

Superseded 5/12/2015

7-2-6 Possession by commissioner -- Notice -- Presentation, allowance, and disallowance of claims -- Objections to claims.

- (1)
 - (a) Possession of an institution by the commissioner commences when notice of taking possession is:
 - (i) posted in each office of the institution located in this state; or
 - (ii) delivered to a controlling person or officer of the institution.
 - (b) All notices, records, and other information regarding possession of an institution by the commissioner may be kept confidential, and all court records and proceedings relating to the commissioner's possession may be sealed from public access if:
 - (i) the commissioner finds it is in the best interests of the institution and its depositors not to notify the public of the possession by the commissioner;
 - (ii) the deposit and withdrawal of funds and payment to creditors of the institution is not suspended, restricted, or interrupted; and
 - (iii) the court approves.
- (2)
 - (a)
 - (i) Within 15 days after taking possession of an institution or other person under the jurisdiction of the department, the commissioner shall publish a notice to all persons who may have claims against the institution or other person to file proof of their claims with the commissioner before a date specified in the notice.
 - (ii) The filing date shall be at least 90 days after the date of the first publication of the notice.
 - (iii) The notice shall be published:
 - (A)
 - (I) in a newspaper of general circulation in each city or county in which the institution or other person, or any subsidiary or service corporation of the institution, maintains an office; and
 - (II) published again approximately 30 days and 60 days after the date of the first publication; and
 - (B) as required in Section 45-1-101 for 60 days.
 - (b)
 - (i) Within 60 days of taking possession of a depository institution, the commissioner shall send a similar notice to all persons whose identity is reflected in the books or records of the institution as depositors or other creditors, secured or unsecured, parties to litigation involving the institution pending at the date the commissioner takes possession of the institution, and all other potential claimants against the institution whose identity is reasonably ascertainable by the commissioner from examination of the books and records of the institution. No notice is required in connection with accounts or other liabilities of the institution that will be paid in full or be fully assumed by another depository institution or trust company. The notice shall specify a filing date for claims against the institution not less than 60 days after the date of mailing. Claimants whose claims against the institution have been assumed by another depository institution or trust company pursuant to a merger or purchase and assumption agreement with the commissioner, or a federal deposit insurance agency appointed as receiver or liquidator of the institution, shall be notified of the assumption of their claims and the name and address of the assuming party within 60 days after the claim is assumed. Unless a purchase and assumption or merger agreement

requires otherwise, the assuming party shall give all required notices. Notice shall be mailed to the address appearing in the books and records of the institution.

- (ii) Inadvertent or unintentional failure to mail a notice to any person entitled to written notice under this paragraph does not impose any liability on the commissioner or any receiver or liquidator appointed by him beyond the amount the claimant would be entitled to receive if the claim had been timely filed and allowed. The commissioner or any receiver or liquidator appointed by him are not liable for failure to mail notice unless the claimant establishes that it had no knowledge of the commissioner taking possession of the institution until after all opportunity had passed for obtaining payment through filing a claim with the commissioner, receiver, or liquidator.
 - (c) Upon good cause shown, the court having supervisory jurisdiction may extend the time in which the commissioner may serve any notice required by this chapter.
 - (d) The commissioner has the sole power to adjudicate any claim against the institution, its property or other assets, tangible or intangible, and to settle or compromise claims within the priorities set forth in Section 7-2-15. Any action of the commissioner is subject to judicial review as provided in Subsection (9).
 - (e) A receiver or liquidator of the institution appointed by the commissioner has all the duties, powers, authority, and responsibilities of the commissioner under this section. All claims against the institution shall be filed with the receiver or liquidator within the applicable time specified in this section and the receiver or liquidator shall adjudicate the claims as provided in Subsection (2)(d).
 - (f) The procedure established in this section is the sole remedy of claimants against an institution or its assets in the possession of the commissioner.
- (3) With respect to a claim which appears in the books and records of an institution or other person in the possession of the commissioner as a secured claim, which, for purposes of this section is a claim that constitutes an enforceable, perfected lien, evidenced in writing, on the assets or other property of the institution:
- (a) The commissioner shall allow or disallow each secured claim filed on or before the filing date within 30 days after receipt of the claim and shall notify each secured claimant by certified mail or in person of the basis for, and any conditions imposed on, the allowance or disallowance.
 - (b) For all allowed secured claims, the commissioner shall be bound by the terms, covenants, and conditions relating to the assets or other property subject to the claim, as set forth in the note, bond, or other security agreement which evidences the secured claim, unless the commissioner has given notice to the claimant of his intent to abandon the assets or other property subject to the secured claim at the time the commissioner gave the notice described in Subsection (3)(a).
 - (c) No petition for lifting the stay provided by Section 7-2-7 may be filed with respect to a secured claim before the claim has been filed and allowed or disallowed by the commissioner in accordance with Subsection (3)(a).
- (4) With respect to all other claims other than secured claims:
- (a) Each claim filed on or before the filing date shall be allowed or disallowed within 180 days after the final publication of notice.
 - (b) If notice of disallowance is not served upon the claimant by the commissioner within 210 days after the date of final publication of notice, the claim is considered disallowed.
 - (c) The rights of claimants and the amount of a claim shall be determined as of the date the commissioner took possession of the institution under this chapter. Claims based on contractual obligations of the institution in existence on the date of possession may be

allowed unless the obligation of the institution is dependent on events occurring after the date of possession, or the amount or worth of the claim cannot be determined before any distribution of assets of the institution is made to claimants having the same priority under Section 7-2-15.

