

FINANCE CODE

TITLE 3. FINANCIAL INSTITUTIONS AND BUSINESSES

SUBTITLE A. BANKS

CHAPTER 36. DISSOLUTION AND RECEIVERSHIP

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 36.001. DEFINITION. In this chapter, "administrative expense" means:

(1) an expense designated as an administrative expense by Subchapter C or D;

(2) court costs and expenses of operation and liquidation of a bank estate;

(3) wages owed to an employee of a bank for services rendered within three months before the date the bank was closed for liquidation and not exceeding:

(A) \$2,000 to each employee; or

(B) another amount set by rules adopted under this subtitle;

(4) current wages owed to a bank employee whose services are retained by the receiver for services rendered after the date the bank is closed for liquidation;

(5) an unpaid expense of supervision or conservatorship of the bank before its closing for liquidation; and

(6) any unpaid fees or assessments owed to the department.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.002. REMEDIES EXCLUSIVE. (a) Unless the banking commissioner so requests, a court may not:

(1) order the closing or suspension of operation of a state bank; or

(2) appoint for a state bank a receiver, supervisor, conservator, liquidator, or other person with similar responsibility.

(b) A person may not be designated a receiver, supervisor,

conservator, or liquidator without the voluntary approval of the banking commissioner.

(c) This chapter prevails over any conflicting law of this state.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.003. FEDERAL DEPOSIT INSURANCE CORPORATION AS LIQUIDATOR. (a) The banking commissioner without court action may tender a state bank that has been closed for liquidation to the Federal Deposit Insurance Corporation or its successor as receiver and liquidating agent if the deposits of the bank were insured by the Federal Deposit Insurance Corporation or its successor on the date of closing.

(b) After acceptance of tender of the bank, the Federal Deposit Insurance Corporation or its successor shall perform the acts and duties as receiver of the bank that it considers necessary or desirable and that are permitted or required by federal law or this chapter.

(c) If the Federal Deposit Insurance Corporation or its successor refuses to accept tender of the bank, the banking commissioner shall act as receiver.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.004. APPOINTMENT OF INDEPENDENT RECEIVER. (a) On request of the banking commissioner, the court in which a liquidation proceeding is pending may:

- (1) appoint an independent receiver; and
- (2) require a suitable bond of the independent receiver.

(b) On appointment of an independent receiver, the banking commissioner is discharged as receiver and remains a party to the liquidation proceeding with standing to initiate or contest any motion. The views of the banking commissioner are entitled to deference unless they are inconsistent with the plain meaning of this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.005. SUCCESSION OF TRUST POWERS. (a) If a state bank in the process of voluntary or involuntary dissolution and liquidation is acting as trustee, guardian, executor, administrator, or escrow agent, or in another fiduciary or custodial capacity, the banking commissioner may authorize the sale of the bank's administration of fiduciary accounts to a successor entity with fiduciary powers.

(b) The successor entity, without the necessity of action by a court or the creator or a beneficiary of the fiduciary relationship, shall:

(1) continue the office, trust, or fiduciary relationship; and

(2) perform all the duties and exercise all the powers connected with or incidental to the fiduciary relationship as if the successor entity had been originally designated as the fiduciary.

(c) This section applies to all fiduciary relationships, including a trust established for the benefit of a minor by court order under Section [142.005](#), Property Code. This section does not affect any right of a court or a party to the instrument governing the fiduciary relationship to subsequently designate another trustee as the successor fiduciary.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

#### SUBCHAPTER B. VOLUNTARY DISSOLUTION

Sec. 36.101. INITIATING VOLUNTARY DISSOLUTION. (a) A state bank may initiate voluntary dissolution and surrender its charter as provided by this subchapter:

(1) with the approval of the banking commissioner;

(2) after complying with the provisions of the Business Organizations Code regarding board and shareholder approval for voluntary dissolution; and

(3) by filing the documents as provided by Section [36.102](#).

(b) The shareholders of a state bank initiating voluntary dissolution by resolution shall appoint one or more persons to act

as the liquidating agent or committee. The liquidating agent or committee shall conduct the liquidation as provided by law and under the supervision of the bank's board. The board, in consultation with the banking commissioner, shall require the liquidating agent or committee to give a suitable bond.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 49, eff. September 1, 2007.

Sec. 36.102. FILING RESOLUTIONS WITH BANKING COMMISSIONER. After resolutions to dissolve and liquidate a state bank have been adopted by the bank's board and shareholders, a majority of the directors shall verify and file with the banking commissioner certified copies of:

(1) the resolutions of the shareholders that:

(A) are adopted at a meeting for which proper notice was given or by unanimous written consent; and

(B) approve the dissolution and liquidation of the bank;

(2) the resolutions of the board approving the dissolution and liquidation of the bank; and

(3) the notice to the shareholders informing them of the meeting.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 50, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 735 (H.B. 2754), Sec. 9, eff. September 1, 2007.

Sec. 36.103. BANKING COMMISSIONER INVESTIGATION AND CONSENT. The banking commissioner shall review the documentation submitted under Section 36.102 and conduct any necessary investigation or examination. If the proceedings appear to have been properly conducted and the bond to be given by the liquidating agent or committee is adequate for its purposes, the banking

commissioner shall consent to dissolution and direct the bank to publish notice of its pending dissolution.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.104. NOTICE OF PENDING DISSOLUTION. (a) A state bank initiating voluntary dissolution shall publish notice of its pending dissolution in a newspaper of general circulation in each community where its home office or a branch is located:

(1) at least once each week for eight consecutive weeks; or

(2) at other times specified by the banking commissioner or rules adopted under this subtitle.

