

**RULES
OF
TENNESSEE DEPARTMENT OF FINANCIAL INSTITUTIONS**

**CHAPTER 0180-7
RULES OF PRACTICE: APPLICATIONS, INSTRUCTIONS,
FORMS, REPORTS OF STATE BANKS, AND SCHEDULE
OF APPLICATION FEES FOR STATE BANKS,
BIDCOS, SAVINGS BANKS AND TRUST COMPANIES**

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0180-7-.01 SCOPE. This chapter establishes rules relating to application procedures, forms, instructions, and reports for banks required by the Department of Financial Institutions, and sets the fees which the Department will assess against Banks, BIDCO's (Business and Industrial Development Corporations under *T.C.A. § 45-8-201 et seq.*), Savings Banks, and Trust Companies which make such applications. The Commissioner, however, may vary or may waive a requirement where permitted by statute.

Authority: *T.C.A. §§45-1-107, 45-8-207, 45-14-111, and 45-14-113. Administrative History: Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed February 17, 1984; effective May 15, 1984. Amendment filed December 30, 1992; effective March 31, 1993. Amendment filed January 30, 1998; effective May 29, 1998.*

0180-7-.02 APPLICATION PROCEDURE FOR NEW BANK CHARTER.

- (1) As required by *T.C.A. § 45-2-202*, the incorporators shall file with the Commissioner a notice of their intention to organize a state bank. The notice of intention shall be considered a record of the Department that is open for public inspection unless the Commissioner, in his discretion, determines that a particular notice of intention or portion thereof shall not be open for public inspection. The offering circular shall not be open for public inspection. The notice shall include the following information:
 - (a) the information required by *T.C.A. § 45-2-202*;
 - (b) a statement of the method of financing and amount of the organizational expense fund required by *T.C.A. § 45-2-203*;
 - (c) a copy of any escrow agreement.
- (2) If the information in the notice of intention is in compliance with *T.C.A. § 45-2-202* and this rule, the Commissioner shall notify the incorporators within ten (10) business days after the receipt thereof that the notice of intention is approved as to form. If the information in the notice of intention is not in compliance as aforesaid, the Commissioner will follow the procedure specified in *T.C.A. § 45-2-202(b)*.
- (3) After the notice of intention has been received and accepted for official filing, the department will contact the incorporators to arrange for a meeting, if needed.

(Rule 0180-7-.02, continued)

- (4) After the incorporators have received notification from the Commissioner that the notice of intention and accompanying documents are approved as to form, the incorporators may begin accepting stock subscriptions and may also apply for a charter as set forth in *T.C.A. § 45-2-204*. The application should be filed simultaneously with the Federal Deposit Insurance Corporation in Memphis, Tennessee and the Department. Application fee checks are to be made payable to the Treasurer, State of Tennessee.
- (5) The incorporators shall give public notice of their application as required in Chapter 0180-5 of these rules and notice to other banks and to such persons and organizations as the Commissioner may require.
- (6) The applicant will receive notification within twenty (20) business days from the receipt of the application and accompanying documents as to its sufficiency. If the application is deemed sufficient it shall be accepted for filing. If the application is submitted prior to the date the commissioner notifies the incorporators that the notice of intention is approved as to form, the twenty (20) business day time period for accepting the application does not begin to run until the notice of intention is approved.
- (7) After an application has been accepted for filing, the applicant may make a written request to the Commissioner to grant the charter. However, the issuance of the charter does not provide authority to the applicant to begin a banking business. The applicant must submit the filing fee payable to the Secretary of State before the Charter can be filed.
- (8) Anyone may file a comment in writing with the Commissioner respecting the application, or anyone may protest the application by filing a written notice of protest within fifteen (15) calendar days of the date of publication of the public notice required in Chapter 0180-5 of the rules of the Department of Financial Institutions.
 - (a) Any person commenting or protesting on an application by telephone shall submit the substance of the comments in writing to the Department.
 - (b) Written or telephonic comments submitted more than fifteen (15) calendar days after publication of the notice of application may be considered by the Department.
 - (c) The Department will notify the applicant should any protest be filed. Any protest is considered to be a confidential record of the Department. The Department will provide the applicant with the substantive facts of any protest unless in the opinion of the Commissioner, such release is not warranted.
 - (d) Any response to a protest is considered to be a confidential record of the Department.
 - (e) If the Department needs any additional information from the protestor after the applicant responds to the protest, the Department will contact the protestor.
 - (f) When the Commissioner makes a decision on an application, he or she will notify any protestor of the final decision after the applicant has been notified.
- (9) The Commissioner shall conduct an investigation and examination relative to the factors enumerated in *T.C.A. § 45-2-205*.
- (10) If the Commissioner approves the application, he or she shall grant the charter as specified in *T.C.A. § 45-2-205*, unless the charter has already been issued in accordance with *T.C.A. § 45-2-204(c)*. If the Commissioner disapproves the application, he or she shall give written notice of the disapproval as specified in *T.C.A. §§ 45-2-204 and 205*. If the charter was issued pursuant to *T.C.A. § 45-2-204* and

