

## **Chapter 3 Banks**

### **7-3-1 Application of chapter.**

This chapter applies to all banks organized under the laws of this state, to all other banks doing business in this state as permitted by the laws and Constitution of the United States, and to all persons conducting banking business in this state except as provided in Chapter 1, General Provisions.

Amended by Chapter 189, 2014 General Session

### **7-3-2 Restrictions on conduct of banking business.**

- (1) The establishment or operation in this state of private or partnership banks is expressly prohibited.
- (2) An institution may establish or maintain a main office or branch in this state at which to conduct banking business only if:
  - (a) it is legitimately chartered as a bank by a state, the federal government, or a foreign government; and
  - (b) in the case of a bank whose home state is not Utah, it is authorized to have a branch in Utah under the laws of this state and the laws of its home state.

Amended by Chapter 49, 1995 General Session

### **7-3-3 "Banking business" defined -- Credit card banks -- Insurance of deposit accounts.**

- (1)
  - (a) Except as provided under Subsection (1)(b), a person is considered to be conducting a banking business and is a bank subject to the provisions of this title that are applicable to banks if the person is authorized:
    - (i) under the laws of this:
      - (A) state;
      - (B) another state;
      - (C) the United States;
      - (D) the District of Columbia; or
      - (E) a territory of the United States; and
    - (ii)
      - (A) to accept deposits from the public; and
      - (B) to conduct such other business activities as may be authorized by statute or by the commissioner in accordance with Subsection 7-3-10(3).
  - (b) A person is not considered to be a bank subject to the provisions of this title that are applicable to banks if the person is authorized to conduct the business of:
    - (i) a federal savings and loan association;
    - (ii) a federal savings bank;
    - (iii) an industrial bank subject to Chapter 8, Industrial Banks;
    - (iv) a federally chartered credit union; or
    - (v) a credit union subject to Chapter 9, Utah Credit Union Act.
- (2) A person authorized to operate as a bank in this state may operate as a credit card bank if it:
  - (a) engages only in credit card operations;

- (b) does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others;
  - (c) does not accept a savings or time deposit of less than \$100,000;
  - (d) maintains only one office that accepts deposits; and
  - (e) does not engage in the business of making commercial loans.
- (3) All deposit accounts in banks or branches subject to the jurisdiction of the department shall be insured by the Federal Deposit Insurance Corporation or a successor to the Federal Deposit Insurance Corporation.

Amended by Chapter 354, 2020 General Session

**7-3-3.2 Securities business permitted -- Activities conducted by subsidiary -- Disclosure statements required.**

- (1) A bank has all necessary and incidental powers to engage in the business of purchasing, selling, underwriting, and dealing in securities, whether as a principal for its own account or as agent or broker for a customer, subject to the limitations in this section.
- (2) The securities business that a bank may conduct as a principal for its own account is limited to the activities specified in Subsections (2)(a) through (d). A bank does not otherwise have power to enter securities underwriting or act as a principal in issuance or marketing of securities.
  - (a) A bank may purchase for investment and subsequently resell those types of securities authorized by statute or rule of the commissioner, including, without limitation, shares purchased in accordance with Section 7-3-21 and government or other securities lawfully acquired for the investment or trading portfolio of the bank or any of its subsidiaries or affiliates in accordance with any limitation established by any other federal or state statute, regulation, or rule.
  - (b) A bank may sell securities of any kind acquired in the ordinary course of business, including, without limitation, through foreclosure on pledged securities.
  - (c) A bank may underwrite or deal in securities issued by a municipality, county, or other local governmental entity or an agency of any such governmental entity, securities issued by a state or any of its agencies, or securities issued by the federal government or any of its agencies.
  - (d) A bank may establish or underwrite the securities of registered investment companies that are limited to operating or investing in money market funds or other short-term government or corporate debt instruments.
- (3) This section may not be interpreted to alter the traditional rights and powers of banks to issue deposit instruments or similar instruments that acknowledge receipt of money for customers, even though the instruments may for some purposes be considered securities.
- (4) Securities activities under this section, except those activities described in Subsections (2)(a) and (b), shall be conducted only through a subsidiary. Any such subsidiary shall be established pursuant to rules that the commissioner may adopt after notice and hearing. Any such rules shall further define the standards by which a securities subsidiary of a bank may be established and operated, including the requirement for registration, if required, as a broker-dealer with state, federal, and self-regulatory agencies. In addition to other standards that may be established by these rules, a bank may not invest more than 10% of its total capital in a securities subsidiary. For purposes of that determination, total capital shall be calculated in accordance with all other applicable statutes and rules of the commissioner, including the effect of loans from the bank to the subsidiary, together with capital standards established by the