(d)

- (i) An unliquidated claim against the institution, including claims based on alleged torts for which the institution would have been liable on the date the commissioner took possession of the institution and any claims for a right to an equitable remedy for breach of performance by the institution, may be filed in an estimated amount. The commissioner may disallow or allow the claim in an amount determined by the commissioner, settle the claim in an amount approved by the court, or, in his discretion, refer the claim to the court designated by Section 7-2-2 for determination in accordance with procedures designated by the court. If the institution held on the date of possession by the commissioner a policy of insurance that would apply to the liability asserted by the claimant, the commissioner, or any receiver appointed by him may assign to the claimant all rights of the institution under the insurance policy in full satisfaction of the claim.
 - (ii) If the commissioner finds there are or may be issues of fact or law as to the validity of a claim, liquidated or unliquidated, or its proper allowance or disallowance under the provisions of this chapter, he may appoint a hearing examiner to conduct a hearing and to prepare and submit recommended findings of fact and conclusions of law for final consideration by the commissioner. The hearing shall be conducted as provided in rules or regulations issued by the commissioner. The decision of the commissioner shall be based on the record before the hearing examiner and information the commissioner considers relevant and shall be subject to judicial review as provided in Subsection (9).
 - (e) A claim may be disallowed if it is based on actions or documents intended to deceive the commissioner or any receiver or liquidator appointed by him.
 - (f) The commissioner may defer payment of any claim filed on behalf of a person who was at any time in control of the institution within the meaning of Section 7-1-103, pending the final determination of all claims of the institution against that person.
 - (g) The commissioner or any receiver appointed by him may disallow a claim that seeks a dollar amount if it is determined by the court having jurisdiction under Section 7-2-2 that the commissioner or receiver or conservator will not have any assets with which to pay the claim under the priorities established by Section 7-2-15.
 - (h) The commissioner may adopt rules to establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed against an institution under this chapter.
 - (i) In establishing alternative dispute resolution processes, the commissioner shall strive for procedures that are expeditious, fair, independent, and low cost. The commissioner shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.
 - (j) The commissioner may establish both binding and nonbinding processes, which may be conducted by any government or private party, but all parties, including the claimant and the commissioner or any receiver appointed by him, must agree to the use of the process in a particular case.
- (5) Claims filed after the filing date are disallowed, unless:
- (a) the claimant who did not file his claim timely demonstrates that he did not have notice or actual knowledge of the proceedings in time to file a timely proof of claim; and

- (b) proof of the claim was filed prior to the last distribution of assets. For the purpose of this subsection only, late filed claims may be allowed if proof was filed before the final distribution of assets of the institution to claimants of the same priority and are payable only out of the remaining assets of the institution.
- (c) A late filed claim may be disallowed under any other provision of this section.
- (6) Debts owing to the United States or to any state or its subdivisions as a penalty or forfeiture are not allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose.
- (7) Except as otherwise provided in Subsection 7-2-15(1)(a), interest accruing on any claim after the commissioner has taken possession of an institution or other person under this chapter may be disallowed.
- (8) A claim against an institution or its assets based on a contract or agreement may be disallowed unless the agreement: (a) is in writing; (b) is otherwise a valid and enforceable contract; and (c) has continuously, from the time of its execution, been an official record of the institution. The requirements of this Subsection (8) do not apply to claims for goods sold or services rendered to an institution in the ordinary course of business by trade creditors who do not customarily use written agreements or other documents.
- (9)
 - (a) Objection to any claim allowed or disallowed may be made by any depositor or other claimant by filing a written objection with the commissioner within 30 days after service of the notice of allowance or disallowance. The commissioner shall present the objection to the court for hearing and determination upon written notice to the claimant and to the filing party. The notice shall set forth the time and place of hearing. After the 30-day period, no objection may be filed. This Subsection (9) does not apply to secured claims allowed under Subsection (3).
 - (b) The hearing shall be based on the record before the commissioner and any additional evidence the court allowed to provide the parties due process of law.
 - (c) The court may not reverse or otherwise modify the determination of the commissioner with respect to the claim unless it finds the determination of the commissioner to be arbitrary, capricious, or otherwise contrary to law. The burden of proof is on the party objecting to the determination of the commissioner.
 - (d) An appeal from any final judgment of the court with respect to a claim may be taken as provided by law by the claimant, the commissioner, or any person having standing to object to the allowance or disallowance of the claim.
- (10) If a claim against the institution has been asserted in any judicial, administrative, or other proceeding pending at the time the commissioner took possession of the institution under this chapter or under Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, the claimant shall file copies of all documents of record in the pending proceeding with the commissioner within the time for filing claims as provided in Subsection (2). Such a claim shall be allowed or disallowed within 90 days of the receipt of the complete record of the proceedings. No application to lift the stay of a pending proceeding shall be filed until the claim has been allowed or disallowed. The commissioner may petition the court designated by Section 7-2-2 to lift the stay to determine whether the claim should be allowed or disallowed.
- (11) All claims allowed by the commissioner and not disallowed or otherwise modified by the court under Subsection (9), if not paid within 30 days after allowance, shall be evidenced by a certificate payable only out of the assets of the institution in the possession of the commissioner, subject to the priorities set forth in Section 7-2-15. This provision does not apply to a secured claim allowed by the commissioner under Subsection (3)(a).