(Rule 0180-7-.02, continued)

the Commissioner denies the application, the Commissioner will notify the Secretary of State and the incorporators shall take all necessary steps to dissolve the corporation.

- (11) The incorporators or directors shall update the list of subscribers every thirty (30) days until the stock is fully subscribed.
- (12) All subscription proceeds shall be placed in an escrow account. The escrow agreement must be reviewed by the Commissioner. Funds may not be removed from the escrow account prior to the issuance of the Certificate of Authority unless written approval has been received from the Commissioner.
- (13) Upon approval of the application for a charter and collection of the required capital, the incorporators shall file an application for a certificate of authority in accordance with T.C.A. §45-2-212. If the conditions and requirements enumerated in T.C.A. §45-2-214 have been met, the Commissioner shall issue the certificate of authority; provided, however, that the certificate of authority shall become null and void whenever substantially all of the assets of a bank are purchased without acquiring the charter.

Authority: T.C.A. §§45-1-103(10), 45-1-107, 45-1-120, 45-2-202, 45-2-203, 45-2-204, 45-2-205, 45-2-206, 45-2-212, 45-2-214, 45-2-215, 45-2-219, and 45-2-1603. **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed May 31, 1978; effective August 14, 1978. Amendment filed February 17, 1984; effective May 15, 1984. Amendment filed January 30, 1998; effective May 29, 1998. Amendment filed October 19, 2000; effective February 28, 2001. Amendment filed November 30, 2001; effective March 30, 2002.

**0180-7-.03 APPLICATION/NOTIFICATION PROCEDURE FOR BRANCHES OF BANKS
CHARTERED BY THE DEPARTMENT.**

- (1) The bank applicant shall file with the Commissioner an application/notification to establish a branch office, branch bank or branch facility as defined by the Commissioner, using the form provided by the Department.
- (2) The applicant shall give public notice of the application/notification as provided by Chapter 0180-5 of these rules and shall give notice to other banks as the Commissioner may require. Anyone desiring to comment on or to protest the application/notification may do so in accordance with the procedure set forth in Rule 0180-7-.02(8). If the proposed branch will operate under a different name from the bank, the operational name must also be included in the public notice.
- (3) The Commissioner shall conduct such investigation and examination with respect to the application/notification as he or she may require and shall send written notice of the decision on the application/notification to the applicant.
- (4) If the branch is to be located outside the State of Tennessee, the Department will submit a copy of the application/notification to the appropriate state regulatory agencies for comments.
- (5) The applicant shall submit a check payable to the Treasurer, State of Tennessee for the branch fee in accordance with Rule 0180-7-.08.
- (6) Banks with a regulatory rating of one (1) or two (2) may file written notification of a branch in lieu of an application. A copy of the clipping evidencing public notice must be furnished to the Department. The branch will be deemed approved at the expiration of the public notice comment period as provided by Rule 0180-5-.02, unless the commissioner objects or requests additional information. If the commissioner requests additional information prior to the expiration of the public comment period, the

(Rule 0180-7-.03, continued)

commissioner shall then have fifteen (15) calendar days from the receipt of the additional information in which to act upon the notification.

- (7) For an application to establish a branch from any other bank, the application shall be deemed to have been approved by the commissioner unless disapproved within ninety (90) calendar days after the submission of the application. The Commissioner may extend the ninety (90) day period if additional information is requested.
- (8) A state-chartered bank may also establish a mobile branch to be operated within specifically approved locations. A mobile branch means a branch of the bank that does not have a single, permanent site, and includes a vehicle that travels to various locations within an approved area to enable customers to conduct their banking business. If a mobile branch seeks approval to operate outside Tennessee, any such requests will be subject to the laws of the foreign state.

Authority: T.C.A. §§45-1-107, 45-2-614, 45-2-601, and 45-14-105. **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed January 30, 1998; effective May 29, 1998. Amendment filed November 30, 2001; effective March 30, 2002.

