a matter for purposes of holding the director personally liable, a director who is present at a board meeting where action on any matter is taken is presumed to have assented to the action unless the director's dissent is entered in the minutes of the meeting or such dissent is filed before or promptly after adjournment of the meeting. Iowa Code §524.605(2).

<sup>106</sup> Iowa Code §524.605(3).

<sup>107</sup> Iowa Code §524.605(4).

<sup>108</sup> Iowa Code §524.606(1).

<sup>109</sup> Iowa Code §524.606(2).

<sup>110</sup> Iowa Code §524.607(1).



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### **b. Special Meetings.**

Any executive officer or director of a state bank may call a special meeting. Two days' notice must be given to each director prior to the special meeting. A director's attendance or signed written waiver constitutes a waiver of the notice requirements.<sup>111</sup>

### **c. Waiver of Notice.**

Whenever any notice is required to be given to a director of a state bank, a director's attendance or signed written waiver constitutes a waiver of such notice requirements.<sup>112</sup>

### **d. Quorum.**

A majority of the board of directors constitutes a quorum to hold a meeting. The act of the majority of the directors present at a meeting with a quorum is the act of the board.<sup>113</sup>

### **e. Action Without Meeting.**

Board action may be taken without a meeting if the action is consented to by all directors. Such an action must be evidenced by a written consent describing the action taken and signed by each director, to be included in the minutes filed with the corporate records.<sup>114</sup>

## **7. Compensation**

A state bank's shareholders must determine and fix a reasonable rate of compensation for the state bank's directors. Directors may also be reimbursed for reasonable expenses incurred in the performance of their duties.<sup>115</sup>

## **8. Oath**

Prior to acting as a director, each director must take an oath that the director will diligently, faithfully, and impartially perform their duties, will not knowingly or willingly permit a violation of Iowa Code chapter 524, and that the director meets all eligibility requirements. The oath must be signed, acknowledged before an authorized officer, and delivered to the superintendent.<sup>116</sup>

## **9. Director Dealings with State Bank**

A director cannot receive a loan or extension of credit, a rate of interest on deposits, or a purchase, sale, or lease price from a state bank of which the person is a director at a lower rate or on terms which are more favorable than those offered to other customers in similar circumstances.<sup>117</sup> A director cannot purchase, sell, or lease any assets to or from a state bank of which the person is a director except upon terms which are not less favorable than those offered to other persons.<sup>118</sup>

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<sup>111</sup> Iowa Code §524.607(2)-(3).

<sup>112</sup> Iowa Code §524.607(4).

<sup>113</sup> Iowa Code §524.607(5).

<sup>114</sup> Iowa Code §524.607A(1).

<sup>115</sup> Iowa Code §524.610.

<sup>116</sup> Iowa Code §524.611.

<sup>117</sup> Iowa Code §524.612(1). A waiver of ordinary charges related to deposit accounts does not violate this requirement.

<sup>118</sup> Iowa Code §524.612(2). Any such dealing requires the prior approval of a majority of the board of directors voting in the absence of the interested director.



## 10. Prohibited Transactions

A director cannot receive anything of value, other than authorized compensation and expense reimbursement, for procuring or attempting to procure any loan or extension of credit to the state bank or investment by the state bank.<sup>119</sup>

## H. Officers and Employees

### 1. Composition

A state bank must have a president, vice president, and cashier. No more than two of these positions may be held by the same person. A state bank can have additional officers as prescribed by the articles of incorporation or bylaws. The board of directors must elect one chief executive officer (CEO), who also serves as a member of the board of directors. An individual other than a director or officer is considered an employee of the state bank.<sup>120</sup>

### 2. Personal Liability

An officer will be held personally liable for any willful or negligent violation of Iowa Code chapter 524 to the same extent as a director would be held personally liable.<sup>121</sup>

### 3. Employment and Compensation

A state bank's board of directors may fix the term length and provide for the reasonable compensation of officers. The CEO must determine employee compensation and tenure. Officers and employees may be reimbursed for reasonable expenses incurred on behalf of the state bank.<sup>122</sup>

### 4. Prohibited Transactions

An officer or employee cannot receive anything of value, other than employment compensation, for procuring or attempting to procure any loan or extension of credit to the state bank or investment by the state bank. An officer or employee may only engage in the business of banking on behalf of the state bank of which the person is an officer or employee, unless authorized to do so by the board of directors.<sup>123</sup>

### 5. Removal

The board of directors may remove an officer or employee, subject to any contract rights of that officer or employee. However, the election of an officer does not automatically create contract rights. The superintendent may also order the removal of an officer or employee engaging in any unlawful behavior or unsafe practices with notice and the opportunity for a hearing.<sup>124</sup>

## I. Banking Powers

### 1. General Powers

A state bank has the following general powers:<sup>125</sup>

- Sue and be sued in its corporate or organizational name.

<sup>119</sup>Iowa Code §524.613.

<sup>120</sup>Iowa Code §524.701.

<sup>121</sup>See Iowa Code §524.702(2).

<sup>122</sup>Iowa Code §524.703.

<sup>123</sup>Iowa Code §524.710.

<sup>124</sup>Iowa Code §§524.606(2), 524.707.

<sup>125</sup>See Iowa Code §524.801(1).



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- Use a corporate seal.
- Acquire and use real or personal property.
- Sell, grant a security interest in, or dispose of any real or personal property.
- Adopt bylaws consistent with its articles of incorporation.
- Make donations for religious, charitable, scientific, or educational purposes.
- Indemnify state bank personnel pursuant to Iowa Code chapter 490, part E.
- Elect officers or appoint agents, define their duties, and fix their compensation.
- Dissolve or cease to exist in accordance with the procedures established in Iowa Code chapter 524.
- Exercise any powers necessary and proper to achieve the purposes for which it is organized.
- Incur liabilities to achieve the purposes for which it is organized.
- Set off a customer's account against any of the customer's debts or liabilities owed to the state bank under an agreement entered into between the customer and the state bank.

### 2. Additional Powers

A state bank may exercise any of the following additional powers:<sup>126</sup>

- Become an insured bank.
- Become a member of the Federal Reserve System.
- Become a member of a clearinghouse association.
- Act as an agent or instrumentality of the United States.
- Act as an agent for a depository institution affiliate.
- Buy and sell currency and bullion.
- Acquire and hold shares in an operations subsidiary with the prior approval of the superintendent.
- Broker insurance and real estate with the prior approval of the superintendent.
- Acquire and hold a certain amount of federal home loan bank shares.
- Acquire and hold shares in the Federal Agricultural Mortgage Corporation engaged solely in the pooling of agricultural loans.
- Become a member of a bankers' bank.
- Organize, acquire, or invest in a subsidiary with the prior approval of the superintendent.
- Acquire, hold, and improve a certain amount of real estate for the sole purpose of economic or community development with the prior approval of the superintendent.
- Provide certain customer financing services for wind energy production facilities eligible for production tax credits under Iowa Code chapter 476B in

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<sup>126</sup>See Iowa Code §524.802.



a manner that maximizes the availability of production tax credits to the state bank.

- Exercise any other powers determined appropriate by the superintendent.

### 3. Business Property

A state bank has the power to acquire or lease personal property for its banking purposes. A state bank may acquire or lease real property for current or future use in its operations with the approval of the superintendent. A state bank may acquire and hold shares in corporations engaged in certain operations with the prior approval of the superintendent.<sup>127</sup>

The book value of all such real and personal property acquired by a state bank cannot exceed 40 percent of the state bank's aggregate capital. A state bank must dispose of any real property no longer used for banking purposes or not used for banking purposes within a reasonable period of time.<sup>128</sup>

### 4. Deposits

A state bank may receive money for deposit and may require the payment of interest on such deposit, as well as repay the deposit, in accordance with the terms and conditions of its acceptance, which must be provided to each customer. No change in the terms and conditions to pay more interest may be applied retroactively. A state bank cannot accept deposits or renew certificates of deposit when it is insolvent.<sup>129</sup>

A state bank may receive deposits from minors, fiduciaries, corporations, trusts, estates, or from one or more persons. When a deposit is made in the names of two or more persons and is payable to any one of them or to the survivor or survivors, the deposit and any interest or part may be paid to any one of the persons whether the others are living or not. Receipt of payment by any such person discharges the state bank for payment made.<sup>130</sup>

A state bank is not required, absent a court order, to recognize any claim of authority over a deposit account other than the customer in whose name the account is held or an individual or group of individuals who are authorized to control the account pursuant to a valid agreement on file with the state bank. To require a state bank to recognize an adverse claim of authority over a deposit account, the claimant must either serve the state bank with a court order or deliver a bond to the state bank indemnifying it from any liability.<sup>131</sup>

### 5. Safe Deposit Boxes

#### a. Authority.

A state bank may lease safe deposit boxes for the storage of property on terms and conditions prescribed by the bank. A state bank may limit its liability as set forth in the lease and agreement. A state bank may lease a safe deposit box to a minor. A state bank cannot incur liability from honoring the provisions

<sup>127</sup>Iowa Code §524.803(1).

<sup>128</sup>Iowa Code §524.803(2)-(3).

<sup>129</sup>Iowa Code §524.805(1)-(4).

<sup>130</sup>Iowa Code §§524.805(5)-(8), 524.806.

<sup>131</sup>Iowa Code §524.808.



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of a power of attorney of a customer covering a safe deposit lease in the event of the death or incompetence of the customer until it receives written notice of the death or written notice of adjudication by a court of the incompetence of the customer.<sup>132</sup>

### **b. Access.**

A state bank must permit any person authorized by a court order access to a safe deposit box at the bank. Absent a court order, the following persons may access the contents of a deceased customer's safe deposit box:<sup>133</sup>

- A co-owner or co-lessee of the safe deposit box.
- A person designated access upon the customer's death in the agreement or lease.
- An executor or administrator of the deceased customer's estate upon delivery of a certified copy of a letter of appointment.
- A person named as an executor in a copy of a purported will, provided that access is limited to the removal of the purported will and nothing else.
- A trustee of a trust created by the deceased customer upon the delivery of a certification of trust or a copy of the trust with the trustee's affidavit.

If a person authorized above fails to request access to the safe deposit box within 30 days following the death of the customer, the state bank may open the safe deposit box in the presence of two bank employees. The bank employees present must remove any purported will from the safe deposit box and make a copy of the will for the state bank's records. The state bank must then send the original will to the district court in the county of the deceased customer's last known residence.<sup>134</sup>

The state bank may rely upon reasonable proof of the death of a customer for deciding whether to open the customer's safe deposit box. A state bank is under no duty and cannot be held liable for failing to inquire about the death of a customer in regard to the customer's safe deposit box. A state bank has no duty to open the safe deposit box of a deceased customer.<sup>135</sup>

### **c. Adverse Claims.**

A state bank is not required, absent a court order, to recognize any claim of authority over property held in safe deposit other than the customer in whose name the property is held or an individual or group of individuals who are authorized to have access to such property under a valid agreement. To require a state bank to recognize an adverse claim of authority over property held in safe deposit, the claimant must either serve the state bank with a court order or deliver a bond to the state bank indemnifying it from any liability.<sup>136</sup>

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<sup>132</sup>Iowa Code §524.809.

<sup>133</sup>See Iowa Code §524.810A(1).

<sup>134</sup>Iowa Code §524.810A(3).

<sup>135</sup>Iowa Code §524.810A(4).

<sup>136</sup>Iowa Code §524.811.





## **d. Remedies for Nonpayment of Rent on Safe Deposit Box.**

A state bank has a lien on the contents of a safe deposit box for past due rent and any expenses incurred in opening and replacing the locks of such safe deposit box. If rent is not paid within six months from when it is due, the state bank must mail notice to the customer stating that if the amount due for rent is not paid by a specific day, which must be at least 30 days after the date of mailing the notice, the contents of the safe deposit box will be removed. If the customer fails to pay rent pursuant to such notice, the state bank may open and remove the contents of the safe deposit box in the presence of two of its officers. If the contents are not claimed within two years after their removal, the state bank may sell the contents in order to pay the past due rent and other expenses.<sup>137</sup>

## **e. Receipt of Property for Safekeeping.**

A state bank can accept property for safekeeping. A state bank accepting property for safekeeping must purchase reasonable insurance coverage to insure against any loss with respect to the property. Property held for safekeeping cannot be commingled with any other property. A state bank has the same remedies and procedural requirements for the nonpayment of charges relating to the safekeeping of property as it has for the nonpayment of rent on safe deposit boxes.<sup>138</sup>

## **6. Loan of Assets**

A state bank may lend its assets, pursuant to a board resolution, for any of the following purposes:<sup>139</sup>

- Secure the state bank's deposits when required by federal law, state law, the state board of regents, resolution relating to the issuance of bonds, interstate compact, or court order.
- Secure transactions to hedge risks relating to interest rate exposure with the approval of the superintendent.
- Secure money borrowed by the state bank except for capital notes or debentures issued under Iowa Code section 524.404.
- Secure participations sold to the Federal Agricultural Mortgage Corporation.