Federal Deposit Insurance Corporation. Every loan made by the bank to a securities subsidiary shall comply with applicable state and federal laws. In all cases, each subsidiary shall maintain separate corporate and financial records.

- (5) Notwithstanding Subsection (4), a bank may enter into a networking agreement with a registered broker-dealer for the provision of brokerage services to the bank's customers on the bank's premises without the need to comply with Subsection (4), (6), or (7).
- (6) The securities activities authorized by this section may be conducted from an authorized banking office or from a separate office of a subsidiary, and may be offered to customers in this state or in any other state, territory, or country, except to the extent such activities are limited or prohibited by the laws of the other state, territory, or country.
- (7) Before undertaking any of the direct or indirect securities activities permitted under this section, except those authorized by Subsection (2)(a), a bank shall apply to the commissioner. The commissioner shall render a decision of approval, conditional approval, or disapproval within 60 days from the date of receiving the application. Public notice is not required for any hearing on the application that may be held. The commissioner shall satisfy himself before approving the application that the bank possesses the managerial and financial resources necessary to conduct the securities activities safely and soundly.
- (8) In conducting securities activities, a bank shall in all respects comply, and cause its securities subsidiary to comply, with the Utah Uniform Securities Act, the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, and other applicable statutes, regulations, and rules.
- (9) In connection with each customer for which a bank or its securities subsidiary shall act as agent or broker, the bank or the subsidiary, as applicable, shall give a written disclosure to its customer prior to closing any single transaction or establishment of an account contemplating a series of transactions. The disclosure statement shall be in legible print and shall be in substantially the form shown in Subsection (9)(a) with respect to the bank and in Subsection (9)(b) with respect to any securities subsidiary.

(a)

DISCLOSURE STATEMENT

The services offered by the securities department of this bank are offered to its customers without regard to any other banking relationship. By signing below the customer acknowledges receipt of this Disclosure Statement and agrees that any contract for securities services is completely voluntary, and the selection of this bank for securities services has not been required by any other business relationship or account with the bank.

\_\_\_\_\_ (month/day/year).

CUSTOMER:

\_\_\_\_\_  
\_\_\_\_\_

(b)

DISCLOSURE STATEMENT

\_\_\_\_\_ (name of securities agency subsidiary) is a subsidiary of \_\_\_\_\_ (name of bank). The services offered by \_\_\_\_\_ (name of subsidiary) are offered to its customers without regard to any separate banking relationship with \_\_\_\_\_ (name of bank). By signing below the customer acknowledges receipt of this Disclosure Statement and agrees that any contract for services with \_\_\_\_\_ (name of subsidiary) is completely voluntary and the selection of \_\_\_\_\_ (name of subsidiary) for securities services has not been required by any business relationship with its parent bank.

\_\_\_\_\_ (month/day/year).

CUSTOMER:

\_\_\_\_\_  
\_\_\_\_\_

Amended by Chapter 75, 2000 General Session

**7-3-10 Organization -- Powers, rights, and privileges of banking corporation -- Other business activities.**

- (1) A bank chartered under this chapter shall be:
  - (a) a domestic corporation under Title 16, Chapter 10a, Utah Revised Business Corporation Act; or
  - (b) subject to Section 7-1-810, including the requirement that the bank be an S Corporation immediately before becoming a limited liability company, a limited liability company created under Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act.
- (2) A bank has all the rights, privileges, and powers necessary or incidental to carrying on the business of banking in addition to the powers granted:
  - (a) if the bank is a corporation, under Title 16, Chapter 10a, Utah Revised Business Corporation Act; or
  - (b) subject to Section 7-1-810, if the bank is a limited liability company, under Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act.
- (3) The commissioner may, by rule or order, determine that necessary or incidental rights, privileges, and powers include:
  - (a) the rights, privileges, and powers held by national banks; or
  - (b) other business activities so long as the commissioner's determination is not inconsistent with the rules, regulations, or other actions of the board of governors of the Federal Reserve System under Section 4(c)(8) of the Bank Holding Company Act of 1956, 12 U.S.C. Sec. 1843(c)(8).
- (4) The commissioner shall implement this section in a manner consistent with the purposes set forth in Section 7-1-102.

Amended by Chapter 281, 2018 General Session

**7-3-12 Prohibited investments and loans.**

- (1)
  - (a) Except as provided in Subsection (2), a bank may not make an investment or loan described in Subsection (1)(b) if the aggregate of the investments and loans described in Subsections (1)(b)(i) and (ii) plus any indebtedness incurred by any corporation holding the premises of the bank which is an affiliate of the bank, exceeds the greater of:
    - (i) the amount of the capital stock and surplus of the bank; or
    - (ii) 50% of the total capital accounts of the bank.
  - (b) If an investment or loan will violate Subsection (1)(a), a bank may not:
    - (i) invest in its own premises including furniture, fixtures and equipment, or in the stock, bonds, debentures, or other obligations of any corporation holding the premises of the bank; or
    - (ii) make loans to or upon the security of the stock of any corporation holding the bank's premises.

- (2) A bank may make an investment or loan prohibited under Subsection (1) with the prior written approval of the commissioner if the bank can demonstrate reasonable need for the investment or loan to the commissioner.

Amended by Chapter 91, 1997 General Session

**7-3-13 Changes in articles of incorporation restricted.**

No change shall be made in the articles of incorporation of any bank if the change would result in the impairment of the rights, remedies, or securities of depositors and other creditors of the bank.

Enacted by Chapter 16, 1981 General Session

**7-3-15 Dividends allowed -- Surplus requirements.**

- (1) The board of directors of a bank may declare a cash or stock dividend out of the net profits of the bank after providing for all expenses, losses, interest, and taxes accrued or due from the bank, as it shall judge expedient.
- (2) Before any dividend is declared pursuant to Subsection (1), not less than 10% of the net profits of the bank for the period covered by the dividend shall be carried to a surplus fund until the surplus shall amount to 100% of its capital stock.
- (3) Under this section, any amounts paid into a fund for the retirement of any debenture capital or preferred stock of the bank from its net earnings for the period covered by the dividend shall be considered an addition to its surplus fund if, upon the retirement of the debenture capital or preferred stock, the amount paid into the retirement fund for the period may be properly carried to the surplus fund of the bank. In this case the bank shall be obligated to transfer to the surplus fund the amount paid into the retirement fund.

Amended by Chapter 97, 2014 General Session

**7-3-18 Real estate acquisition, holding, and conveyance.**

A bank may purchase, hold, and convey real estate, other than bank premises, only for those purposes and in a manner prescribed by commissioner by regulation. Such regulations may not be more restrictive than the laws and regulations applicable to acquisition and holding of real estate by national banks.

Amended by Chapter 8, 1983 General Session

**7-3-19 Limitations on loans and extensions of credit.**

- (1) The total loans and extensions of credit, including credit exposure to a derivative transaction, by a bank to a person outstanding at one time and not fully secured, as determined in a manner consistent with Subsection (2), by collateral having a market value at least equal to the amount of the loan or extension of credit may not exceed 15% of the amount of the bank's total capital.
- (2)
  - (a) The total loans and extensions of credit, including credit exposure to a derivative transaction, by a bank to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding may not exceed 10% of the total capital of the bank.