0180-7-.04 APPLICATION/NOTIFICATION PROCEDURE FOR A TENNESSEE- CHARTERED BANK TO CHANGE THE LOCATION OF ITS MAIN OFFICE OR A BRANCH.

- (1) In an effort to streamline the application/notification process the Department will look to the appropriate federal regulator to determine what application/notification should be filed by a state-chartered bank to change the location of its main office or a branch.
- (2) The applicant shall file an application/notification with the Commissioner.
- (3) The applicant shall give such public notice of the application/notification as the Commissioner may require. The public notice must include: the statement required by Rule 0180-5-.02; the name and present location of the branch or main office; and, the name and proposed new location of the branch or main office upon relocation. Anyone desiring to comment on or to protest the application/notification may do so in accordance with the procedures set forth in Rule 0180-7-.02 (8).
- (4) The Commissioner shall have such investigation and examination conducted with respect to the application/notification as he or she may require.
- (5) The Commissioner shall make a determination on the application/notification on the basis of the factors set forth in T.C.A. § 45-2-218; he or she shall send written notice of the decision on the application/notification to the applicant bank.
- (6) Banks with a regulatory rating of one (1) or two (2) may file written notification of a main office or branch relocation. A copy of the clipping evidencing public notice must be furnished to the Department. The relocation will be deemed approved at the expiration of the public notice comment period as provided by Rule 0180-5-.02, unless the commissioner objects, or requests additional information. If the commissioner requests additional information prior to the expiration of the public comment period, the commissioner shall then have fifteen (15) calendar days from the receipt of the additional information in which to act upon the notification for relocation.
- (7) For an application to relocate a branch or main office from any other bank, the application shall be deemed to have been approved by the commissioner unless disapproved within ninety (90) calendar days after the submission of the application. The commissioner may extend the ninety (90) day period if additional information is requested.

(Rule 0180-7-.04, continued)

Authority: T.C.A. §§45-1-107 and 45-2-218. **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed January 30, 1998; effective May 29, 1998. Amendment filed November 30, 2001; effective March 30, 2002.

0180-7-.05 APPLICATION PROCEDURE FOR AMENDMENT OF CHARTER.

- (1) In accordance with T.C.A. §45-2-218, a state bank shall apply to the Commissioner to amend its charter. The applicant bank shall file the original and two (2) copies of the proposed amendment with the Commissioner for certification. If shareholder approval is required by T.C.A. §45-2-218, certified minutes of the shareholders meeting evidencing approval of the amendment should be submitted with the application. The applicant shall also submit a check payable to the Secretary of State for the required filing fee.
- (2) The Commissioner shall make his determination on the application pursuant to T.C.A. § 45-2-218. If he approves the charter amendment, he shall forward the amendment to the Secretary of State for filing. If he disapproves the amendment, he shall give written notice thereof to the applicant bank.

Authority: T.C.A. §§45-1-107 and 45-2-218. **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed January 30, 1998; effective May 29, 1998. Amendment filed November 30, 2001; effective March 30, 2002.

0180-7-.06 FORMATION OF INTERIM BANKS.

- (1) Definitions. An “interim bank merger” is the technique by which a bank holding company obtains a new bank charter solely for the purpose of merging an existing bank into the bank for which the charter is sought or solely for the purpose of merging the bank for which the charter is sought into an existing bank; the technique is a transaction intended to qualify the exchange of stock between the bank holding company and the stockholders of the existing bank as a reorganization within the meaning of § 368 (a) of the Internal Revenue Code of 1954, as amended (U.S.C., Title 26, § 368 (a)).
- (2) Capital Structure. An interim bank shall have such capital structure as will meet the expenses of organization of the interim bank, but not less than \$1,000. The capital requirements contained in T.C.A. § 45-2-207 do not apply to an interim bank.
- (3) Application Procedure. Application forms for the creation of an interim bank may be obtained from the Department of Financial Institutions. The application should include a description of the reorganization, including the reasons therefore. Financial information of the incorporators need not be furnished if they are executive officers or directors of the existing bank. Public notice shall be made in accordance with Chapter 0180-5.
- (4) Decisions. Preliminary approval of all interim banks will be specifically conditioned on approval of the subsequent merger or consolidation. This preliminary approval will be rescinded automatically if the merger or consolidation is not filed within six (6) months of preliminary approval of the interim bank; the preliminary approval shall automatically be withdrawn unless an extension has been requested and granted by the Commissioner of Financial Institutions.
- (5) Subsequent Merger or Consolidation. When the formation of the interim bank has been approved by the Commissioner of Financial Institutions and the filing fee received, the interim bank becomes a body corporate and may then legally enter into the merger or consolidation agreement.

