

31A-27a-610 Secured creditor's claims.

- (1) The value of a security held by a secured creditor shall be determined in one of the following ways:
 - (a) by converting the security into money according to the terms of the agreement pursuant to which the security is delivered to the creditor; or
 - (b) by agreement or litigation between the creditor and the liquidator.
- (2)
 - (a) The receiver has the first priority to use collateral to reimburse a prepetition loss or expense if:
 - (i) a surety pays a loss or loss adjustment expense under its own surety instrument before any petition for a delinquency proceeding;
 - (ii) the principal posts collateral that remains available to reimburse the loss, the loss adjustment expense, or both; and
 - (iii) at the time of the petition, the collateral posted under this Subsection (2)(a) has not been credited against the payments made.
 - (b) If the principal under a surety bond or a surety undertaking pledges collateral, including a guaranty or a letter of credit, to secure the principal's reimbursement obligation to the insurer, the claim of an obligee or, subject to the discretion of the receiver, completion contractor under the surety bond or surety undertaking shall be satisfied first out of the collateral or the collateral's proceeds.
 - (c) In making a distribution to an obligee or completion contractor, the receiver shall retain a sufficient reserve for any other potential claim against the collateral under Subsection (2)(b).
 - (d) If the collateral is insufficient to satisfy in full all potential claims against it under Subsections (2)(b) and (f):
 - (i) the claims shall be paid on a pro rata basis; and
 - (ii) the obligees or completion contractor shall have claims, subject to allowance pursuant to Section 31A-27a-603, for any deficiency.
 - (e) If the time to assert a claim against a surety bond or a surety undertaking expires and all claims have been satisfied in full, any remaining collateral for the surety bond or surety undertaking shall be returned to the principal.
 - (f)
 - (i) To the extent that a guaranty association has made a payment relating to a claim against a surety bond, the guaranty association shall first be reimbursed for the payment and related expenses out of the available collateral or proceeds related to the surety bond.
 - (ii) To the extent the collateral is sufficient, the guaranty association will be reimbursed for 100% of the guaranty association's payment.
 - (iii) If the collateral is insufficient to satisfy in full all potential claims against it under this Subsection (2)(f) and Subsection (2)(b), the one or more guaranty associations that pay claims on a surety bond:
 - (A) are entitled to a pro rata share of the available collateral in accordance with Subsection (2)(d); and
 - (B) have claims against the general assets of the estate in accordance with Section 31A-27a-603 for any deficiency.
 - (iv) A payment made to a guaranty association from the collateral may not be considered early access or otherwise considered a distribution out of the general assets or property of the estate.
 - (v) A guaranty association shall subtract any payment from the collateral from the guaranty association's final claims against the estate.
- (3)

- (a) The amount determined pursuant to Subsection (1) shall be credited upon the secured claim, and the claimant may file a proof of claim, subject to the other provisions of this chapter, for any deficiency, which shall be treated as an unsecured claim.
 - (b) If the claimant surrenders the claimant's security to the liquidator, the entire claim shall be treated as if unsecured.
- (4) The liquidator may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, the property to the extent of any benefit to the holder of the allowed secured claim.

Enacted by Chapter 309, 2007 General Session