

**7-2-15 Priority of obligations, expenses, and claims -- Distribution of balance of assets.**

- (1) The following obligations, expenses, and claims have the following priority:
  - (a) first, any obligation the commissioner may have under Subsection 7-2-6(3)(b) to be bound by the terms, covenants, and conditions of obligations secured by assets or property of the institution;
  - (b) second, administrative expenses, including those allowed under Section 7-2-14;
  - (c) third, unsecured claims for wages, salaries, or commissions, including vacation, severance, or sick leave pay, earned by an individual within 90 days before the date of the commissioner's possession, in an amount not exceeding \$2,000 for each individual;
  - (d) fourth, claims of depositors. Any federal deposit insurance agency or other deposit insurer is subrogated to all rights of the depositors against the institution, its officers and directors, and its persons in control of the institution as control is defined in Section 7-1-103 to the extent of all payments made for the benefit of the depositors. "Payments," as used in this subsection, includes arrangements by a federal deposit insurance agency for the assumption or payment of the deposit liabilities by another institution whose deposits are insured by a federal deposit insurance agency. The right of any agency of the United States insuring deposits or savings obligations to be subrogated to the rights of depositors upon payment of their claims may not be less extensive than the law of the United States provides with respect to subrogation to the rights of depositors in national banks. For the purposes of this section, a contractual commitment to advance funds, including a standby letter of credit, may not be considered a deposit liability of the institution;
  - (e) fifth, all other unsecured claims in amounts allowed by the court, including claims of secured creditors to the extent the amount of their claims exceed the present fair market value of their collateral. The claim of a lessor for damages resulting from the termination of a lease of property may not be allowed in an amount in excess of the rent reserved by the lease, without acceleration, for 60 days after the lessor repossessed the leased property, or the leased property was surrendered to the lessor, whichever first occurs, whether before or after the commissioner took possession of the institution, plus any unpaid rent due under the lease, without acceleration, on the date of possession or surrender. A claim for damages resulting from the termination of an employment contract, may not be allowed in an amount in excess of the compensation provided by the contract, without acceleration, for 90 days after the employee was directed to terminate, or the employee terminated, performance under the contract, whichever first occurs, whether before or after the commissioner took possession of the institution, plus any unpaid compensation due under the contract, without acceleration, on the date the employee was directed to terminate or the employee terminated performance. Claims for damages resulting from the termination of employment contracts of persons who were in control of the institution, as control is defined in Section 7-1-103, are not entitled to priority under this subsection. Claims for damages for breach of a commitment to advance funds shall be limited to the amount due and owing by the institution on the date the commissioner took possession of the institution;
  - (f) sixth, claims for debt that are subordinated under the provisions of a subordination agreement or other instrument;
  - (g) seventh, claims of persons who were at any time in control of the institution as control is defined in Section 7-1-103; and
  - (h) eighth, all other claims.
- (2) The commissioner shall classify each claim presented for priority purposes under Subsection (1) and shall indicate the classification on any certificate issued under the provisions of

Subsection 7-2-6(11). This classification is final, subject to review by the court upon a timely objection filed under Subsection 7-2-6(9).

- (3) When the commissioner has paid to each depositor and creditor of the institution whose claims have been proved and allowed the full amount of the claim, has made proper provision for unclaimed or unpaid deposits or dividends, and has paid all the expenses of the liquidation, he shall distribute the balance of the assets of the institution in his possession among the shareholders of the institution in proportion to the holdings and classes of this stock. Unless a court of competent jurisdiction determines otherwise, the shareholders shall be determined by the books and records of the institution as of the date the commissioner took possession.

Amended by Chapter 49, 1995 General Session