- (b) The limitation of Subsection (2)(a) is separate from and in addition to the limitation described in Subsection (1).
- (3)
  - (a) The limitations contained in Subsections (1) and (2) are subject to exceptions the commissioner may prescribe by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (b) A rule made under this section may not be inconsistent with law and regulations applicable to loan restrictions on national banks.
- (4)
  - (a) The commissioner may, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, define the following terms as used in this section:
    - (i) "credit exposure to a derivative transaction";
    - (ii) "derivative";
    - (iii) "loans and extensions of credit"; and
    - (iv) "person".
  - (b) The definitions described under Subsection (4)(a) may not be inconsistent with those applicable to national banks.

Amended by Chapter 194, 2012 General Session

**7-3-20 Bank acquiring, holding, or accepting as collateral its own stock.**

- (1) A bank may not accept as collateral or acquire its own stock except when the taking of the collateral or acquisition of the stock is necessary to prevent loss upon a debt previously contracted in good faith.
- (2) If a bank acquires stock as permitted under Subsection (1), the bank shall sell the stock within 12 months from the date of the bank's acquisition.
- (3) The value of all the stock held after acceptance or acquisition may not exceed 10% of the total capital of the bank.

Amended by Chapter 97, 2014 General Session

**7-3-21 Stock ownership by banks.**

- (1) A bank may purchase, own and hold, and sell or otherwise dispose of:
  - (a) shares of the Federal Reserve Bank of the Twelfth Federal Reserve District;
  - (b) the stock of a corporation organized under the laws of the United States for purposes similar to those of the federal reserve banks or the Federal Deposit Insurance Corporation;
  - (c) shares of the Federal National Mortgage Association;
  - (d) the stock of a safe deposit company;
  - (e) the stock of a corporation owning the banking house in which any place of business of the bank is located;
  - (f) the stock of a bank service corporation performing services for the bank;
  - (g) the stock of a corporation acquired by the bank in satisfaction of or on account of debts previously contracted in the course of the bank's business;
  - (h) the stock of a foreign banking corporation;
  - (i) the stock of a corporation authorized under Title IX of the Housing and Urban Development Act of 1968;
  - (j) the stock of the Government National Mortgage Association authorized under 12 U.S.C. Sec. 1716 et seq.;

- (k) the stock of a charitable foundation;
  - (l) the stock of a community development corporation;
  - (m) the stock of bankers' banks; and
  - (n) the stock of an agricultural credit corporation.
- (2) A bank may invest in a small business investment company to the same extent allowed federally chartered banks.
- (3) Unless expressly authorized by this chapter, a bank may not purchase or own the stock of any other corporation except in a fiduciary capacity.

Amended by Chapter 97, 2014 General Session

**7-3-22 Certificates and evidences of deposit binding -- Issuance of items intended to circulate as money prohibited.**

All certificates or evidences of deposit made by the proper officers of any bank bind the bank with or without its corporate seal affixed. No bank shall issue any bill, note, or certificate intended to circulate as money.

Enacted by Chapter 16, 1981 General Session

**7-3-24 Certification of check.**

It shall be unlawful for any bank to certify any check drawn upon the bank unless the person drawing the check has on deposit with the bank at the time the check is certified an amount of money equal to the amount specified in the check.

Enacted by Chapter 16, 1981 General Session

**7-3-25 Bad debts.**

All demand and matured debts due to any bank on which interest is past due and has not been paid for a period of six months, unless they are well secured and in process of collection, are considered bad debts and shall be charged off to the reserve for loan losses account.

Amended by Chapter 200, 1994 General Session

**7-3-26 Overdraft as asset.**

An overdraft of more than 90 days' standing may not be allowed as an asset of a bank, unless amply secured and in the process of collection.

Amended by Chapter 8, 1983 General Session

**7-3-28 Capital notes or debentures.**

- (1) Any bank, with the prior written approval of the commissioner and the authorization by resolution of its board of directors may issue its convertible or nonconvertible capital notes or debentures. The issuance may be in the amounts, for the term, and contain provisions as may be approved by the commissioner.
- (2) All such notes or debentures shall be subordinated to the claims of depositors and other creditors.

