

RCW 32.08.025 Limited liability company—Organization or conversion—Approval of director—Conditions—Application of chapter 25.15 RCW—Definitions. (1) Notwithstanding any other provision of this title, if the conditions of this section are met, a savings bank, or a holding company of a savings bank, may be organized as, or convert to, a limited liability company under the Washington limited liability company act, chapter 25.15 RCW. As used in this section, "savings bank" includes an applicant to become a savings bank or holding company of a savings bank, and "holding company" means a holding company of a savings bank.

(2) (a) Before a savings bank or holding company may organize as, or convert to, a limited liability company, the savings bank or holding company must obtain approval of the director.

(b) (i) To obtain approval under this section from the director, the savings bank or holding company must file a request for approval with the director at least ninety days before the day on which the savings bank or holding company becomes a limited liability company.

(ii) If the director does not disapprove the request for approval within ninety days from the day on which the director receives the request, the request is considered approved.

(iii) When taking action on a request for approval filed under this section, the director may:

(A) Approve the request;

(B) Approve the request subject to terms and conditions the director considers necessary; or

(C) Disapprove the request.

(3) To approve a request for approval, the director must find that the savings bank or holding company:

(a) Will operate in a safe and sound manner; and

(b) Has the following characteristics:

(i) The certificate of formation and limited liability company require or set forth that the duration of the limited liability company is perpetual;

(ii) The savings bank or holding company is not otherwise subject to automatic termination, dissolution, or suspension upon the happening of some event other than the passage of time;

(iii) The exclusive authority to manage the savings bank or holding company is vested in a board of managers or directors that:

(A) Is elected or appointed by the owners;

(B) Is not required to have owners of the savings bank or holding company included on the board;

(C) Possesses adequate independence and authority to supervise the operation of the savings bank or holding company; and

(D) Operates with substantially the same rights, powers, privileges, duties, and responsibilities as the board of directors of a corporation;

(iv) Neither state law, nor the savings bank's or holding company's operating agreement, bylaws, or other organizational documents provide that an owner of the savings bank or holding company is liable for the debts, liabilities, and obligations of the savings bank or holding company in excess of the amount of the owner's investment;

(v) Neither state law, nor the savings bank's or holding company's operating agreement, bylaws, or other organizational documents require the consent of any other owner of the savings bank or holding company in order for any owner to transfer an ownership

interest in the savings bank or holding company, including voting rights;

(vi) The savings bank or holding company is able to obtain new investment funding if needed to maintain adequate capital;

(vii) The savings bank or holding company is able to comply with all legal and regulatory requirements for a federally insured depository bank, or holding company of a federally insured depository bank, under applicable federal and state law; and

(viii) A savings bank or holding company that is organized as a limited liability company shall maintain the characteristics listed in this subsection (3)(b) during such time as it is authorized to conduct business under this title as a limited liability company.

(4)(a) All rights, privileges, powers, duties, and obligations of a savings bank or holding company, that is organized as a limited liability company, and its members and managers are governed by the Washington limited liability company act, chapter 25.15 RCW, except:

(i) To the extent chapter 25.15 RCW is in conflict with federal law or regulation respecting the organization of a federally insured depository institution as a limited liability company, such federal law or regulation supersedes the conflicting provisions contained in chapter 25.15 RCW in relation to a savings bank or holding company organized as a limited liability company pursuant to this section; and

(ii) Without limitation, the following are inapplicable to a savings bank or holding company organized as a limited liability company:

(A) Permitting automatic dissolution or suspension of a limited liability company as set forth in RCW 25.15.265(1), pursuant to a statement of limited duration which, though impermissible under subsection (3)(b)(i) of this section, has been provided for in a certificate of formation;

(B) Permitting automatic dissolution or suspension of a limited liability company, pursuant to the limited liability company agreement, as set forth in RCW 25.15.265(2);

(C) Permitting dissolution of the limited liability company agreement based upon agreement of all the members, as set forth in RCW 25.15.265(3);

(D) Permitting dissociation of all the members of the limited liability company, as set forth in RCW 25.15.265(4); and

(E) Permitting automatic dissolution or suspension of a limited liability company, pursuant to operation of law, as otherwise set forth in chapter 25.15 RCW.

(b) Notwithstanding (a) of this subsection:

(i) For purposes of transferring a member's interests in the savings bank or holding company, a member's interest in the savings bank or holding company is treated like a share of stock in a corporation; and

(ii) If a member's interest in the savings bank or holding company is transferred voluntarily or involuntarily to another person, the person who receives the member's interest obtains the member's entire rights associated with the member's interest in the savings bank or holding company including all economic rights and all voting rights.

(c) A savings bank or holding company may not by agreement or otherwise change the application of (a) of this subsection to the savings bank or holding company.

(5)(a) Notwithstanding any provision of chapter 25.15 RCW or this section to the contrary, all voting members remain liable and

responsible as fiduciaries of a savings bank or holding company organized as a limited liability company, regardless of resignation, dissociation, or disqualification, to the same extent that directors of a savings bank or holding company organized as a corporation would be or remain liable or responsible to the department and applicable federal banking regulators; and

(b) If death, incapacity, or disqualification of all members of the limited liability company would result in a complete dissociation of all members, then the savings bank or holding company, or both, as applicable is deemed nonetheless to remain in existence for purposes of the department or an applicable federal regulator, or both, having standing under RCW 32.24.090 or applicable federal law, or both, to exercise the powers and authorities of a receiver for the savings bank or holding company.

(6) For the purposes of this section, and unless the context clearly requires otherwise, for the purpose of applying chapter 25.15 RCW to a savings bank or holding company organized as a limited liability company:

(a) "Articles of incorporation" includes a limited liability company's certificate of formation, as that term is used in RCW 25.15.006 and 25.15.071, and a limited liability company agreement as that term is used in RCW 25.15.006;

(b) "Board of directors" includes one or more persons who have, with respect to a savings bank or holding company described in subsection (1) of this section, authority that is substantially similar to that of a board of directors of a corporation;

(c) "Bylaws" includes a limited liability company agreement as that term is defined in RCW 25.15.006;

(d) "Corporation" includes a limited liability company organized under chapter 25.15 RCW;

(e) "Director" includes any of the following of a limited liability company:

(i) A manager;

(ii) A director; or

(iii) Other person who has, with respect to the savings bank or holding company described in subsection (1) of this section, authority substantially similar to that of a director of a corporation;

(f) "Dividend" includes distributions made by a limited liability company under RCW 25.15.211;

(g) "Incorporator" includes the person or persons executing the certificate of formation as provided in RCW 25.15.086;

(h) "Officer" includes any of the following of a savings bank or holding company:

(i) An officer; or

(ii) Other person who has, with respect to the savings bank or holding company, authority substantially similar to that of an officer of a corporation;

(i) "Security," "shares," or "stock" of a corporation includes a membership interest in a limited liability company and any certificate or other evidence of an ownership interest in a limited liability company; and

(j) "Stockholder" or "shareholder" includes an owner of an equity interest in a savings bank or holding company, including a member as defined in RCW 25.15.006 and 25.15.116. [2015 c 188 § 120; 2006 c 48 § 3.]

Effective date—2015 c 188: See RCW 25.15.903.