



Ohio Revised Code

Section 1121.33 Notice of charges and intent to remove regulated person from office or prohibit further participation.

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 remove a regulated person from office or prohibit a regulated person from further participation in the conduct of the affairs of a bank or trust company, or both, if, in the opinion of the superintendent, all of the following apply:

(1) The regulated person has, directly or indirectly, done any of the following:

(a) Violated any of the following:

(i) A law or rule;

(ii) A final cease and desist order;

(iii) 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 a bank, trust company, or regulated person;

(iv) A written agreement between a bank or trust company and the superintendent, or between the regulated person and the superintendent.

(b) Engaged or participated in an unsafe or unsound practice in connection with a bank, trust company, or other business institution;

(c) Committed or engaged in an act, omission, or practice constituting a breach of the regulated person's fiduciary duty as a regulated person.

(2) The violation, practice, or breach results in any of the following:



- (a) A bank, trust company, or other business institution has suffered or will probably suffer substantial financial loss or other damage;
 - (b) The interests of a bank's depositors or shareholders or trust company's beneficiaries or shareholders have been or could be prejudiced;
 - (c) The regulated person has received or will receive financial gain or other benefit.
- (3) The violation, practice, or breach does either of the following:
- (a) Involves personal dishonesty on the part of the regulated person;
 - (b) Demonstrates willful or continuing disregard by the regulated person for the safety and soundness of a bank, trust company, or business institution.
- (B) The notice of charges and intent to remove a regulated person from office or prohibit a regulated person from further participation in the conduct of the affairs of a bank or trust company shall include all of the following:
- (1) A statement of the violation or violations, unsafe or unsound practice or practices, or breach or breaches alleged;
 - (2) A statement of the facts constituting the grounds for the proposed removal or prohibition order;
 - (3) Notice that the regulated person is entitled to a hearing, in accordance with section 1121.38 of the Revised Code, to determine whether an order removing the regulated person from office, prohibiting the regulated person from further participation in the conduct of the affairs of a bank or trust company, or both, should be issued against the regulated person if the regulated person requests the hearing within thirty days after service of the notice;
 - (4) Notice that, if the regulated person makes a timely request for a hearing, the regulated person may appear at the hearing in person, 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 regulated person.

(5) Notice that failure of the regulated person to timely request a hearing to determine whether an order removing the regulated person from office, prohibiting the regulated person from further participation in the conduct of the affairs of a bank or trust company, or both, should be issued or to appear at the hearing, in person, by attorney, or by writing, is consent by the regulated person to the issuance of the order.

(C) The superintendent may issue an order removing the regulated person from office or prohibiting the regulated person from further participation in the conduct of the affairs of a bank or trust company, or both, if either of the following applies:

(1) The regulated person consents to the issuance of the order;

(2) Upon the record of the hearing the superintendent finds the grounds for the order have been established.

(D) A regulated person who has been removed from office or prohibited from further participation in the conduct of the affairs of a bank or trust company pursuant to this section shall not, while the removal or prohibition order is in effect, continue or commence to hold any office of or participate in any manner in the conduct of the affairs of any bank or trust company in this state, except as specifically permitted by the superintendent pursuant to modification of the order. Participation in the conduct of the affairs of a bank or trust company includes doing any of the following:

(1) Soliciting, procuring, transferring, attempting to transfer, voting, or attempting to vote any proxy, consent, or authorization with respect to any voting rights in any bank or trust company;

(2) Violating any voting agreement previously approved by the superintendent;

(3) Voting for a director of any bank or trust company.

(E) An order issued by the superintendent pursuant to this section is effective at the time specified in



the order, which, in the case of an order issued pursuant to division (C)(2) of this section, shall be not less than thirty days after service of the order on the regulated person.

(F) An order issued by the superintendent pursuant to this section shall remain enforceable and effective 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.

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