(Rule 0180-7-.06, continued)

- (6) Interim Bank as Survivor. If, after the merger or consolidation, the interim bank, rather than the existing bank, is the surviving bank, the certificate of authority issued to the existing bank shall be endorsed over to the surviving bank and the surviving bank shall therefore have the age of the existing bank.

Authority: T.C.A. §§45-1-107, 45-2-204(c), 45-2-204(e), and 45-2-1403. **Administrative History:** Original rule filed September 30, 1983; effective December 14, 1983. Amendment filed February 17, 1984; effective May 15, 1984. Amendment filed December 30, 1992; effective March 31, 1993. Amendment filed October 19, 2000; effective February 28, 2001. Amendment filed November 30, 2001; effective March 30, 2002.

0180-7-.07 FORMS.

- (1) The Commissioner may provide forms which can be used for the appropriate application procedure. In most cases, the Department accepts the Federal application form in lieu of the Department's form.
- (2) The applicant must provide in detail all information required by the Commissioner.
- (3) The applicant shall execute the appropriate form(s) and send the original and four copies to the Commissioner of Financial Institutions.

Authority: T.C.A. §45-1-107. **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed February 17, 1984; effective May 15, 1984. Amendment filed January 30, 1998; effective May 29, 1998. Amendment filed November 30, 2001; effective March 30, 2002.

0180-7-.08 FEES.

- (1) Following are the fees charged for each particular type of transaction:
 - (a) Application to organize a state bank, state BIDCO, state savings bank, state trust company or state credit card bank.....\$20,000.00
 - (b) Application/Notification to establish a branch office for a state bank, state BIDCO, state savings bank.....\$300.00
 - (c) Application/Notification to relocate a main office or branch by a state bank, state BIDCO, state savings bank.....\$300.00
 - (d) Application to relocate an office of a state trust institution.....\$300.00
 - (e) Application to form an interim bank.....\$1,000.00
 - (f) Application for a merger where the resulting institution will be a state-chartered bank, state-chartered savings bank, state trust company or state BIDCO and any change of control application.....\$5,000.00
 - (g) Application for an acquisition where the resulting institution will be a state-chartered bank, state-chartered savings bank, state BIDCO or state trust company.....\$5,000.00
 - (h) Application to convert to a state bank, state savings bank or state trust company.....\$3,000.00
 - (i) Application for a purchase and assumption transaction of less than substantially all of the assets of a bank by a state-chartered bank, savings bank, or a state BIDCO.....\$500.00

(Rule 0180-7-.08, continued)

- (j) Licensing fee per location for a state BIDCO \$500.00
 - (k) Application to engage directly or indirectly through a subsidiary in securities activities by a state bank, savings bank or state trust company \$1,000.00
 - (l) Filing fee for a state trust institution to establish or acquire a trust office..... \$500.00
 - (m) Application for private trust company status..... \$1,000.00
 - (n) Annual certification to maintain status as an exempt private trust company..... \$250.00
 - (o) Filing fee for conversion from private trust company to public trust company \$10,000.00
 - (p) Application by a state-chartered bank or state trust company for a charter amendment that requires the approval of the shareholders \$100.00
 - (q) Application by a state-chartered bank or a state-chartered savings bank to begin exercising fiduciary powers..... \$100.00
 - (r) Application by a state-chartered bank or a state-chartered savings bank to establish an automated teller machine at a location other than a main office or branch location \$100.00
 - (s) Application by a state-chartered bank to engage in any expanded activity requiring approval under Rule 0180-19-.05..... \$1,000.00
- (2) If a process involves more than one transaction, the institution will be charged a separate fee for each application/notification.

Authority: T.C.A. §§45-1-107, 45-1-118, 45-2-103, 45-2-215, 45-2-218, 45-2-614, 45-2-1303, 45-2-1304, 45-2-1307, 45-2-1402, 45-2-1403, 45-2-1802, 45-2-1803, 45-2-1902, 45-3-1002, 45-3-1003, 45-8-204, 45-8-207, 45-8-208, 45-8-211, 45-8-214, 45-11-105, 45-14-103, 45-14-104, 45-14-110, 45-14-111, and 45-14-113. **Administrative History:** Original rule filed September 30, 1983; effective December 14, 1983. Amendment filed February 17, 1984; effective May 15, 1984. Amendment filed December 12, 1988; effective March 29, 1989. Amendment filed June 29, 1990; effective September 26, 1990. Amendment filed December 30, 1992; effective March 31, 1993. Amendment filed January 30, 1998; effective May 29, 1998. Amendment filed October 19, 2000; effective February 28, 2001. Amendment filed November 30, 2001; effective March 30, 2002. Repeal and new rule filed May 31, 2005; effective September 28, 2005.