- (3) The total amount of outstanding capital notes or debentures of any bank may not exceed such limitations as the commissioner may by regulation prescribe for the protection of depositors. The limitations prescribed may not be more restrictive than those prescribed for national banks.
- (4) The amount of such outstanding capital notes or debentures not maturing within one year shall be added to the capital of the issuing bank for the purpose of determining the maximum amount that may be loaned to a single borrower by such bank as provided in this chapter.
- (5) The commissioner may prescribe regulations for the protection of the bank's depositors and shareholders as, in the judgment of the commissioner, will effectuate the purposes of this section.

Amended by Chapter 8, 1983 General Session

**7-3-30 Board of directors to manage business -- Residency of directors.**

The business and affairs of a corporation conducting a banking business shall be managed by its board of directors. Directors are not required to be residents of this state or shareholders of the corporation unless its articles of incorporation or bylaws so require.

Enacted by Chapter 16, 1981 General Session

**7-3-31 Oath of bank directors.**

When a person is appointed or elected to be a director of a bank, that person shall take an oath promising to diligently carry out the duties required of a director, to honestly administer the affairs of the bank, and not to knowingly violate or wilfully permit the violation of any of the provisions of law applicable to the bank. The oath shall be subscribed by the director and shall be immediately filed in the office of the commissioner.

Enacted by Chapter 16, 1981 General Session

**7-3-32 Meetings of board of directors -- Reports -- Records -- Loans to officers, directors and principal shareholders.**

- (1) In this section "principal shareholder" means any officer, director, or person who directly or indirectly owns, controls, or has the power to vote more than 10% of any class of voting securities of the bank.
- (2) The board of directors of every bank shall hold at least one regular meeting every three months. The board shall designate an officer or officers of the bank to prepare and submit reports to the board at every regular quarterly meeting in such detail as the board may direct. Such reports shall include pertinent information on the loans and investments, the transactions with affiliates, and the lines of credit and acquisitions of real estate made during the preceding quarter or since the last report. It shall also include information on delinquent loans, other possible losses, and such other information as the regulations of the department may require.
- (3) At regular intervals at least twice each year, a report shall be made to the board of:
  - (a) the aggregate amount of all extensions of credit by the bank to its officers, directors, and principal shareholders and their related interests; and
  - (b) all extensions of credit from a correspondent bank of the bank to an executive officer or principal shareholder of the bank, since the last preceding report. The board of directors shall make the reports part of the record of the meeting, and the record shall show its action.

Amended by Chapter 177, 1990 General Session



**7-3-33 Examination of affairs by board of directors -- Purposes -- Frequency -- Report filed in bank records.**

- (1) Except as otherwise expressly provided in this chapter, it shall be the duty of the board of directors of every bank to examine or cause to be examined fully the books, papers, and affairs of the bank, and particularly the loans, discounts, and overdrafts thereof with a special view of ascertaining the value and security thereof and of the collateral security, if any, given in connection therewith, and to inquire into such other matters as the commissioner of financial institutions or bank examiner may require.
- (2) The examination shall be made not less frequently than once within an 18-month period and at such other times as the commissioner may require.
- (3) Within 30 days after the completion of the examination a report in writing thereof shall be made and placed on file with the records of the bank and shall be subject to examination by the commissioner or bank examiner.

Amended by Chapter 20, 1995 General Session

**7-3-34 Contents of examination report of board of directors -- Failure to make and file report as misdemeanor.**

The report required by Subsection 7-3-33(3) shall contain a statement of the assets and liabilities of the bank as shown by its books, and any deductions for the assets or additions to the liabilities which the directors, an examining committee, or examiner after the examination, may recommend. It shall also contain a detailed statement of loans, if any, which in their opinion are worthless or doubtful, together with their reasons for so regarding them, also a statement of loans made on collateral security which in their opinion are insufficiently secured, giving in each case the amount of the loan, the name and market value of the collateral, if it has any market value, and, if without market value, a statement of that fact and its actual value as near as it is possible to ascertain. The report shall also contain a statement of overdrafts with the names of the persons owing the same and the amounts of those they consider worthless or doubtful, and a full statement of other matters which affect the solvency and soundness of the bank. If the directors of any bank wilfully fail to make and file, or cause to be made and filed, the examination and report in the manner and within the time specified, each director of the bank shall be guilty of a class C misdemeanor.