## **7. Indebtedness**

A state bank may borrow money or incur debt for business purposes subject to any restrictions placed on such practices by the superintendent.<sup>140</sup>

## **8. Transmission of Funds**

A state bank may receive money for transmission. Upon receiving money for transmission, the state bank must provide the customer a receipt containing the date of transmission, the amount of money, and the amount of money in foreign currency if the money is to be transmitted to a foreign country. In an action by a customer against a state bank for the recovery of transmitted money, the burden of proof of

<sup>137</sup>Iowa Code §524.812(1)-(3).

<sup>138</sup>Iowa Code §524.813.

<sup>139</sup>See Iowa Code §524.814.

<sup>140</sup>Iowa Code §524.818.



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proper delivery is on the state bank. However, an affidavit by an agent of the state bank that the money was delivered pursuant to the customer's instructions, along with the signed receipt, is prima facie evidence of proper delivery. A state bank may engage in electronic transmission of funds in accordance with Iowa Code chapter 527.<sup>141</sup>

### 9. Securities Activities

A state bank or subsidiary may engage in securities activities and any aspect of the securities industry, subject to the prior approval of the superintendent.<sup>142</sup>

## J. Investment Powers

### 1. Investment Securities<sup>143</sup>

A state bank may invest up to 15 percent of its aggregate capital in investment securities of any one obligor, as determined by the par value of the investment securities. However, a state bank may invest without any capital limitations in any of the following:<sup>144</sup>

- Investment securities of the United States with payment of principal and interest fully guaranteed.
- Investment securities issued, insured, or guaranteed by a department or agency of the federal government which commit full faith and credit to the federal government to repay the securities.
- Investment securities of the Federal National Mortgage Association.
- Investment securities of the Federal Home Loan Mortgage Corporation.
- Investment securities of the Student Loan Marketing Association.
- Investment securities of a federal home loan bank.
- Investment securities of a farm credit bank.
- Investment securities representing general obligations of the State of Iowa or any political subdivision in Iowa.
- Shares or units of federally registered investment companies or trusts with a portfolio consisting of federal investment securities or repurchase agreements that are fully collateralized by federal investment securities, so long as delivery of the collateral is through an authorized custodian and the average maturity of the portfolio is not more than five years.

### 2. Shares or Equity Interests of a Corporation

A state bank, with the approval of the superintendent, can invest up to 5 percent of its aggregate capital in the shares or equity interests of any of the following:<sup>145</sup>

- Economic development corporations organized under Iowa Code chapter 496B.

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<sup>141</sup>Iowa Code §§524.820-524.821(1); see also Iowa Code chapter 527.

<sup>142</sup>Iowa Code §524.825(1).

<sup>143</sup>"Investment securities" are defined as bonds, notes, or debentures that have been publicly offered, are of sound value or readily marketable at a fair value, and are within the four highest grades of a reputable rating service. Iowa Code §524.901(1)(a).

<sup>144</sup>See Iowa Code §524.901(2)-(4).

<sup>145</sup>See Iowa Code §524.901(7)(a).



- Community development corporations or projects to the same extent permitted by a national bank under federal law.
- Small business investment companies as defined by federal law.
- Venture capital funds which invest an amount equal to at least 50 percent of a state bank's investment in small businesses that have their principal offices in Iowa and either over half of their assets within Iowa or over half of their employees employed in Iowa.
- Small businesses that have their principal offices in Iowa and either over half of their assets within Iowa or over half of their employees employed in Iowa, limited to equity interests not to exceed 20 percent ownership of such small businesses.
- Any other entities accepted by the superintendent whose sole purpose is to promote economic or civil development in Iowa.

However, a state bank's total investment in any combination of the shares or equity interests listed above cannot exceed 15 percent of the state bank's aggregate capital at any one time.<sup>146</sup>

### 3. Contracts

A state bank may purchase cash value life insurance contracts that may include provisions for the lump sum payment of premiums. A purchase from any one company is limited to 25 percent of the state bank's aggregate capital, unless the state bank obtains approval from the superintendent to purchase contracts exceeding this amount.<sup>147</sup>

A state bank may invest without limitation in futures, forward, and standby contracts to purchase and sell any of the instruments the state bank is authorized to purchase and sell, subject to the superintendent's prior approval and any applicable federal laws governing such contracts.<sup>148</sup>

## K. Lending Powers

### 1. Purchase and Sale of Drafts

A state bank may accept the following drafts drawn upon it having not more than six months after sight to run:<sup>149</sup>

- Drafts that derive from transactions involving the importation or exportation of goods.
- Drafts that derive from transactions involving the domestic shipment of goods if supported with documents of title attached at the time of acceptance.
- Drafts in which a security interest is perfected at the time of acceptance.

A state bank may also accept drafts drawn upon it having not more than three months after sight to run from banks in foreign countries or United States dependencies for the purpose of furnishing dollar exchange. Such a draft drawn

<sup>146</sup>Iowa Code §524.901(7)(b).

<sup>147</sup>Iowa Code §524.901(8).

<sup>148</sup>Iowa Code §524.901(9).

<sup>149</sup>See Iowa Code §524.903(1).



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by a single foreign bank cannot exceed 7.5 percent of the state bank's aggregate capital at any one time.<sup>150</sup>

A state bank's total acceptance of drafts cannot exceed 30 percent of the state bank's aggregate capital at any one time.<sup>151</sup>

### 2. Loans and Extensions of Credit

#### a. 15 Percent Limitation.

A state bank may not grant loans and extensions of credit to one borrower in an amount that exceeds 15 percent of the state bank's aggregate capital, unless an exception below applies.<sup>152</sup>

#### b. 25 Percent Limitation.

A state bank may grant loans and extensions of credit to one borrower in an amount of up to 25 percent of the state bank's aggregate capital if the loan or credit amount is fully secured by any of the following:<sup>153</sup>

- A bill of lading, receipt, or other document transferring title of readily marketable nonperishable goods that are insured and are valued at no less than 120 percent of the loan or credit amount.
- A bill of lading, receipt, or other document transferring title of readily marketable refrigerated or frozen goods that are insured and are valued at no less than 120 percent of the loan or credit amount.
- A shipping document or instrument that secures title to or gives a first lien on livestock valued at no less than 100 percent of the loan or credit amount at inception.
- A mortgage, deed, or similar instrument granting a first lien on farmland or on a single-family or multi-family residence, so long as the loan or credit amount does not exceed 50 percent of the appraised value of the property.
- Other readily marketable collateral, with the prior approval of the superintendent, valued at no less than 100 percent of the loan or credit amount.

#### c. 35 Percent Limitation.

A state bank may grant loans and extensions of credit to one borrower in an amount of up to 35 percent of the state bank's aggregate capital if the loan or credit amount consists of obligations as endorser of negotiable paper endorsed with recourse, as unconditional guarantor of nonnegotiable chattel paper, or as transferor of chattel paper endorsed without recourse subject to a repurchase agreement.<sup>154</sup>

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<sup>150</sup>Iowa Code §524.903(3).

<sup>151</sup>Iowa Code §524.903(2).

<sup>152</sup>Iowa Code §524.904(2).

<sup>153</sup>See Iowa Code §524.904(3).

<sup>154</sup>Iowa Code §524.904(4).



## d. Loan and Extension of Credit to a Borrowing Group.<sup>155</sup>

A state bank may grant loans and extensions of credit to a borrowing group in an amount of up to 35 percent of the state bank's aggregate capital if the loan or credit amount conforms to the requirements described above for a loan or credit provided to a single borrower, and the state bank does not rely on the financial strength or endorsement of any one borrowing group member as the basis for providing a loan or credit to any other borrowing group member. The loan or credit amount may be extended to up to 50 percent of the state bank's aggregate capital if authorized by the superintendent. A state bank granting a loan or credit to a borrowing group must maintain certain documentation in its files about the group.<sup>156</sup>

## 3. Loans on Real Property

A state bank may grant loans secured by liens on real property in accordance with administrative rules adopted by the superintendent. A state bank may collect a certain amount in protective payments in addition to interest and principal under the note to a borrower to better secure a loan on real property. A state bank acting as an escrow agent with respect to real property must deliver a written report each year to the mortgagor containing certain information. If a state bank receives information suggesting any problems relating to the marketability of title to encumbered real property, the bank must provide a copy of the information to the mortgagor and the mortgagor's attorney.<sup>157</sup>

## 4. Insurance as a Condition

In any situation where a state bank requires a customer to purchase insurance as a condition for receiving a loan or in any other transaction, the customer is free to obtain insurance from whichever source the customer chooses.<sup>158</sup>

## 5. Consumer Loans<sup>159</sup>

A state bank may provide consumer loans to customers in accordance with the provisions of Iowa Code chapter 537, the Iowa Consumer Credit Code.<sup>160</sup>

## L. Fiduciary Powers

### 1. Acting in Fiduciary Capacity

The superintendent may authorize a state bank to act in a fiduciary capacity when approving a proposed state bank or when a state bank proposes to amend its articles of incorporation.<sup>161</sup> The following rules apply to a state bank acting in a fiduciary capacity:<sup>162</sup>

<sup>155</sup> A "borrowing group" includes a person or legal entity where one or more persons controls at least 50 percent of the group's votes or membership interests, controls the election of a majority of the group's directors, managers, trustees, or other similar personnel, and has the power to vote at least 50 percent of any class of the group's votes or membership interests. Iowa Code §524.904(5)(b).

<sup>156</sup> Iowa Code §524.904(5).

<sup>157</sup> Iowa Code §524.905.

<sup>158</sup> Iowa Code §524.912.

<sup>159</sup> A "consumer loan" is defined as a loan in which the creditor is regularly engaged in the business of making loans, the debtor is not an organization, the loan is obtained primarily for a personal, family, or household purpose, the loan is payable in installments or under a finance charge, and the amount financed does not exceed the threshold amount. Iowa Code §537.1301(15).

<sup>160</sup> Iowa Code §524.913(1); see Iowa Code chapter 537.

<sup>161</sup> Iowa Code §524.1001.

<sup>162</sup> Iowa Code §524.1002.



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- The state bank must separate all property held as fiduciary from its assets.
- The state bank may deposit funds of a fiduciary account, either as demand deposits, savings deposits, or time deposits.
- The state bank may provide a required oath or affidavit through one of its officers.
- The state bank cannot grant loans or extensions of credit using funds held as fiduciary except if specifically authorized by the terms of its fiduciary designation.
- The state bank cannot sell any assets to itself or its personnel for its own account, or purchase from the state bank or its personnel any assets issued by the state bank except for certain types of investments and assets.

The superintendent may remove a state bank's fiduciary powers if it is acting in an unsafe manner and fails to correct such unsafe practices. A state bank can also voluntarily relinquish its fiduciary powers by filing a copy of a resolution signifying such intent with the superintendent and filing a petition regarding the same in the proper district court.<sup>163</sup>

### 2. Succession of Fiduciary Accounts

#### a. To an Affiliate.<sup>164</sup>

A state bank may enter into an agreement for the succession of its fiduciary accounts with any affiliate authorized to act in a fiduciary capacity pursuant to certain notice requirements. A state bank relinquishes its fiduciary duties on the effective date of succession to the affiliate. Any person with an interest in a fiduciary account held by the affiliate can petition the proper district court to appoint a new fiduciary on the ground that the affiliate will harm the account.<sup>165</sup>

#### b. To an Independent Bank.

A state bank may enter into an agreement for the succession of its fiduciary accounts with a trust company subsidiary or one or more state or national banks located in Iowa pursuant to certain notice requirements. As specified in the agreement, the succeeding fiduciary must maintain at least one employee at the office of the relinquishing bank to facilitate the continued services of the fiduciary accounts or the relinquishing bank must act as an agent to the succeeding fiduciary with respect to the fiduciary accounts. A state bank relinquishes its fiduciary duties on the effective date of succession to the succeeding fiduciary. A state bank cannot relinquish fiduciary accounts or act as agent to more than one succeeding fiduciary at once. Any person with an interest in a fiduciary account held by the succeeding fiduciary can petition the proper district court to appoint a new fiduciary on the ground that the succeeding fiduciary will harm the account.<sup>166</sup>

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<sup>163</sup>Iowa Code §§524.1003-524.1004.

<sup>164</sup>An affiliate may be a trust company subsidiary located in Iowa, a state bank located in Iowa, or a national bank located in Iowa under the common ownership of a bank holding company. Iowa Code §524.1007(3).

<sup>165</sup>Iowa Code §524.1007(1)-(2).

<sup>166</sup>Iowa Code §524.1008(1)-(3).