0180-7-.09 BRANCH NAME USAGE.

- (1) Banks, Savings Banks or Savings and Loan Companies doing business in Tennessee and subject to examination authority of the commissioner are not required to use their official chartered name at all branch locations. However, reasonable care must be taken to insure that customer confusion does not occur. To eliminate confusion and the potential to mislead members of the public into believing they are dealing with different institutions for purposes of federal deposit insurance coverage, institutions will be required to do the following when using unofficial branch names:
- (a) Disclose, clearly and conspicuously, in signs, advertising, and similar materials that the facility is a branch, division, or other unit of the insured institution. The institution should exercise care that the signs and advertising do not create a deceptive and/or misleading impression.

(Rule 0180-7-.09, continued)

- (b) Use the official chartered name and location of the institution on all legal documents, checks, cashier's checks, drafts, loan applications, loan agreements, loan documents, certificates of deposit, signature cards, account statements, and other similar documents;
 - (c) Educate the staff of the institution regarding the possibility of customer confusion with respect to deposit insurance. Advise staff at the branch facility to inquire of customers, prior to opening new accounts, whether they have deposits at the Institution's other facilities or branches. Require staff to make the branch customer aware that the branch and other facilities are in fact parts of the same insured institution and that deposits held at each facility are not separately insured; and
 - (d) Within thirty (30) days after one institution acquires or combines with another, all customers shall be provided a disclosure that identifies the official chartered name of the institution, its main office location and all branch locations. Utilization of branch names different from the official chartered name of the institution must be adequately described in the disclosure.
- (2) The Department will not authorize the registration of unofficial branch names with the Secretary of State as assumed names.
 - (3) Institutions that contemplate using name other than their official chartered names over a computer network such as the Internet should be aware that in instances where customers are allowed to open accounts electronically, the same procedures described in Rule 0180-7-.09(1) shall apply.

Authority: T.C.A. §§45-1-102(a), 45-1-107(a)(5), 45-1-107(h), 45-1-124(d), 45-2-205, 45-2-614, 45-2-1407, 45-2-1408, 45-3-115, 45-3-202(b)(5), 45-3-209, and 48-14-101. **Administrative History:** Original rule filed November 25, 1975; effective December 27, 1975. Amendment filed February 17, 1984; effective May 15, 1984. Amendment filed January 30, 1998; effective May 29, 1998. Amendment filed November 30, 2001; effective March 30, 2002.

0180-7-.10 STATE BANK ORGANIZATIONAL EXPENSE FUND: PROCEDURE AND PURPOSE.

- (1) T.C.A. § 45-2-203 requires that the incorporators of a proposed state bank establish an organizational expense fund in an amount the Commissioner of Financial Institutions deems adequate. This rule prescribes the procedure and purpose for establishing the organizational expense fund, hereinafter referred to as the "fund."
- (2) The incorporators of a proposed state bank shall include in the notice of intention required by T.C.A. § 45-2-202 a statement specifying the method of financing and the amount of the fund.
- (3) The fund may be financed in any legal and proper manner. By way of example, the incorporators individually may provide the financing, or the incorporators may allocate to the fund a specified portion of a down payment made by each stock subscriber pursuant to an express provision in each stock subscription agreement.
- (4) The fund shall be used to satisfy organizational expenses incurred by the incorporators in connection with the organization of the proposed bank. Upon opening of the bank, any unused portion of the fund may be credited to the undivided profits account of the bank or may be returned (unless the monies were allocated to the organization's expense fund through stock subscriptions) pro-rata to the persons providing the financing for the fund. In the event, however, the fund is insufficient to satisfy all of the expenses incurred in connection with the organization of the proposed bank, T.C.A. § 45-2-203 is hereby interpreted to mean that no stock subscription money, except any amount previously allocated to the fund as allowed by subsection (3) herein, and no part of the capital account of the bank shall be

(Rule 0180-7-.09, continued)

used to satisfy any indebtedness incurred by the incorporators in connection with the organization of the bank without the prior written consent of the Commissioner of Financial Institutions.

Authority: T.C.A. §§45-1-107, 45-2-202, and 45-2-203. **Administrative History:** Original rule filed May 31, 1978; effective August 14, 1978. Amendment filed February 17, 1984; effective May 15, 1984. Amendment filed January 30, 1998; effective May 29, 1998.