Enacted by Chapter 16, 1981 General Session

**7-3-35 Examinations in lieu of directors' examination -- Report filed with board minutes.**

- (1) With the approval of the commissioner, and under rules and regulations prescribed by him, any examination made during an 18-month period by the department, the applicable federal reserve bank or the Federal Deposit Insurance Corporation, or a certified audit prepared by an independent certified public accountant may be substituted for the directors' examination required under Section 7-3-33.
- (2) If an examination by the department, the applicable federal reserve bank, or the Federal Deposit Insurance Corporation or an audit by a certified public accountant, is substituted for the directors' examination, the board of directors of the examined bank, or an examining committee appointed by the board shall prepare and file with the minutes of the board a detailed written report of the findings and recommendations based upon the examination. The report shall be in addition to any other requirements prescribed by the commissioner.

Enacted by Chapter 16, 1981 General Session

**7-3-36 Loans to officers, directors and stockholders.**

A bank may lend its funds or extend credit to any executive officer or director of the bank or to any person who directly or indirectly owns, controls, or has the power to vote 10% or more of any class of voting securities of the bank only in the manner and to the extent that the commissioner may prescribe by regulation. Any limitations imposed by the commissioner under this section may not be more restrictive than those prescribed by regulations issued by the bank's federal supervisory or insuring agency.

Amended by Chapter 8, 1983 General Session

**7-3-39 Shareholders' right to examine bank records -- Records as to a particular customer.**

Every shareholder of a bank shall have the right to examine the books and records of the bank as provided in Sections 16-10a-1601 through 16-10a-1604. Access to records pertaining solely to the deposits, borrowings, or other financial transaction of a particular customer shall be allowed to a shareholder of the bank upon the following conditions:

- (1) a written request for such access is submitted to the board of directors of the bank stating its purpose and necessity;
- (2) the board denies such request;
- (3) the shareholder files a petition with a court of competent jurisdiction requesting an order granting such access;
- (4) after hearing upon not less than 10 days' written notice to the bank and to the particular person whose records are involved, the court finds that the request for access is made in good faith and it is necessary to protect a legitimate interest of a shareholder;
- (5) the court orders that the records of the bank pertaining to the particular customer be made available subject to such conditions as the court considers appropriate to protect the privacy of the customer; and
- (6) the person seeking to inspect or obtain copies of such records reimburses the bank for the costs of search, retrieval, and reproduction of such records. The bank shall have no liability to the customer in providing to the shareholder of the bank access to such records in accordance with the terms and conditions of the order of the court.

Amended by Chapter 277, 1992 General Session

**7-3-40 Board of Bank Advisors.**

- (1) There is created a Board of Bank Advisors consisting of five members to be appointed by the governor as follows:
  - (a) each member of the board shall be an individual who is familiar with and associated with banks organized under this chapter; and
  - (b) at least three of the members of the board shall be individuals who:
    - (i) have had three or more years experience as a bank executive officer; and
    - (ii) are selected from a list submitted to the governor by an association in this state representing commercial banks.
- (2)
  - (a) The board shall meet quarterly.
  - (b) Subject to Subsection (2)(a), meetings of the board shall be held on the call of the chair.

- (3) The members of the board shall elect the chair of the board each year from the membership of the advisory board by a majority of the members present at the board's first meeting each year.
- (4)
  - (a) Except as required by Subsection (4)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.
  - (b) Notwithstanding the requirements of Subsection (4)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
- (5) When a vacancy occurs in the membership of the board for any reason, the replacement shall be appointed for the unexpired term.
- (6) All members shall serve until their successors are appointed and qualified.
- (7) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (8) A majority of the members of the board shall constitute a quorum.
- (9) The board has the duty to advise the governor and commissioner on problems relating to banks organized under this chapter and to foster the interest and cooperation of banks in the improvement of their services to the people of the state.

Amended by Chapter 286, 2010 General Session