## c. Merger.

The merger of a state bank acting in a fiduciary capacity with another state or national bank also authorized to act in a fiduciary capacity has no effect on the appointment as fiduciary. The resulting state or national bank is automatically substituted as fiduciary of all accounts held by the original bank. Any person with an interest in a fiduciary account held by the merged bank can petition the proper district court to appoint a new fiduciary on the ground that the merger will harm the account.<sup>167</sup>

## 3. Fiduciary Relationship with Customers

The Supreme Court of Iowa has held that fiduciary relationships can exist between a state bank and its customers.<sup>168</sup> However, a fiduciary relationship is not automatically created in a bank-customer relationship.<sup>169</sup> The courts evaluate the particular facts and circumstances of each case to determine whether a fiduciary relationship exists.<sup>170</sup> If the facts of a case show that a customer, in a relationship of “confidence and trust,” relied on the “judgment and advice” of a bank employee, a court will determine that a fiduciary relationship existed.<sup>171</sup> A fiduciary who breaches the duty of care is liable in tort to the person whom the fiduciary owed the duty.<sup>172</sup>

## M. Affiliates

### 1. Transactions with Affiliates

A state bank cannot make a loan or an extension of credit, invest, or accept the shares or other obligations of an affiliate if the total amount of the transaction will exceed 10 percent of the aggregate capital of the state bank in the case of any one affiliate, or 20 percent of the aggregate capital of the state bank in the case of all affiliates.<sup>173</sup>

An affiliate is defined in this context as a corporation or other organization that meets any of the following criteria:<sup>174</sup>

- Is owned or controlled by a state bank through voting power.
- Is controlled by the shareholders of a state bank through share ownership.
- Has a majority of directors that are directors of a state bank.
- Owns or controls a state bank through voting power or share ownership.
- Is a bank holding company.

Any transaction with an affiliate must be secured by collateral that has a market value, at the time of the transaction, of at least 20 percent more than the amount of the transaction. If the transaction is secured by obligations of a state or political subdivision, the collateral must have a market value of at least 10 percent of the

<sup>167</sup>Iowa Code §524.1009.

<sup>168</sup>See, e.g., *Weltzin v. Cobank, ACB*, 633 N.W.2d 290, 293 (Iowa 2001).

<sup>169</sup>*Id.*

<sup>170</sup>*Id.*

<sup>171</sup>*Id.* at 294 (quoting *Kurth v. Van Horn*, 380 N.W.2d 693, 695 (Iowa 1986)).

<sup>172</sup>*Manufacturers Bank & Trust Co. v. Weber*, No. 12-0577, 2013 WL 988645, at \*1 (Iowa Ct. App. 2013) (citing Restatement (Second) of Torts §874(b) (1979)).

<sup>173</sup>Iowa Code §524.1102(1).

<sup>174</sup>See Iowa Code §524.1101.



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amount of the transaction. If the transaction is secured by a segregated deposit account which the state bank can set off, the collateral must have a market value of at least 100 percent of the transaction amount.<sup>175</sup>

### 2. Exceptions

The requirements for state bank transactions with affiliates do not apply to transactions fully secured or guaranteed by obligations of the United States, farm credit banks, or federal home loan banks.<sup>176</sup> Further, these requirements do not apply to any of the following:<sup>177</sup>

- An affiliate engaged only in holding or operating a state bank's real estate.
- An affiliate engaged only in the safe-deposit business or the business of an agricultural credit corporation eligible for discount loans with a farm credit bank.
- An affiliate engaged only in holding obligations of the United States, farm credit banks, federal home loan banks, or obligations fully guaranteed by the United States.
- Where the affiliate relationship arose as a result of acquiring shares to satisfy a bona fide debt if the shares are sold within one year from the date the affiliate relationship was created.
- Where the affiliate relationship exists as a result of the control of voting shares by a state bank in a fiduciary capacity.
- An affiliate that is a bank.
- An affiliate that is an operations subsidiary or other subsidiary in which the state bank controls at least 80 percent of the voting shares.

A state bank can request an exemption from the requirements for transactions with affiliates by submitting a written request with the superintendent containing the reasons for wanting an exemption.<sup>178</sup>

### 3. Fees Paid to an Affiliate

Any fees for services paid by a state bank to a person who owns shares in the bank or any other affiliate must first be approved by the superintendent before the contract becomes binding on the state bank.<sup>179</sup>

## N. Dissolution

### 1. Voluntary Dissolution Before Commencement of Business

A majority of a state bank's incorporators, organizers, or initial directors may dissolve the state bank prior to issuing shares or commencing business by delivering articles of dissolution to the superintendent. The articles of dissolution must include the state bank's name, date of incorporation, and information regarding the state bank's business status.<sup>180</sup>

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<sup>175</sup>Iowa Code §524.1102(2).

<sup>176</sup>Iowa Code §524.1102(4).

<sup>177</sup>See Iowa Code §524.1103(1).

<sup>178</sup>Iowa Code §524.1103(2)(b).

<sup>179</sup>Iowa Code §524.1106.

<sup>180</sup>Iowa Code §524.1301.





## 2. Involuntary Dissolution Before Commencement of Business

Prior to issuing an authorization to do business, the superintendent may dissolve a state bank if it should not have been initially incorporated or if an authorization to do business is not issued within one year of the state bank's incorporation. The superintendent will cause the dissolution by filing a statement with the Secretary of State after giving notice and an opportunity for a hearing. The Secretary of State's issuance of a certificate of dissolution marks the dissolution of the state bank.<sup>181</sup>

## 3. Voluntary Dissolution After Commencement of Business

A state bank may voluntarily dissolve after commencing business by taking the following steps:<sup>182</sup>

- A majority of the holders of shares entitled to vote on the proposed voluntary dissolution must vote to do so and adopt a plan with respect to the state bank's assets and the assumption of liabilities. The state bank must deliver its application, including the plan of dissolution, to the superintendent.
- The superintendent must conduct an investigation to determine whether the plan of dissolution adequately protects the interests of all parties, including depositors, creditors, and shareholders.
- The dissolving bank must publish notice in an applicable newspaper within 30 days after delivering its application for dissolution to the superintendent.
- Within 30 days after publication of the dissolving bank's notice, any interested party may submit comments or a request for a hearing to the superintendent.
- The superintendent must approve or deny the application within 90 days after acceptance. The dissolving state bank must reimburse the superintendent for any expenses incurred in connection with the application.
- Upon approving the dissolving bank's application, the dissolving bank must prepare articles of dissolution containing the state bank's name, date that dissolution was authorized, shareholder voting information, and other information regarding the state bank's business and legal status. The dissolving bank must deliver the articles to the superintendent for filing with the Secretary of State.

The state bank is dissolved upon the effective date of its articles of dissolution.<sup>183</sup>

## 4. Winding Up of Business in Voluntary Dissolution

The board of directors of a state bank in voluntary dissolution proceedings has the full power to wind up and settle the affairs of the state bank and to do any of the following:<sup>184</sup>

- Collect assets.
- Dispose of properties not to be distributed to shareholders.
- Discharge liabilities.

<sup>181</sup>Iowa Code §524.1302.

<sup>182</sup>See Iowa Code §§524.1303-524.1304A.

<sup>183</sup>Iowa Code §524.1304A(2).

<sup>184</sup>See Iowa Code §524.1305.



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- Distribute remaining property among shareholders.
- Take any other action necessary to wind up and liquidate the business and affairs of the state bank.

The dissolution of a state bank does not result in transferring title to the state bank's property, preventing transfer of its shares or securities, subjecting its directors or officers to different lower standards of conduct, changing quorum or voting requirements, preventing the commencement of proceedings by or against the state bank, or suspending a pending proceeding by or against the state bank.<sup>185</sup>

Within 30 days after a dissolved bank's articles of dissolution are filed, the dissolved bank must give notice of its dissolution by mail to each depositor, creditor, safe-deposit box lessee, and other customer who has property or any interest in funds at the state bank. Such customers have at least 90 days after notice is given to make claims or withdraw property. Notice is not required if the dissolved bank's liability was assumed by another FDIC insured bank.<sup>186</sup>

A dissolved bank's creditors and debtors must be paid promptly after the date indicated in the bank's notice of dissolution. Any unclaimed safe deposit box contents must be removed and transmitted to the Secretary of State. All amounts of money due to unknown or legally incompetent creditors or debtors must be transmitted to the Secretary of State for safekeeping. Remaining assets may be distributed to the dissolved bank's shareholders with the approval of the superintendent.<sup>187</sup>

### 5. Claims Against Dissolved State Bank

#### a. Known Claims.

A dissolved bank can dispose of any known claims by giving notice of the dissolution to the known claimant including the information that must be included in a claim, the mailing address where a claim can be sent, the deadline for submitting a claim, to be at least 120 days from the date of the notice, and a statement that the claim will be barred if not received by the deadline. A claim is barred if was not received by the deadline stated in the notice or if a claimant whose claim was rejected does not commence a proceeding to enforce the claim within 90 days of the rejection.<sup>188</sup>

#### b. Unknown Claims.

A dissolved bank may publish notice of its dissolution in an applicable newspaper to request that anyone with claims against the bank present them. This notice must include the information that must be included in a claim, the mailing address where a claim can be sent, and a statement that the claim will be barred unless an enforcement proceeding is commenced within two years of the newspaper notice.<sup>189</sup>

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<sup>185</sup>Iowa Code §524.1305(2).

<sup>186</sup>Iowa Code §524.1305(3).

<sup>187</sup>Iowa Code §524.1305(5)-(7).

<sup>188</sup>Iowa Code §524.1308A(2)-(3).

<sup>189</sup>Iowa Code §524.1308B(1)-(2).



## 6. Voluntarily Ceasing to Carry on the Business of Banking

Instead of dissolution, a state bank may cease to carry on the business of banking and continue as a corporation pursuant to Iowa Code chapter 490 or as an LLC pursuant to Iowa Code chapter 489. A state bank must take the following steps to do so:<sup>190</sup>

- A majority of the holders of shares entitled to vote on the proposal must do so and adopt a plan regarding its assets and liabilities as well as the nature of its proposed business as a corporation or LLC. The state bank must deliver its application, including the plan, to the superintendent.
- The superintendent must conduct an investigation to determine whether the plan adequately protects the interests of all parties, including the state bank's depositors, creditors, and shareholders.
- The state bank must publish notice of its proposed action in an applicable newspaper within 30 days after delivering its application to the superintendent.
- The superintendent must approve or deny the application. Upon approval of the application, the state bank must immediately surrender its authorization to do business as a bank and carry on the business of banking.
- Within 30 days after the superintendent's approval of the plan, the state bank must give notice of its plan to cease carrying on the business of banking by mail to each depositor, creditor, safe-deposit box lessee, and other customer who has property or any interest in funds at the state bank. Such customers have at least 90 days after notice is given to make claims or withdraw property. Notice is not required if the state bank's liability was assumed by another FDIC insured bank.
- The state bank must promptly pay its creditors and debtors after the date indicated in the bank's notice. Any unclaimed safe deposit box contents must be removed and transmitted to the Secretary of State. All amounts of money due to unknown or legally incompetent creditors or debtors must be transmitted to the Secretary of State for safekeeping. Remaining assets must be distributed to the state bank's shareholders with the approval of the superintendent.
- After completing the above steps, the state bank must deliver its articles of intent to be subject to Iowa Code chapter 489 or 490 to the superintendent. If the superintendent is satisfied that the state bank has complied with all requirements, the superintendent must deliver the articles to the Secretary of State for filing.

The state bank ceases to be a state bank and becomes a corporation or LLC upon the Secretary of State's filing of the state bank's articles of intent.<sup>191</sup>

## 7. Involuntary Dissolution After Commencement of Business

If superintendent has ordered a state bank to cease to carry on the business of banking after business has commenced, the superintendent must tender the

<sup>190</sup> See Iowa Code §524.1309.

<sup>191</sup> Iowa Code §524.1309(7).



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receivership for the state bank to the FDIC.<sup>192</sup> A diligent effort must be made to collect the state bank's assets and distribute proceeds. The FDIC may execute assignments and releases, sell bad or doubtful debts, and sell the real and personal property of the state bank.<sup>193</sup>

After ordering the involuntary dissolution of a state bank, the superintendent must file notice of the dissolution with the Secretary of State and county recorder. The state bank's corporate existence ceases when the notice of dissolution is filed with the Secretary of State.<sup>194</sup>

### 8. Distribution of Assets Upon Insolvency

In distributing the assets of an insolvent state bank, the order of paying the state bank's liabilities is as follows:<sup>195</sup>

- The payment of costs and expenses for administering the dissolution.
- The payment of claims for public funds and claims given priority under applicable law. If the assets are insufficient for payment of such claims in full, priority is determined by the applicable law or on a pro rata basis.
- Amounts due to depositors.
- The payment of all other claims pro rata except claims on capital notes and debentures.
- The payment of capital notes and debentures.

