



Ohio Revised Code

Section 1121.32 Notice of charges and intent to issue cease and desist order.

Effective: January 1, 1997

Legislation: House Bill 538 - 121st General Assembly

(A) The superintendent of financial institutions may issue and serve a notice of charges and intent to issue a cease and desist order upon a bank, trust company, or regulated person, if, in the opinion of the superintendent, either of the following applies to the bank, trust company, or regulated person:

(1) The bank, trust company, or regulated person is engaging, has engaged, or, the superintendent has reasonable cause to believe, is about to engage in an unsafe or unsound practice in conducting the bank's or trust company's business;

(2) The bank, trust company, or regulated person is violating, has violated, or, the superintendent has reasonable cause to believe, is about to violate any of the following:

(a) A law or rule;

(b) A condition imposed in writing by the superintendent in connection with granting an application or notice that is subject to the superintendent's approval or an opportunity for the superintendent to disapprove or other request by the bank, trust company, or regulated person;

(c) A written agreement entered into with the superintendent.

(B) The notice of charges and intent to issue as cease and desist order shall include all of the following:

(1) A statement of the violation or violations or unsafe or unsound practice or practices alleged;

(2) A statement of the facts constituting the violation or violations or unsafe or unsound practice or practices alleged;

(3) Notice that the bank, trust company, or regulated person is entitled to a hearing, in accordance



with section 1121.38 of the Revised Code, to determine whether a cease and desist order should be issued against the bank, trust company, or regulated person, if the bank, trust company, or regulated person requests the hearing within thirty days of service of the notice;

(4) Notice that, if the bank, trust company, or regulated person makes a timely request for a hearing, the bank, trust company, or regulated person may appear at the hearing in person or by attorney or by presenting positions, arguments, and contentions in writing, and at the hearing may present evidence and examine witnesses for and against the bank, trust company, or regulated person.

(5) Notice that failure of the bank, trust company, or regulated person to make a timely request for a hearing to determine whether a cease and desist order should be issued or to appear at the hearing, in person, by attorney, or by writing, is consent by the bank, trust company, or regulated person to the issuance of the cease and desist order.

(C) The superintendent may issue a cease and desist order against the bank, trust company, or regulated person, if any of the following applies:

(1) The bank, trust company, or regulated person consents to the issuance of the cease and desist order;

(2) Upon the record of the hearing the superintendent finds a violation or unsafe or unsound practice has been established;

(3) The superintendent determines the bank's or trust company's books and records are too incomplete or inaccurate to permit the superintendent, through the normal supervisory process, to determine the financial condition of the bank or trust company or the details or purpose of one or more transactions that may have a material effect on the financial condition of the bank or trust company;

(4) The superintendent finds the violation or unsafe or unsound practice alleged is likely, prior to completion of the hearing, to cause any of the following:

(a) The bank's or trust company's insolvency;



(b) Significant dissipation of the bank's or trust company's earnings or assets;

(c) Weakening of the bank's or trust company's condition or other prejudice to the interests of the bank's depositors or trust company's beneficiaries.

(D) A cease and desist order may require the bank, trust company, or regulated person to cease and desist from each violation or unsafe or unsound practice, to correct or remedy the conditions resulting from each violation or unsafe or unsound practice, and to take affirmative action, including any of the following:

(1) Make restitution or provide reimbursement, indemnification, or guarantee against loss, if either of the following applies:

(a) The bank, trust company, or regulated person was or will be unjustly enriched in connection with the violation or practice;

(b) The violation or practice involved a reckless disregard for the law or any applicable rule or prior order of the superintendent.

(2) Restrict the bank's or trust company's growth;

(3) Dispose of any loan or asset involved;

(4) Rescind agreements or contracts;

(5) Employ qualified officers or employees, who may be subject to approval by the superintendent;

(6) Take any other action the superintendent determines appropriate.

(E) A cease and desist order issued by the superintendent is effective at the time specified in the order, which shall be as follows:



(1) In the case of a cease and desist order issued pursuant to division (C)(2) of this section, not less than thirty days after service of the order upon the bank, trust company, or regulated person;

(2) In the case of a cease and desist order issued pursuant to division (C)(1), (3), or (4) of this section, immediately upon service of the order on the bank, trust company, or regulated person.

(F) A cease and desist order shall remain effective and enforceable as provided in the order except to the extent it is stayed, modified, terminated, or set aside by action of the superintendent or a reviewing court. If, upon the record of a hearing, the superintendent determines not to issue a cease and desist order, any cease and desist order issued pursuant to division (C)(3) or (4) of this section is terminated.

(G) Within ten days after being served a cease and desist order issued pursuant to division (C)(3) or (4) of this section, a bank, trust company, or regulated person may apply to the court of common pleas of the county in which the principal place of business of the bank, trust company, or regulated person, or residence of the regulated person, is located, or the court of common pleas of Franklin county, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the cease and desist order pending completion of the hearing to determine whether a cease and desist order should be issued against the bank, trust company, or regulated person pursuant to division (C)(2) of this section, and the court has jurisdiction to issue the injunction.

(H) The superintendent shall serve a certified copy of a cease and desist order issued pursuant to this section on any bank or trust company in relation to which the object of the cease and desist order is a regulated person.