### 9. Survival of Rights and Remedies

A state bank's dissolution or the expiration of the period of its duration does not affect the remedies available to or against the state bank, its directors, officers, or shareholders, for any right or liability existing or incurred prior to the dissolution for two years after the date of the state bank's dissolution or expiration.<sup>196</sup>

### 10. Preservation of Records

The superintendent may take custody and retain a dissolved state bank's records unless another bank has acquired the dissolved state bank's assets and assumed its liabilities.<sup>197</sup>

## O. Merger

### 1. Authority to Merge

One or more state banks, national banks, federal associations, corporations, or any combination can merge into a single state bank with the approval of the superintendent. One or more state banks may merge into a national bank if at the time of the merger federal law authorizes a national bank located in Iowa to merge into a state bank under limitations that are not more restrictive under Iowa law. One

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<sup>192</sup>Iowa Code §524.1310(1)-(2). Upon tendering receivership to the FDIC, the state bank's affairs are thereafter governed by this Iowa Code section, Iowa Code section 524.1311, and applicable provisions of federal law. However, the rights of the state bank's depositors and creditors under the receivership are determined in accordance with Iowa law.

<sup>193</sup>Iowa Code §524.1311(1).

<sup>194</sup>Iowa Code §524.1311(2).

<sup>195</sup>See Iowa Code §524.1312.

<sup>196</sup>Iowa Code §524.1314(1).

<sup>197</sup>Iowa Code §524.1314(2).



or more state banks may merge with one or more federal associations if federal law authorizes the merger.<sup>198</sup>

## 2. Procedure for Merger

### a. Merger to Form a State Bank.

One or more parties may merge to form a state bank by taking the following steps:<sup>199</sup>

- The parties must adopt a merger plan. If a state bank is a party to the merger, the state bank must adopt the plan with a majority vote of its directors and approval by the shareholders.<sup>200</sup>
- The parties must deliver an application for approval of the merger to the superintendent. The application must include the articles of merger and all applicable filing fees.<sup>201</sup>
- The parties must publish notice of the proposed merger in an applicable newspaper within 30 days after the superintendent accepts the application. The parties must deliver proof of publishing notice to the superintendent within 14 days. Any interested person can submit comments or a request for a hearing on the proposed merger to the superintendent within 30 days after the notice is published. However, the notice requirement may be waived by the superintendent if necessary to expedite the application.
- After receiving the application, the superintendent must conduct an investigation to determine whether the plan adequately protects the interests of all parties and satisfies all applicable laws. The superintendent must approve or deny the application within 180 days of receiving it with written notice to the parties. This period may be extended for no more than 60 days if the application is amended.
- If the superintendent approves the application and final approval of the merger, if required by federal or state law, is provided by the necessary federal or state agency, the superintendent must deliver the approved articles of merger to the Secretary of State and county recorder office of each county that the parties previously maintained a principal place of business. The superintendent must rescind his approval if final approval from another agency, if required by law, is not provided within six months.

The merger becomes effective on the date that the articles of merger are filed with the Secretary of State, or at any later date and time as specified in the

<sup>198</sup>Iowa Code §524.1401.

<sup>199</sup>See Iowa Code §§524.1402-524.1404.

<sup>200</sup>Iowa Code §524.1402(1)-(2). The merger plan must include the names of the parties proposing to merge and the name of the resulting bank, the terms and conditions of the merger, the manner of converting the shares of each party into the shares of the resulting bank, the rights of the shareholders of each party, an agreement concerning the merger, and all other necessary provisions.

<sup>201</sup>Iowa Code §524.1402(8). The articles of merger include the names of the parties and resulting bank, the location and address of each party and resulting bank, the votes by which the merger plan was adopted, information regarding the board of directors of the resulting bank, any amendments to the articles of incorporation of the resulting bank, and the merger plan.



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articles of merger. The Secretary of State must issue a certificate of merger to the resulting bank and a copy of the certificate to the superintendent.<sup>202</sup>

### **b. Merger to Form a National Bank.**

One or more parties which include a state bank may merge to form a national bank by notifying the superintendent of the proposed merger, providing the superintendent with any requested evidence of the merger plan, notifying the superintendent of any changes to the merger plan, filing evidence of the approval of the merger by the Comptroller of the Currency of the United States with the superintendent and Secretary of State, and notifying the superintendent of the date that the merger is to become effective.<sup>203</sup>

### **3. Effect of Merger**

Once a merger is effective, each party merges into one resulting bank and the separate existence of each party ceases. Title to all real estate and property owned by each party to the merger is vested in the resulting bank without reversion or impairment. The merged bank is liable for each party to the merger. However, pending proceedings against any party can continue as if the merger did not occur, or the merged bank may be substituted for the party whose existence ceased. The shares of each party to the merger are converted into the shares of the merged bank.<sup>204</sup>

### **4. Appraisal Rights of Shareholders of Merged Bank**

A shareholder of a state bank proposing to merge into another state bank and who objects to the proposed merger is entitled to the appraisal rights and payment for shares as provided in Iowa Code chapter 490, division XIII.<sup>205</sup> A shareholder of a national bank proposing to merge into a state bank or a shareholder of a state bank proposing to merge into a national bank and who objects to the proposed merger is entitled to receive the value of the shareholder's shares, as determined by federal law, from the resulting bank.<sup>206</sup>

### **5. Merger of Subsidiary Corporation or LLC into State Bank**

A state bank owning at least 90 percent of the outstanding shares of a subsidiary corporation or LLC can merge the corporation or LLC into itself without obtaining the approval of the shareholders of either the state bank or subsidiary. A state bank merging a subsidiary corporation or LLC must take the following steps:<sup>207</sup>

- The board of directors of the state bank must approve a plan of merger, mail the plan to the record shareholders of the subsidiary corporation or holders of membership interests in the subsidiary LLC, and prepare the articles of merger.
- The state bank must deliver the articles of merger and all applicable filing fees to the superintendent.

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<sup>202</sup> Iowa Code §524.1405(1).

<sup>203</sup> Iowa Code §524.1402(9).

<sup>204</sup> Iowa Code §524.1405(2).

<sup>205</sup> Iowa Code §524.1406(1); see Iowa Code §§490.1320-490.1326 for the procedure a shareholder takes to exercise such appraisal rights.

<sup>206</sup> Iowa Code §524.1406(2).

<sup>207</sup> See Iowa Code §524.1408.



- The superintendent, upon approving the proposed merger, must deliver the articles of merger to the Secretary of State and the applicable office of the county recorder for filing.
- The Secretary of State must file the articles of merger and issue a certificate of merger to the state bank and a copy of the certificate to the superintendent.

## P. Conversion

### 1. Conversion of National Bank to State Bank

A national bank or federal savings association may convert into a state bank by taking the following steps:<sup>208</sup>

- The national bank must adopt a plan of conversion with the majority vote of its directors and the holders of two-thirds of each class of its shares.
- The national bank must deliver an application for the approval of the conversion to the superintendent containing its articles of conversion and all applicable filing fees.<sup>209</sup>
- The national bank must publish notice of the proposed conversion in an applicable newspaper within 30 days after the superintendent accepts the application. The national bank must deliver proof of publishing notice to the superintendent within 14 days.
- After receiving the application, the superintendent must conduct an investigation to determine whether the plan adequately protects the interests of all parties and satisfies all applicable laws. The superintendent must approve or deny the application within 90 days with written notice to the national bank.
- If the superintendent approves the application, the superintendent delivers the articles of conversion to the Secretary of State and applicable county recorder's office.

The conversion becomes effective on the date that the articles of conversion are filed with the Secretary of State, or at any later date and time as specified in the articles of conversion.<sup>210</sup>

### 2. Effect of Conversion of National Bank into State Bank

Once a conversion is effective, the existence of the national bank continues in the resulting state bank, which has all the rights and powers of the national bank to the extent that a state bank is authorized under Iowa Code chapter 524. Title to all of the national bank's real estate and other property is vested in the resulting state bank without reversion or impairment. The conversion has no effect on the national bank's liabilities. A claim existing by or against the national bank may continue as

<sup>208</sup> See Iowa Code §§524.1409-524.1414.

<sup>209</sup> Iowa Code §524.1411. The articles of conversion must contain the names of the national bank and resulting state bank, the locations and addresses of the national bank and resulting state bank's principal places of business, the votes by which the plan of conversion was adopted, information regarding the board of directors of the resulting state bank, and information regarding the resulting state bank's articles of incorporation.

<sup>210</sup> Iowa Code §524.1415(1).



## State Banks and Credit Unions

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if the conversion did not occur, or the resulting state bank may be substituted in its place.<sup>211</sup>

### 3. Conversion of State Bank into National Bank

A state bank may convert into a national bank by complying with federal law and adopting a plan of conversion with the majority vote of its directors and the holders of two-thirds of each class of its shares. The state bank must notify the superintendent of the proposed conversion, provide the superintendent with any requested evidence of the conversion plan, notify the superintendent with any changes to the conversion plan, file the certificate of approval for the conversion, issued by the Comptroller of the Currency of the United States, with the superintendent and Secretary of State, and notify the superintendent of the date that the conversion is to become effective.<sup>212</sup>

### 4. Appraisal Rights of Shareholders of Converted Bank

A shareholder of a state bank that converts into a national bank and who objects to the plan of conversion is entitled to the appraisal rights and payment for shares as provided in Iowa Code chapter 490, division XIII. A shareholder of a national bank that converts into a state bank and who objects to the plan of conversion is entitled to receive the value of the shareholder's shares, as determined by federal law, from the resulting state bank.<sup>213</sup>

### 5. Conversion of Mutual Corporation to Stock Corporation

A mutual corporation may convert into a stock corporation that is either a state bank or a state bank holding company by obtaining the approval of the superintendent. The mutual corporation must deliver an application for conversion into a stock corporation to the superintendent containing the articles of conversion, a business plan, proof that notice of the conversion was published, and all applicable fees for filing. Within 30 days after the superintendent accepts the application, the mutual corporation must publish notice of the proposed conversion in an applicable newspaper.<sup>214</sup>

## Q. Amendments to Articles of Incorporation

### 1. Authority to Amend

A state bank may amend its articles of incorporation with the approval of the superintendent so long as the amended provisions would have been lawful if included in the original articles of incorporation.<sup>215</sup>

### 2. Procedure to Amend

A state bank may amend its articles of incorporation by taking the following steps:<sup>216</sup>

- The state bank's board of directors must adopt a resolution proposing to amend the articles of incorporation and containing the language of

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<sup>211</sup> Iowa Code §524.1415(2)-(4).

<sup>212</sup> Iowa Code §524.1416.

<sup>213</sup> Iowa Code §524.1417.

<sup>214</sup> Iowa Code §524.1422.

<sup>215</sup> Iowa Code §524.1501.

<sup>216</sup> See Iowa Code §§524.1502-524.1506.





each amendment, directing that the resolution be submitted to a vote at a shareholders meeting.

- At the meeting, each amendment must be adopted by the holders of a majority of the shares entitled to vote. Certain types of amendments may be voted on and adopted by voting groups.
- After adopting an amendment, the state bank must prepare the articles of amendment containing the state bank's name, the location of its principal place of business, the adopted amendment set forth in full, and information about the shareholder meeting and vote to adopt the amendment. The articles of amendment must be signed by two of the state bank's officers and delivered to the superintendent.
- The superintendent must conduct an investigation to determine whether the articles of amendment adequately protect the interests of all parties and satisfy all applicable laws. The superintendent must approve or deny the articles of investigation within 60 days.
- If the superintendent approves the articles of amendment, the superintendent must deliver the articles to the Secretary of State and applicable county recorder's office for filing.
- The Secretary of State must file the articles of amendment and issue a certificate of amendment to the state bank.

The amendment becomes effective when the Secretary of State issues the certificate of amendment.<sup>217</sup>

### **3. Restated Articles of Incorporation**

A state bank may restate its articles of incorporation, which may be amended by the restatement, so long as the restated articles of incorporation contain provisions that would have been lawful if included in the original articles of incorporation. To restate the articles of incorporation, a state bank must follow the same procedures required for amending the articles of incorporation. The restated articles of amendment, including any amendments, are effective when the Secretary of State issues a restated certificate of incorporation to the state bank. The restated articles of incorporation supersedes the state bank's original articles of incorporation.<sup>218</sup>

## **R. Bank Holding Companies**

### **1. Limitation on Acquiring Deposits**

A bank or bank holding company cannot acquire a bank or its deposits if the total deposits in Iowa controlled by the bank or bank holding company would be greater than 15 percent of the total deposits in Iowa. A bank cannot transfer or convert deposits for the purpose of achieving compliance with the 15 percent limitation. If the superintendent determines that an acquisition might involve a question of compliance, the superintendent may require every party involved in an acquisition to submit a

<sup>217</sup>Iowa Code §524.1506(2).

<sup>218</sup>Iowa Code §524.1508(1), (5).



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statement providing details of the acquisition to verify that a lawful acquisition has occurred.<sup>219</sup>

### 2. Notice of Acquisition

A bank holding company which proposes to acquire control of or substantially all of the assets of a state bank or national bank must provide a copy to the superintendent of the application submitted to the Federal Reserve Board to take such action. The superintendent may conduct an investigation into the proposed action and submit comments or recommendations about the proposed action to the board.<sup>220</sup>

### 3. Restriction on Acquisitions and Mergers

An out-of-state bank or out-of-state bank holding company cannot acquire control of or substantially all of the assets of a bank located in Iowa unless the bank has been in continuous existence and operation for five years.<sup>221</sup>

## S. Penalties

### 1. Penalties Applicable to Directors, Officers, and Employees

A state bank director, officer, or employee who willfully engages in an unlawful dealing or prohibited transaction is guilty of a serious misdemeanor and may be required to pay an additional fine in certain circumstances.<sup>222</sup>

### 2. Penalties Applicable to State Banks

The superintendent may impose a penalty of \$1,000 per day on a state bank for each day that the state bank violates the requirements set forth in Iowa Code chapter 524 for holding investments, purchasing and selling drafts, making loans and extensions of credit, making loans and other transactions with affiliates, or disseminating fraudulent advertising.<sup>223</sup>

### 3. Penalties Applicable to Bank Holding Companies

A bank holding company which willfully violates any provision in Iowa Code chapter 524 relating to the limitations, restrictions, and procedures for bank holding companies in acquiring the deposits or control of a bank will be fined at least \$100 and not more than \$1,000 for each day the violation occurs. Any individual who willfully participates in such a violation is guilty of a serious misdemeanor.<sup>224</sup>

### 4. Unlawful Business of Banking

Any person who willfully engages in the business of banking in Iowa without being incorporated as a state bank in accordance with Iowa Code chapter 524 is guilty of a serious misdemeanor.<sup>225</sup>

The superintendent may impose a penalty of \$1,000 per day on a state bank for each day that the state bank violates the requirements relating to bank offices.<sup>226</sup>

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<sup>219</sup>Iowa Code §524.1802(2)-(4).

<sup>220</sup>Iowa Code §524.1804.

<sup>221</sup>Iowa Code §524.1805.

<sup>222</sup>See Iowa Code §524.1601.

<sup>223</sup>See Iowa Code §524.1602.

<sup>224</sup>Iowa Code §524.1807.

<sup>225</sup>Iowa Code §524.1603(1).

<sup>226</sup>Iowa Code §524.1603(2); see also Iowa Code §524.1201.



## 5. Failure to File Reports or Make Statements

Any person with the duty to make statements or file reports under Iowa Code chapter 524 and who willfully neglects or refuses to do so is guilty of a simple misdemeanor. A state bank which fails to provide the superintendent with any report or information requested within 10 days of the request for the report or information must pay the superintendent a penalty of \$50 for each day the state bank is delinquent, unless the superintendent extended the time period for doing so. Any officer or employee of a state bank who fails to make records available to the superintendent is guilty of a simple misdemeanor.<sup>227</sup>

## 6. Felonious Acts

Any director, officer, or employee of a state bank who knowingly makes a false statement or false report or any other act with the intent to defraud a state bank or any other person is guilty of a class “C” felony and is forever disqualified from acting as a director, officer, or employee of a state bank.<sup>228</sup>

Any officer or employee of a state bank who participates in a transaction or receives money or any other benefit from a transaction with the intent to defraud the state bank or any other person is guilty of a class “C” felony and is forever disqualified from acting as an officer or employee of a state bank.<sup>229</sup>

## 7. Fraudulent Advertising

A state bank is prohibited from disseminating any advertising containing false or deceptive statements about the state bank’s services or financial condition. Any officer or employee of a state bank who willfully violates this prohibition is guilty of a fraudulent practice.<sup>230</sup>

## 8. Making False Statements for Credit

Any person who knowingly makes a false statement in writing with the intent that a financial institution will rely upon the false statement in delivering property, paying cash, or providing credit for that person’s benefit is guilty of a fraudulent practice.<sup>231</sup>

## 9. Accepting Deposits While Insolvent

Any officer or employee of an insolvent state bank who, knowing that the state bank is insolvent, accepts, renews, or knowingly permits a deposit or certificate of deposit is guilty of a fraudulent practice and is forever disqualified from acting as an officer or employee of a state bank.<sup>232</sup>

## 10. Making False Statements Concerning State Banks

Any person who, maliciously or with intent to deceive, makes any false statement that is harmful or tends to be harmful to the business of a state bank is guilty of a simple misdemeanor.<sup>233</sup>

<sup>227</sup> Iowa Code §524.1604.

<sup>228</sup> Iowa Code §524.1605(1).

<sup>229</sup> Iowa Code §524.1605(2).

<sup>230</sup> Iowa Code §524.1606; see Iowa Code §§714.8-714.14 for provisions relating to the criminal offense of fraudulent practice.

<sup>231</sup> Iowa Code §524.1607.

<sup>232</sup> Iowa Code §524.1608.

<sup>233</sup> Iowa Code §524.1609.



## State Banks and Credit Unions

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### 11. Receiving Commission for Organizing State Banks

Any person who receives a commission or bonus for organizing a state bank, except for receiving reasonable compensation for providing legal or accounting services in connection with organizing a state bank, is guilty of a simple misdemeanor.<sup>234</sup>

### 12. Offenses Involving Banking Division Employees

Any division employee who obtains a loan or property from a state bank which the employee personally helps regulate is guilty of a fraudulent practice and will be fined an amount equal to the amount of the loan or property. An employee convicted under this offense will be immediately discharged and forever disqualified from holding any position in the division.<sup>235</sup>

Any division examiner who discloses information relating specifically to the supervision and regulation of a state bank, except when ordered by a court, is guilty of a serious misdemeanor. An examiner convicted under this offense will be immediately discharged and forever banned from holding any position in the division.<sup>236</sup>

### 13. Maximum Sentences — General Applicability

#### a. Simple Misdemeanor.

A person convicted of a simple misdemeanor will be fined at least \$65, but not more than \$625, and may be imprisoned for up to 30 days in lieu of or in addition to the fine.<sup>237</sup>

#### b. Serious Misdemeanor.

A person convicted of a serious misdemeanor will be fined at least \$315, but not more than \$1,875, and may be imprisoned for up to one year in addition to the fine.<sup>238</sup>

#### c. Class “C” Felony.

A person convicted of a class “C” felony will be fined at least \$1,000, but not more than \$10,000, and may be imprisoned for up to 10 years in addition to the fine.<sup>239</sup>

## III. Regulation of State Credit Unions — Iowa Code Chapter 533

### A. Credit Union Division

#### 1. Purpose

The Credit Union Division of the DOC is responsible for regulating state credit unions in Iowa.<sup>240</sup>

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<sup>234</sup>Iowa Code §524.1610.

<sup>235</sup>Iowa Code §524.1611(1).

<sup>236</sup>Iowa Code §524.1611(2).

<sup>237</sup>Iowa Code §903.1(1)(a).

<sup>238</sup>Iowa Code §903.1(1)(b).

<sup>239</sup>Iowa Code §902.9(1)(d).

<sup>240</sup>Iowa Code §533.103.



## 2. Funding

All expenses required for the operation of the Credit Union Division are paid from fees provided under law and appropriations from the General Assembly, which must be deposited into the DOC Revolving Fund established in Iowa Code section 546.12. The Superintendent of Credit Unions is responsible for the receipt and disbursement of fees and other moneys required for the operation of the Credit Union Division.<sup>241</sup>

## 3. Superintendent of Credit Unions

### a. Appointment.

The Governor is responsible for appointing the superintendent, subject to the Senate's confirmation. The superintendent must have at least five years of experience as a director or executive officer of a credit union. The superintendent serves a term of four years and receives a salary fixed by the Governor. If the position becomes vacant, the Deputy Superintendent, appointed by the superintendent, will serve as Acting Superintendent until the Governor appoints a new person.<sup>242</sup>

### b. Powers and Duties.

The superintendent has the duty to regulate state credit unions, and administer and execute all laws, rules, and regulations relating to state credit unions. The superintendent has the power to adopt rules to carry out the provisions of Iowa Code chapter 533.<sup>243</sup> In addition, Iowa Code chapter 533 provides the superintendent with the following powers and duties:

- Appoint examiners and other employees as necessary.<sup>244</sup>
- Conduct background investigations on applicants for employment with the Credit Union Division.<sup>245</sup>
- Acquire insurance and surety bonds to insure against liability in accordance with the provisions of Iowa Code chapter 64.<sup>246</sup>
- Provide an annual report to the Governor summarizing the Credit Union Division's work from the previous year.<sup>247</sup>
- Examine any state credit union when necessary.<sup>248</sup>
- Call a meeting of the board of directors of any state credit union when necessary.<sup>249</sup>
- Establish annual and individual fees for state credit unions to pay based on the costs and expenses incurred in the Credit Union Division's operations.<sup>250</sup>

<sup>241</sup> Iowa Code §533.111(1)-(2).

<sup>242</sup> Iowa Code §§533.104(1)-(3), 533.105(2).

<sup>243</sup> Iowa Code §533.104(5).

<sup>244</sup> Iowa Code §533.106(1)(a).

<sup>245</sup> Iowa Code §533.106A, as enacted by 2018 Acts, ch. 1123, §6.

<sup>246</sup> Iowa Code §533.109.

<sup>247</sup> Iowa Code §533.114.

<sup>248</sup> Iowa Code §533.113. All reports of examinations conducted by the superintendent are confidential and are the exclusive property of the Credit Union Division.

<sup>249</sup> Iowa Code §533.113A.

<sup>250</sup> Iowa Code §533.112.



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- Enforce the Iowa Consumer Credit Code, Iowa Code chapter 537, with respect to state credit unions, and assist the Administrator of the Consumer Credit Code whenever necessary.<sup>251</sup>
- Prepare approved forms of articles of incorporation and bylaws to be used by state credit union incorporators.<sup>252</sup>
- Impose penalties against any state credit union for certain violations of Iowa Code chapter 533.<sup>253</sup>

### 4. Credit Union Review Board

The Credit Union Review Board consists of seven members appointed by the Governor, five of whom are members of a state or federal credit union for at least the previous five years and two of whom are members of the public. However, no more than five of the members at any time may be directors or employees of a credit union. Each member serves a staggered term of three years. The review board must meet at least four times each year. The review board has the authority to adopt administrative rules.<sup>254</sup>

### 5. Records of the Credit Union Division

Records specifically relating to the supervision and regulation of any state credit union are confidential and not open for examination by the public. No such records may be offered in evidence in court or subject to subpoena, except in an action brought by the superintendent, an action seeking review of a decision of the superintendent, an action arising out of criminal law, an action brought as a shareholders derivative suit, or an action brought to recover losses in connection with an indemnity bond as a result of the misuse of funds by a state credit union.<sup>255</sup>

### 6. Prohibitions

State credit union personnel are prohibited from making a loan of money or property to the superintendent and the superintendent is prohibited from accepting such a loan. Employees of the Credit Union Division may borrow money from a state credit union on terms and conditions comparable to other members of the state credit union. However, the employee must notify the superintendent of the acceptance of such a loan. An employee of the division cannot participate in the examination of a state credit union where that employee has a loan. Division personnel, except for members of the review board, cannot perform any services on behalf of a state credit union. Any person who violates these provisions will be permanently barred from working for a state credit union or the division. Any division personnel convicted of a crime involving breach of trust is permanently barred from holding any position in the division.<sup>256</sup>

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<sup>251</sup> Iowa Code §533.116.

<sup>252</sup> Iowa Code §533.201(1).

<sup>253</sup> See, e.g., Iowa Code §§533.113(6), 533.205(9), 533.315(8).

<sup>254</sup> Iowa Code §533.107.

<sup>255</sup> Iowa Code §533.108.

<sup>256</sup> Iowa Code §533.106.



## B. State Credit Union Obligations

### 1. Payment of Fees

A state credit union must pay the annual and individual fees established by the division when due. Failing to do so will subject the state credit union to an additional charge equal to 5 percent of the amount of the fees for each day that the payment is delinquent.<sup>257</sup>

### 2. Reports to Superintendent

A state credit union must provide quarterly reports to the superintendent as prescribed. The superintendent may take possession and order the dissolution of a state credit union which fails to provide a quarterly report within 30 days of its due date.<sup>258</sup>

### 3. Preservation of Records

A state credit union is not required to preserve its records for longer than seven years from the time that the record was made or filed. However, account records showing unpaid balances due to depositors cannot be destroyed. A copy of an original record can be kept in lieu of the original and is to be treated as the original record in judicial or administrative proceedings.<sup>259</sup>

### 4. Confidentiality of Information

The directors, officers, and employees of a state credit union must maintain the confidentiality of all information regarding its transactions, except where disclosure is necessary in connection with any of the following actions:<sup>260</sup>

- Making, extending, or collecting loans or lines of credit.
- Guaranteeing member share drafts by third parties.
- Communicating with insurance companies for the continuation of insurance coverage.
- Acting pursuant to a confidentiality agreement entered into between the Credit Union Division and a state credit union authorizing the disclosure of information.
- Complying with examinations of records by regulatory authorities.

### 5. Legal Reserves

A state credit union must determine its gross income at the end of each dividend period and set aside an amount from its gross income as a legal reserve to protect against losses on loans. The legal reserve belongs to the state credit union and cannot be distributed to members unless the state credit union is liquidated or according to a plan approved by the superintendent. If a state credit union fails to set aside a legal reserve in the amounts as described below, the state credit union must replenish the legal reserve with regular contributions until it reaches the required

<sup>257</sup> Iowa Code §533.112.

<sup>258</sup> Iowa Code §533.330.

<sup>259</sup> Iowa Code §533.322.

<sup>260</sup> See Iowa Code §533.325(1).



## State Banks and Credit Unions

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amount. However, the superintendent may waive legal reserve requirements if necessary.<sup>261</sup>

### **a. Legal Reserve Amount for Established State Credit Unions.**

A state credit union operating for more than four years and having at least \$500,000 in assets must set aside these amounts as a legal reserve in the following order:<sup>262</sup>

- 10 percent of the gross income until the legal reserve equals 4 percent of the total outstanding loans and risk assets.
- 5 percent of the gross income until the legal reserve equals 6 percent of the total outstanding loans and risk assets.

### **b. Legal Reserve Amount for New or Small State Credit Unions.**

A state credit union operating for less than four years or having less than \$500,000 in assets must set aside these amounts as a legal reserve in the following order:<sup>263</sup>

- 10 percent of the gross income until the legal reserve equals 7.5 percent of the total outstanding loans and risk assets.
- 5 percent of the gross income until the legal reserve equals 10 percent of the total outstanding loans and risk assets.

### **c. Special Reserves.**

The superintendent may require a state credit union to set aside an additional amount as a special reserve if an examination of the assets shows that the state credit union's legal reserve is inadequate.<sup>264</sup>

### **d. Risk Assets.**

For the purpose of establishing the legal reserve amount, the following are not considered risk assets that would affect the legal reserve amount:<sup>265</sup>

- Cash on hand.
- Deposits and shares in federally insured banks, savings banks, and credit unions.
- Assets insured by, fully guaranteed by, or due from the federal government.
- Loans to other credit unions.
- Student loans insured under federal or state programs.
- Loans insured by the Federal Housing Administration.
- Loans fully insured or guaranteed by the federal or a state government.
- Loans fully insured by a pledge of shares within the state credit union.
- Real estate loans in transit to the secondary market.

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<sup>261</sup>Iowa Code §533.303(1)-(3).

<sup>262</sup>See Iowa Code §533.303(2)(a).

<sup>263</sup>See Iowa Code §533.303(2)(b).

<sup>264</sup>Iowa Code §533.303(4).

<sup>265</sup>See Iowa Code §533.303(6).





- Deposits in the National Credit Union Share Insurance Fund.
- Common trust investments.
- Prepaid expenses.
- Accrued interest on nonrisk investments.
- Furniture and equipment.
- Land and buildings.

## 6. Accounts Insurance

A state credit union, as a condition of maintaining its privilege of organization, must acquire and maintain insurance to protect each shareholder and depositor against loss. Insurance must be obtained from the National Credit Union Administrator or from an insurance plan approved by the superintendent and the Iowa Commissioner of Insurance. However, insurance coverage need not cover a state credit union's earned dividends.<sup>266</sup>

## 7. Fidelity Bond and General Insurance

A state credit union must maintain a fidelity bond for its employees and officials in an amount sufficient to indemnify the state credit union against losses from unlawful acts committed by its employees or officials. A state credit union must also maintain general insurance for losses caused by individuals not associated with the state credit union.<sup>267</sup>

## C. Organization

### 1. Common Bond

A state credit union may be organized by a group of at least seven Iowa residents. The individuals organizing the state credit union must have a common bond of association such as occupation, common employer, or residence within a specific geographic area. Changes to the common bond may be made by the state credit union's board of directors.<sup>268</sup>

### 2. Articles of Incorporation

The articles of incorporation of a proposed state credit union must include its name, location, the names and addresses of the subscribers to the articles and the number of shares subscribed to each, and the share structure of the credit union. The articles may contain a provision limiting the personal liability of a state credit union's directors, officers, or employees for the breach of fiduciary duty, so long as the provision does not limit liability for breach of the director, officer, or employee's duty of loyalty to the state credit union, for bad-faith acts or omissions or those that involve intentional misconduct or a knowing violation of law, or for any transaction which derives an improper personal benefit. Further, the provision cannot limit liability for acts or omissions that occurred before the provision in the articles limiting liability became effective.<sup>269</sup>

<sup>266</sup> Iowa Code §533.307.

<sup>267</sup> Iowa Code §533.308(1).

<sup>268</sup> Iowa Code §§533.201(2)(a), 533.202(1).

<sup>269</sup> Iowa Code §533.201(2)(b), (10).



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### 3. Organization Process

The following steps must be taken for a state credit union to become organized:<sup>270</sup>

- The organizers of the proposed state credit union must submit an application to the superintendent, which includes the articles of incorporation, bylaws, and a fee of \$10.
- The superintendent must determine whether the application complies with the requirements of Iowa Code chapter 533 within 30 days of its receipt. The superintendent must notify the applicants of the determination.
- If the decision is favorable, the superintendent must issue a certificate of approval, along with duplicate articles of incorporation and bylaws, to the applicants.
- The applicants must file the duplicate articles of incorporation and certificate of approval with the applicable county recorder's office.
- The county recorder must record and index the documents and return the documents to the superintendent for permanent record.

### 4. Amendment to Articles or Bylaws

A state credit union's articles of incorporation or bylaws may be amended by a majority vote of its board of directors pursuant to a variety of methods. If the proposed amendment receives a favorable majority upon a vote, notice of the amendment must be given to the state credit union's members. However, an amendment to a state credit union's articles or bylaws must be approved by the superintendent before it becomes effective.<sup>271</sup>

### 5. Membership

Members of a state credit union consist of individuals in the common bond who have subscribed to at least one ownership share. Organizations, whether incorporated or not, may also become members. Once a person or organization becomes a member, that person or organization may remain a member of the state credit union until that person or organization chooses to withdraw or is expelled pursuant to Iowa Code chapter 533.<sup>272</sup>

### 6. Meetings and Voting

A state credit union must have an annual meeting and may have special meetings, held in the manner indicated in its bylaws. Each member receives one vote at a meeting regardless of the number or class of shares a member has. Voting by proxy is prohibited. The board of directors of a state credit union selects the method of conducting a membership vote, which is either a majority vote of the members present at a meeting or a majority vote of members voting by mail or electronic ballot. A state credit union must provide notice of the results of a vote to all members. The majority of the members of a state credit union present at a meeting

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<sup>270</sup> See Iowa Code §533.201(3)-(6).

<sup>271</sup> Iowa Code §533.201(7)-(9).

<sup>272</sup> Iowa Code §533.202(2).



can vote to modify, amend, or reverse any act of the state credit union's board of directors or instruct the board to take action.<sup>273</sup>

## 7. Board of Directors

### a. Election.

The members of a state credit union must elect its board of directors at the organizational meeting and at each annual meeting thereafter. The board must consist of at least seven directors and must always be composed of an odd number of directors. The directors serve staggered terms of three years and must serve until a successor is elected. The names and addresses of newly elected directors, officers, and committee persons must be filed with the superintendent within 10 days following their election. An employee of a state credit union cannot serve as a director.<sup>274</sup>

### b. Duties.

The directors of a state credit union have the following duties:<sup>275</sup>

- Elect officers from the board of directors within five days following the organizational meeting and each subsequent annual meeting.
- Appoint a credit committee of at least three members.
- Appoint an auditing committee of at least three members.
- Provide general management of the affairs of the state credit union.
- Set the amount of the surety bond for all officers and employees handling money.
- Attend at least 75 percent of all regular board meetings held per year.
- Periodically review original records, internal controls, and security measures.
- Establish education and training programs.
- Employ and fix the tenure and compensation of the chief executive officer, who may be a member of the board of directors.

### c. Compensation.

The directors of a state credit union cannot be compensated solely for serving as directors. However, directors may be reimbursed for reasonable expenses related to their service.<sup>276</sup>

### d. Prohibited Relationships.

The directors of a state credit union cannot be blood-related or have an affinity within the third degree to any person holding a senior management position in a state credit union.<sup>277</sup>

<sup>273</sup> Iowa Code §§533.203-533.203A.

<sup>274</sup> Iowa Code §§533.204, 533.205(6)(b).

<sup>275</sup> See Iowa Code §533.205.

<sup>276</sup> Iowa Code §533.205(8).

<sup>277</sup> Iowa Code §533.209A.



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### 8. Credit Committee

The role of a state credit union's committee is to supervise loans to members. The committee must approve a form for loan applications, which must set forth the purpose for the loan, the security, and any other important information. A majority of the committee must review and act on all loan applications. However, the committee, with the prior approval of the board of directors, may delegate the authority to approve or reject loans to one or more loan officers.<sup>278</sup>

### 9. Auditing Committee

A state credit union's auditing committee has the following duties and powers:<sup>279</sup>

- Perform an annual audit of the state credit union's financial records and take action if necessary by calling a meeting of its members.
- Submit an annual report of the state credit union's financial condition at the annual member meeting.
- Suspend any of the state credit union's officers, directors, or auditing committee members if necessary for the proper conduct of the state credit union, to be put to a vote by the members on whether to sustain or reinstate such person.
- Call a special meeting of the state credit union's members by majority vote to consider a matter raised by the committee.

### 10. Conflicts of Interest

A director, officer, or employee of a state credit union is prohibited from directly or indirectly participating in the deliberation or determination of any matter in which that person has a direct or indirect pecuniary or familial interest.<sup>280</sup>

### 11. Expulsion or Withdrawal of Members

The board of directors of a state credit union can, by majority vote, expel any member of the state credit union who fails to carry out the member's obligations or comply with any applicable policies. An expelled member can request a hearing before the members of the state credit union, which must be held within 60 days of the request. The members may reinstate the expelled member by majority vote. Further, any member of a state credit union can withdraw from the state credit union at any time, subject to the state credit union having the authority to require 60 days' advance notice of any withdrawal of shares or deposits.<sup>281</sup>

After deducting any amounts due, an expelled or withdrawn member must be paid all amounts paid on shares or as deposits, including accrued dividends and interest. An expelled or withdrawn member is not released from any remaining liability to the state credit union because of the expulsion or withdrawal.<sup>282</sup>

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<sup>278</sup>Iowa Code §533.207.

<sup>279</sup>See Iowa Code §533.208.

<sup>280</sup>Iowa Code §533.209A.

<sup>281</sup>Iowa Code §533.210(1)-(3), (5).

<sup>282</sup>Iowa Code §533.210(4), (6).



## 12. Suspension or Restriction of Services

A state credit union can suspend or deny certain services to members who cause a loss to the state credit union, violate a membership agreement, or who physically or verbally abuse other members or staff. However, members with suspended services can still maintain a share account and continue to vote at meetings.<sup>283</sup>

## 13. Name of State Credit Union

A state credit union must include the words “credit union” in its name. The full name of the state credit union must be identified on all of its offices and used on all legal documents. No person or organization other than a credit union may use a name or title that includes the words “credit union” and such a person or organization may be enjoined from using such words.<sup>284</sup> A state credit union is prohibited from including the name of any public university located in Iowa in its name.<sup>285</sup>

## 14. Other Types of Credit Unions

### a. Central Credit Unions.

Central credit unions may be established to serve the directors, officers, and employees of credit unions, members of dissolved and existing credit unions, credit unions, groups of persons having insufficient numbers to establish a separate credit union, and anyone else approved by the superintendent.<sup>286</sup>

### b. Corporate Central Credit Unions.

Corporate central credit unions may be established to serve state and national credit unions, regulated financial institutions, nonprofit organizations, and cooperative organizations. A corporate central credit union cannot be required to transfer over 5 percent of its annual net income to its legal reserve. A corporate central credit union has the same powers and obligations of a state credit union organized under Iowa Code chapter 533, along with the following additional powers:<sup>287</sup>

- Borrow any amount of money from any source.
- Make investments to the same extent allowed for other regulated financial institutions.
- Acquire the shares or stock of an organization providing services for the operations of credit unions up to 50 percent of the corporate central credit union’s total reserves and earnings.
- Buy or sell marketable obligations of a corporation or state or federal agency issued without recourse.
- Establish capital accounts in the same manner as national credit unions.
- Sell all or part of its assets to another corporate central credit union and assume the liabilities of another corporate central credit union pursuant to a plan adopted by a majority vote of the board of directors and, if

<sup>283</sup> Iowa Code §533.211.

<sup>284</sup> Iowa Code §533.212(1)-(2).

<sup>285</sup> 2018 Iowa Acts, ch. 1172, §§82, 86. The prohibition is effective April 30, 2019.

<sup>286</sup> Iowa Code §533.214.

<sup>287</sup> See Iowa Code §533.213; Iowa Admin. Code 189-10.1.



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involving the sale of all of its assets, the affirmative vote of a majority of its members.

- Invest in the shares or deposits of another corporate central credit union.
- Make other investments approved by the superintendent.
- Exercise any other powers granted to nationally chartered corporate central credit unions.

### **c. Low-Income Designated Credit Unions.<sup>288</sup>**

Low-income designated credit unions have the same purpose as all other state credit unions. In addition, over 50 percent of the members of a low-income designated credit union must be low-income members. A “low-income member” is defined as an individual who makes less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics, an individual whose annual household income is at or below 80 percent of the national median household income as established by the Census Bureau, individuals who are enrolled as full-time or part-time students in a university, college, high school, or vocational school, or anyone else defined as “low income” by the superintendent or the National Credit Union Administration Board.<sup>289</sup>

A state credit union requesting designation as a low-income credit union must submit a written request and receive approval from the superintendent. The state credit union must also provide sufficient supporting documentation that its members or potential members meet the low-income designation. The superintendent may apply a variety of methods to determine whether the state credit union meets the low-income member threshold.<sup>290</sup>

A low-income designated credit union can receive nonmember shares and deposits from any source, at any given time not to exceed 20 percent of its total shares and deposits or \$1.5 million, whichever is greater. A low-income designated credit union may accept nonmember accounts in excess of 20 percent of its total shares and deposits if approved by the superintendent pursuant to a specific written plan regarding the intended use of these accounts that is adopted by the low-income designated credit union’s board of directors. A low-income designated credit union can also offer secondary capital accounts to nonnatural members and nonmembers, subject to a plan adopted by the board of directors and approved by the superintendent.<sup>291</sup>

Once a state credit union is designated as low income, documentation regarding its low income eligibility is reviewed during each regular examination to ensure that it continues to meet the standards for low-income designation. The superintendent may remove a state credit union’s designation as low income at the request of the credit union or if the superintendent determines that the credit union no longer meets the standards for low income designation, if in the public interest and after giving the state credit union notice and an opportunity

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<sup>288</sup> The Credit Union Division derives its authority to establish rules allowing for low-income designated credit unions from Iowa Code §533.301(1)(b).

<sup>289</sup> Iowa Admin. Code 189-7.1 to 7.2.

<sup>290</sup> Iowa Admin. Code 189-7.3.

<sup>291</sup> Iowa Admin. Code 189-7.4(1)-(2), 7.6.



for a hearing. A state credit union which loses its low-income designation must immediately notify all of its nonmembers and provide information regarding the withdrawal of nonmember accounts, shares, and deposits.<sup>292</sup>

## D. Operations

### 1. General Powers

A state credit union may exercise any of the following general powers:<sup>293</sup>

- Receive payments for shares or deposits from the state credit union's members, other credit unions, local and federal governments, and nonmembers if designated a low-income credit union.
- Make loans or leases to its members.
- Make deposits in state and national banks, federal savings banks, savings and loan associations, and state and national credit unions, the accounts of which are insured.
- Make investments in time deposits, obligations of the United States government or any agency therein, obligations of the state or any subdivision therein, notes purchased from liquidating credit unions, shares and deposits in other credit unions, obligations of credit union service organizations in an amount not to exceed 5 percent of all assets, obligations of federal land banks, investment grade corporate bonds, or any permissible investment for national credit unions.
- Borrow money.
- Sue and be sued.
- Enter into contracts.
- Purchase, hold, and dispose of property.
- Exercise any incidental powers necessary for the state credit union to carry on its business effectively.
- Maintain insurance for its shares and deposit accounts.
- Serve a group of persons not having enough members to form a separate credit union with no common bond between the group and the state credit union needed.
- Make a deposit with a state credit union in existence for not more than one year in an amount not to exceed 25 percent of the new state credit union's assets.
- Acquire the conditional sales contracts, promissory notes, or other similar instruments of its members at a rate of interest not to exceed the highest rate charged on the state credit union's outstanding loans.
- Sell, participate in, or discount the obligations of its members with or without recourse.

<sup>292</sup>Iowa Admin. Code 189-7.5.

<sup>293</sup>See Iowa Code §533.301.



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- Acquire and hold shares in a corporation operating facilities engaged in credit union transactions with the prior approval of the superintendent.
- Utilize, operate, or establish state or national banks, national savings and loan associations, licensed industrial loan companies, or third parties by which the state credit union engages in transactions, in compliance with Iowa Code chapter 527.
- Establish one or more offices other than its main office with a certificate issued by the superintendent for each office.
- Contract with other credit unions to furnish services.
- Purchase insurance or make the purchase of insurance available to its members.
- Charge fees and penalties.
- Act as an agent of the federal government when requested by the Secretary of the United States Department of Treasury or an agent of the state when requested by the Iowa Treasurer of State.
- Perform services required relating to the collection of state or federal taxes.
- Act as a depository of public moneys when designated for that purpose.
- Receive public funds and pledge its assets to secure the deposit of public funds.
- Promote the public welfare and make donations for religious, charitable, scientific, educational, or community purposes.
- Set off a member's accounts against any of the member's debts or liabilities owed to the state credit union pursuant to an agreement entered into between the member and the state credit union.
- Sell negotiable checks, money orders, and other money transfer instruments to members.
- Cash checks and money orders and send and receive electronic fund transfers for members.
- Engage in any activity authorized by the superintendent that would be permitted if the state credit union were nationally chartered and which is consistent with Iowa law.

### 2. Capital

The capital of a state credit union consists of payments that have been made to it by its members on shares. A credit union may establish an equity share with a par value of up to \$100 as part of its capital which cannot be withdrawn except upon expulsion or withdrawal of membership. Such equity share may earn a dividend and be insured.<sup>294</sup>

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<sup>294</sup>Iowa Code §533.302.





## 3. Investment Powers

### a. Investments in Small Businesses.<sup>295</sup>

A state credit union may invest up to 5 percent of its assets in either of the following:<sup>296</sup>

- Shares or equity interests in venture capital funds that agree to invest at least 50 percent of the investment in small businesses having their principal office in Iowa and with either over half of their assets in Iowa or over half of their employees employed in Iowa.
- Shares or equity interests in small businesses having their principal office in Iowa and with either over half of their assets in Iowa or over half of their employees employed in Iowa. Such an investment is limited to no more than 20 percent of the total capital and surplus of any one small business.

### b. Investments in Banks or Savings Banks.

A state credit union may invest in the capital stock, obligations, or other securities of a bank or savings bank with the prior approval of the superintendent. Before granting an approval to invest in a bank or savings bank, the superintendent must first make a finding that either the proposed investment will not significantly reduce competition between financial institutions in the same community or the proposed investment will create a net public benefit. The liquidation of a bank or savings bank whose shares are acquired by a state credit union cannot prevent another bank or savings bank from incorporating in the same community.<sup>297</sup>

## 4. Borrowing Powers

A state credit union may borrow a sum that does not exceed 50 percent of the sum of its share and deposit account balances from any source.<sup>298</sup>

## 5. Lending Powers

### a. General Lending Power.

A state credit union may provide a loan to a member for any “provident or productive” purpose. A loan application must include supportive credit information.<sup>299</sup>

### b. Aggregate Limit on Loans to One Member.

A state credit union cannot lend in the aggregate to one member over 10 percent of the state credit union’s member savings.<sup>300</sup>

### c. Loans to Directors.

A state credit union may provide loans to a director of a state credit union subject to rates, terms, and conditions that are not more favorable than those

<sup>295</sup> A “small business” is defined as one that meets the appropriate federal small business administration definition and is principally engaged in the development of inventions, technological improvements, new processes, other products not generally available in Iowa, or other investments which provide an economic benefit to Iowa. Iowa Code §533.304(1)(b).

<sup>296</sup> See Iowa Code §533.304(2).

<sup>297</sup> Iowa Code §533.305.

<sup>298</sup> Iowa Code §533.306.

<sup>299</sup> Iowa Code §533.315(1).

<sup>300</sup> Iowa Code §533.315(2).



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provided to other members. However, the aggregate amount of all loans provided to directors cannot exceed 25 percent of the state credit union's assets.<sup>301</sup>

### **d. Loans on Real Property.**

A state credit union may make loans secured by liens on real property, subject to rules adopted by the superintendent.<sup>302</sup> A state credit union may require a borrower to pay each month, in addition to interest and principal under the note, an amount equal to one-twelfth of the estimated real estate taxes, special assessments, hazard insurance premium, mortgage insurance premium, or any other payment agreed upon to better secure the loan.<sup>303</sup> A state credit union can act as an escrow agent with respect to real property that is mortgaged to the state credit union and is deemed to be acting in a fiduciary capacity with respect to escrowed funds.<sup>304</sup> A state credit union maintaining an escrow account must deliver an annual escrow report to the mortgagor containing a summary of all transactions made with respect to the account during each calendar year.<sup>305</sup>

### **e. Consumer Loans.**

The provisions of Iowa Code chapter 537, the Iowa Consumer Credit Code, apply to consumer loans made by a state credit union and supersede any conflicting provision in Iowa Code chapter 533 with respect to a consumer loan.<sup>306</sup>

## **6. Share Accounts**

A state credit union may have share accounts, including but not limited to ownership share accounts, joint accounts, accounts for minors, and beneficiary accounts. When a deposit is made in the name of two or more individuals, the deposit and any interest may be paid to any one or more of the individuals, whether or not the others are living, and the receipt of such funds by any individual is a valid release and discharge of the state credit union for any payment made.<sup>307</sup>

## **7. Share Drafts**

A state credit union can provide its members with share draft accounts, or accounts from which the state credit union has agreed that funds may be withdrawn upon demand by means of a share draft. A state credit union may charge fees and penalties in relation to share draft services. When a state credit union is dissolved, first priority of payment is given to unpaid share drafts unless the share draft was issued on or after the date of dissolution or the date on which the state credit union is required to cease doing business, the share draft account does not contain enough funds, or if the share draft is payable to a member of the state credit union or other interested persons.<sup>308</sup>

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<sup>301</sup>Iowa Code §533.315(3).

<sup>302</sup>Iowa Code §533.315(4)(a). A state credit union cannot charge an interest rate on such a loan that exceeds the maximum rate permitted in Iowa Code §535.2. Iowa Code §533.316(1)(b).

<sup>303</sup>Iowa Code §533.315(4)(b)(1).

<sup>304</sup>Iowa Code §533.315(5).

<sup>305</sup>See Iowa Code §533.315(5) for information required in the annual escrow report.

<sup>306</sup>Iowa Code §533.315(9). This includes limits on interest rates permitted in Iowa Code sections 537.2401 and 537.2402.

<sup>307</sup>Iowa Code §§533.309-533.310.

<sup>308</sup>See Iowa Code §§533.313-533.314.



## 8. Safe Deposit Boxes

A state credit union may lease safe deposit boxes to its members in the same manner that a state bank may lease safe deposit boxes to its customers.<sup>309</sup>

## 9. Taxation

Unlike state banks, Iowa law deems state credit unions as “institution[s] for savings” and exempts state credit unions from paying taxes on their shares. Therefore, a state credit union is only subject to taxation as to its real estate (property taxes) and moneys and credits.<sup>310</sup>

A state credit union is subject to a moneys and credit tax at a rate of 0.5 percent on each dollar of the legal and special reserves the state credit union is required to maintain, minus a \$40,000 exemption. A state credit union may also reduce its tax liability through any applicable tax credits provided in law. The tax is collected by the Department of Revenue and is apportioned 20 percent to the county, 30 percent to the general fund of the city, and 50 percent to the general fund of the state. The tax amount collected in each taxing district outside of cities is apportioned 50 percent to the county and 50 percent to the general fund of the state.<sup>311</sup>

## E. Dissolution

### 1. Voluntary Dissolution

A state credit union may voluntarily dissolve by taking the following steps:<sup>312</sup>

- A majority of the state credit union’s members eligible to vote on the voluntary dissolution must do so with at least 20 days’ notice of the vote.
- The state credit union must cease to do business except for liquidation purposes immediately upon sending notice of the members’ vote on dissolution.
- A majority of the state credit union’s board of directors must vote in favor of the dissolution and notify the superintendent of its intent to dissolve within three business days of the vote.
- The board of directors must notify the national credit union administration of the intent to dissolve, as required by federal law.
- The board of directors must terminate and settle the affairs of the state credit union, including discharging its liabilities, collecting and distributing its assets, and all other acts required to terminate its affairs. The board of directors may appoint a responsible person, as approved by the superintendent, to exercise its powers to terminate and settle the affairs of the state credit union.
- The board of directors must give notice to creditors of the state credit union to present their claims within 10 days of the members’ affirmative vote to dissolve the state credit union. The state credit union must also publish notice of the dissolution in a newspaper of general circulation in each county where the state credit union is located, either once if the state credit union has assets of

<sup>309</sup>See Iowa Code §§533.317-533.321.

<sup>310</sup>Iowa Code §533.329(1).

<sup>311</sup>Iowa Code §533.329(2), as amended by 2018 Iowa Acts, ch. 1172, §§83-85.

<sup>312</sup>See Iowa Code §533.405.



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\$5 million or less on the month immediately prior to the vote or once a week for two consecutive weeks if the state credit union has assets over \$5 million.

- The superintendent must issue a certificate of dissolution upon proof that all obligations have occurred.

The state credit union is dissolved upon the filing of the certificate of dissolution in the county in which the state credit union has its principal place of business and the county in which its original articles of incorporation were filed. At any time prior to the final distribution of its assets, a state credit union may revoke voluntary dissolution proceedings with the affirmative vote of a majority of its members eligible to vote with at least 20 days' notice of the vote. The board of directors must immediately notify the superintendent of any action to revoke the voluntary dissolution proceedings.<sup>313</sup>

### 2. Involuntary Dissolution

The superintendent may move for the involuntary dissolution of a state credit union in one of two situations:<sup>314</sup>

- The superintendent takes over the management of the property and business of a state credit union and determines that the state credit union cannot be reorganized or merged with another state credit union.
- The superintendent finds that a state credit union in the process of a voluntary dissolution is not making reasonable progress in terminating its affairs.

In either situation, the superintendent must apply to the district court for appointment as receiver with the authority to dissolve the state credit union.<sup>315</sup>

### F. Merger

A state credit union may merge with another credit union with the approval of the superintendent and pursuant to a plan agreed upon by a majority of the board of directors of each merging credit union. The merger must also be approved by an affirmative vote of the members of each merging credit union with at least 20 days' notice of the vote. However, the superintendent may waive the membership merger vote if the superintendent finds an emergency exists to justify the waiver. The rights and privileges of the members of the merging credit unions continue as provided in the merger plan. Membership in the continuing credit union is available to any person within the common bond of the merging credit unions.<sup>316</sup>

### G. Conversion

#### 1. Conversion of Financial Institution to State Credit Union

Any financial institution chartered under federal or state law may convert to a state credit union by complying with the laws of the originally chartered authority and upon the approval of the superintendent. The financial institution must submit its application for approval of the conversion to the state credit union accompanied with the articles of organization and bylaws as required for organization of a state credit union. The superintendent may examine the financial institution applying for conversion and must

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<sup>313</sup>Iowa Code §533.405(6)(c), (7).

<sup>314</sup>See Iowa Code §533.405A.

<sup>315</sup>Iowa Code §533.405A.

<sup>316</sup>Iowa Code §533.401(1), (5), (7).



be reimbursed for the costs for such examination. If the superintendent approves the application for conversion, the superintendent will file the articles of incorporation in the county in which the state credit union has its principal place of business and will issue a certificate of authority to do business to the resulting state credit union. Upon conversion, the existence of the original financial institution ceases and the resulting state credit union may only engage in the business of a state credit union.<sup>317</sup>

## **2. Conversion of State Credit Union to Federal Credit Union**

A state credit union may convert to a federal credit union with the approval of the administrator of the National Credit Union Administration (NCUA) and by the affirmative vote of a majority of the state credit union's members. The board of directors of the state credit union must notify the superintendent of the proposed conversion and of any abandonment or disapproval of the conversion by the state credit union's members or the administrator of NCUA, file evidence with the superintendent of approval of the conversion by the administrator of NCUA, and notify the superintendent of the date on which the conversion is to be effective. Upon receiving satisfactory proof that the state credit union has complied with all applicable laws, the superintendent issues a certificate of conversion to be filed and recorded in the county in which the state credit union has its principal place of business and the county in which its original articles of incorporation were filed and recorded.<sup>318</sup>

## **H. Supervisory Action by Superintendent**

### **1. Cease and Desist Order**

The superintendent may serve notice upon an officer, director, employee, or committee member of a state credit union if the superintendent has reason to believe the individual involved has violated any law, rule, or order relating to a state credit union, or has engaged in an unsafe or unsound practice in conducting the business of a state credit union. Such notice must require the individual to appear before the superintendent to show cause why the individual should not be removed from office or employment. Copies of the notice must be mailed to each director of the affected state credit union. If the superintendent finds that the individual has violated the law, rule, or order upon a hearing, the superintendent may order that the individual be removed from office or employment and may further require that the individual not accept employment in any state credit union without prior approval.<sup>319</sup>

If the superintendent determines, after notice and opportunity for hearing, that a state credit union has violated any provision of Iowa Code chapter 533, the superintendent must order the state credit union to correct the violation within 60 days or less, unless the state credit union is insolvent. The superintendent may revoke a state credit union's certificate of approval for failing to comply with an order.<sup>320</sup>

### **2. Summary Cease and Desist Order**

If the superintendent believes that a state credit union, or a director, officer, employee, or committee member of a state credit union, is engaging in or is about

<sup>317</sup>Iowa Code §533.402(1)-(3).

<sup>318</sup>Iowa Code §533.403.

<sup>319</sup>Iowa Code §533.501(1)(a).

<sup>320</sup>Iowa Code §533.501(1)(b).



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to engage in an unsafe or unsound practice or dishonest act in conducting the business of the state credit union that is likely to cause insolvency, seriously weaken the condition of the state credit union, or otherwise seriously harm the interests of its members, the superintendent may issue an interim summary cease and desist order requiring the state credit union or individual to cease and desist from any such practice or act, and may take affirmative action, including suspension of the individual. The interim order must contain a concise statement of the facts and schedule a time and place at which a hearing will be held, no later than 30 days after the service of the interim order unless the party served requests a later date. Within 10 days after being served with the interim order, the state credit union or individual may apply to the district court in the county in which the state credit union has its principal place of business for an injunction setting aside, limiting, or suspending the enforcement of the interim order pending the completion of the hearing.<sup>321</sup>

If the superintendent finds that any unsound or unsafe practice or dishonest act has been established at the hearing, the superintendent may issue a final cease and desist order to the state credit union or individual. The final cease and desist order may require the state credit union or individual to cease and desist from any such practice or act and direct any action, including suspension of the individual. If an order is violated or is threatened to be violated, the superintendent may apply to the district court in which the state credit union has its principal place of business for the enforcement of the order.<sup>322</sup>

### 3. Administrative Hearing

A hearing provided to a state credit union or individual under the superintendent's authority must be presided over by an administrative law judge. All hearings are private, unless the superintendent determines that a public hearing is necessary to protect the public interest after full consideration of the views of the party afforded the hearing. After the hearing, and within 30 days after the case is submitted for decision, the superintendent must review the proposed order of the administrative law judge and render a final decision, including findings of fact upon which the decision is made. Records and information relating to the hearing are confidential and not subject to subpoena.<sup>323</sup>

### 4. Taking Over Management of State Credit Union

The superintendent may take over the management of a state credit union if any of the following occurs:<sup>324</sup>

- The state credit union violates any Iowa law.
- The capital of the state credit union is impaired.
- The state credit union conducts its business in an unsafe or unsound manner.
- The state credit union is in such condition that it is unsound, unsafe, or inexpedient for it to transact business.

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<sup>321</sup> Iowa Code §533.501(2)(a), (b)(1)-(2), (f).

<sup>322</sup> Iowa Code §533.501(2)(b)(4), (e).

<sup>323</sup> Iowa Code §533.501(2)(c).

<sup>324</sup> See Iowa Code §533.502(1).



- The state credit union suspends or refuses payment of its deposits or other liabilities.
- The state credit union refuses to provide records or information as requested.
- The state credit union neglects or refuses to observe any order of the superintendent, unless the enforcement of such order is stayed in a court proceeding.
- The state credit union has not conducted business for at least 180 days.

If the superintendent takes over the management of a state credit union, the superintendent may operate and direct the affairs of the state credit union in its regular course of business, collect amounts due, and do any other act that is necessary to conserve or protect the state credit union's assets, property, and business. The superintendent may appoint one or more persons to assist in the management of the state credit union. During the period of the superintendent's management of a state credit union, the superintendent may assess the state credit union for costs and expenses incurred during the management period.<sup>325</sup>

### 5. Receivership

In any situation in which the superintendent is appointed by a court as receiver for a state credit union, the superintendent must make a diligent effort to collect and realize on the assets of the state credit union and occasionally distribute proceeds to those entitled in the order provided by law. The superintendent as receiver may also do any of the following:<sup>326</sup>

- Execute assignments, releases, and satisfactions to effectuate sales and transfers.
- Sell or compound all bad or doubtful debts upon the order of the court.
- Sell all the real and personal property of the state credit union upon the order of the court.
- Sue and defend in the superintendent's name with respect to the state credit union's affairs.

After completion of the receivership, the superintendent must file a final report with the court containing the details of receivership activity and any other information the court may require. Upon the submission and approval of the final report by the court, the court enters a decree dissolving the state credit union and discharging the superintendent as receiver. All expenses of the receivership and dissolution are determined by the superintendent, subject to the court's approval, and are paid out of the state credit union's assets. The superintendent must hold all records of a receivership for two years after the court decree dissolving the state credit union and discharging the receiver.<sup>327</sup>

<sup>325</sup>Iowa Code §533.502(2).

<sup>326</sup>See Iowa Code §533.503(1).

<sup>327</sup>Iowa Code §533.503(2), (4)-(6).



## State Banks and Credit Unions

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### 6. Examination and Subpoenas

The superintendent may conduct an examination of a state credit union on any subject relating to the superintendent's powers and duties. The superintendent or a designee may subpoena witnesses, compel their attendance, administer an oath, examine any person under oath, and require the production of any relevant record during the examination. If a person subpoenaed fails to produce a record or give testimony as required in the terms of the subpoena, the superintendent may apply to the Polk County district court to enforce the subpoena or issue an order compelling compliance. Refusing to obey any order issued by the district court without reasonable cause is considered contempt of court.<sup>328</sup>

#### I. Limitations of Actions and Penalties

##### 1. Limitation of Actions

All causes of action against a state credit union based on a claim inconsistent with an entry in the state credit union's records made in the regular course of business accrue one year after the date of the entry. An action founded upon such a cause cannot be brought after 10 years from the date of such accrual.<sup>329</sup>

##### 2. Penalties

###### a. Penalties Imposed by Superintendent.

The superintendent may impose a penalty against a state credit union, after notice and the opportunity for a hearing, in an amount not to exceed \$100 per day for each day that the violation is unresolved, for any of the following violations:

- Failing to comply with an examination required by the superintendent.<sup>330</sup>
- Failing to comply with the duties imposed upon the board of directors.<sup>331</sup>
- Failing to provide a quarterly report to the superintendent when due.<sup>332</sup>
- Providing an unlawful loan.<sup>333</sup>

###### b. False Statement.

Any person who knowingly makes a false statement in writing to a state credit union concerning the person or anyone else's ability to pay with the intent that such statement is relied upon by the state credit union for the receipt of credit in any form, for the benefit of the person or anyone else, is guilty of a fraudulent practice.<sup>334</sup>

Any director, officer, or employee of a state credit union who intentionally publishes, disseminates, or distributes any advertising containing false, misleading, or deceptive statements concerning rates, terms, or conditions of

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<sup>328</sup> Iowa Code §533.505.

<sup>329</sup> Iowa Code §533.506.

<sup>330</sup> Iowa Code §533.113(6).

<sup>331</sup> Iowa Code §533.205(9).

<sup>332</sup> Iowa Code §533.330. In the case of a state credit union's failure to provide a supplemental report to the superintendent when due, the superintendent may impose a penalty of \$50 per day that such report is late.

<sup>333</sup> Iowa Code §533.315(8); see Iowa Code §533.315 for loan requirements.

<sup>334</sup> Iowa Code §§533.507, 714.8-714.14. A fraudulent practice is punishable by a varying degree of penalties, depending on the value of the money or property involved or on the number of prior fraudulent practice convictions of the offender.





loans or deposits, authorized charges, or the financial condition of the state credit union is also guilty of a fraudulent practice.<sup>335</sup>

Any person who maliciously or with intent to deceive makes, publishes, repeats, or circulates any false statement about a state credit union which imputes insolvency, unsound financial condition, or financial embarrassment, may cause or provoke a general withdrawal of deposits from the state credit union, or would otherwise injure the business of the state credit union, is guilty of a simple misdemeanor.<sup>336</sup>

### **c. Falsification.**

Any director, officer, agent, or employee of a state credit union who knowingly makes a false statement or entry in the records of the state credit union, knowingly consents to the making of a false report regarding the state credit union, or knowingly diverts the funds of the state credit union is guilty of a class “C” felony and is forever barred from holding any office or position in a state credit union.<sup>337</sup>

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<sup>335</sup>Iowa Code §533.508(1).

<sup>336</sup>Iowa Code §533.508(2). A simple misdemeanor is punishable by confinement for no more than 30 days or a fine of at least \$65 but not more than \$625 or by both. Iowa Code §903.1(1)(a).

<sup>337</sup>Iowa Code §533.509. A class “C” felony is punishable by confinement for no more than 10 years and a fine of at least \$1,000 but not more than \$10,000. Iowa Code §902.9(1)(d).