(b) The notice must:

(1) be in the form and include the information required by the banking commissioner; and

(2) state that:

(A) the bank is liquidating;

(B) depositors and creditors must present their claims for payment on or before a specified date; and

(C) all safe deposit box holders and bailors of property left with the bank should remove their property on or before a specified date.

(c) The dates selected by the bank under Subsection (b) must:

(1) be approved by the banking commissioner; and

(2) allow:

(A) the affairs of the bank to be wound up as quickly as feasible; and

(B) creditors, depositors, and owners of property adequate time for presentation of claims, withdrawal of accounts, and redemption of property.

(d) The banking commissioner may adjust the dates under Subsection (b) with or without republication of notice if additional time appears needed for the activities to which the dates pertain.

(e) At the time of or promptly after publication of the notice, the bank shall mail to each of the bank's known depositors,

creditors, safe deposit box holders, and bailors of property left with the bank, at the mailing address shown on the bank's records, an individual notice containing:

(1) the information required in a notice under Subsection (b); and

(2) specific information pertinent to the account or property of the addressee.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.105. SAFE DEPOSITS AND OTHER BAILMENTS. (a) A contract between the bank and a person for bailment, of deposit for hire, or for lease of a safe, vault, or box ceases on the date specified in the notice as the date for removal of property or a later date approved by the banking commissioner. A person who has paid rental or storage charges for a period extending beyond the date designated for removal of property has an unsecured claim against the bank for a refund of the unearned amount paid.

(b) If the property is not removed by the date the contract ceases, an officer of the bank shall inventory the property. In making the inventory the officer may open a safe, vault, or box, or any package, parcel, or receptacle, in the custody or possession of the bank. The inventory must be made in the presence of a notary public who is not an officer or employee of the bank and who is bonded in an amount and by sureties approved by the banking commissioner. The property shall be marked to identify, to the extent possible, its owner or the person who left it with the bank. After all property belonging to others that is in the bank's custody and control has been inventoried, a master list certified by the bank officer and the notary public shall be furnished to the banking commissioner. The master list shall be kept in a place and dealt with in a manner the banking commissioner specifies pending delivery of the property to its owner or to the comptroller as unclaimed property.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.106. OFFICES TO REMAIN OPEN. Unless the banking commissioner directs or consents otherwise, the home office and all

branch offices of a state bank initiating voluntary dissolution shall remain open for business during normal business hours until the last date specified in published notices for presentation of claims, withdrawal of accounts, and redemption of property.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.107. FIDUCIARY ACTIVITIES. (a) As soon after publication of the notice of dissolution as is practicable, the bank shall:

- (1) terminate all fiduciary positions it holds;
- (2) surrender all property held by it as a fiduciary;

and

- (3) settle its fiduciary accounts.

(b) Unless all fiduciary accounts are settled and transferred by the last date specified in published notices or by the banking commissioner and unless the banking commissioner directs otherwise, the bank shall mail a notice to each trustor and beneficiary of any remaining trust, escrow arrangement, or other fiduciary relationship. The notice must state:

- (1) the location of an office open during normal business hours where administration of the remaining fiduciary accounts will continue until settled or transferred; and

- (2) a telephone number at that office.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.108. FINAL LIQUIDATION. (a) After the bank has taken all of the actions specified by Sections 36.102, 36.105, and 36.107, paid all its debts and obligations, and transferred all property for which a legal claimant has been found after the time for presentation of claims has expired, the bank shall make a list from its books of the names of each depositor, creditor, owner of personal property in the bank's possession or custody, or lessee of any safe, vault, or box, who has not claimed or has not received a deposit, debt, dividend, interest, balance, or other amount or property due to the person. The list must be sworn to or affirmed by a majority of the bank's board.

(b) The bank shall:

(1) file the list and any necessary identifying information with the banking commissioner;

(2) pay any unclaimed money and deliver any unclaimed property to the comptroller as provided by Chapter 74, Property Code; and

(3) certify to the banking commissioner that the unclaimed money has been paid and unclaimed property has been delivered to the comptroller.

(c) After the banking commissioner has reviewed the list and has reconciled the unclaimed cash and property with the amounts of money and property reported and transferred to the comptroller, the banking commissioner shall allow the bank to distribute the bank's remaining assets, if any, among its shareholders as their ownership interests appear.

(d) After distribution of all remaining assets under Subsection (c), the bank shall file with the department:

(1) an affidavit and schedules, sworn to or affirmed by a majority of the bank's board, showing the distribution to each shareholder;

(2) all copies of reports of examination of the bank in its possession; and

(3) its original charter or an affidavit stating that the original charter is lost.

(e) After verifying the submitted information and documents, the banking commissioner shall issue a certificate canceling the charter of the bank.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 51, eff. September 1, 2007.

Sec. 36.109. APPLICATION OF LAW TO BANK IN DISSOLUTION. A state bank in the process of voluntary dissolution and liquidation remains subject to this subtitle and Chapters 11 and 12, including provisions for examination by the banking commissioner, and the bank shall furnish reports required by the banking commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.



Sec. 36.110. AUTHORIZATION OF DEVIATION FROM PROCEDURES. The banking commissioner may authorize a deviation from the procedures for voluntary dissolution in this subchapter if the banking commissioner determines that the interests of claimants are not jeopardized by the deviation.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.111. CLOSURE BY BANKING COMMISSIONER FOR INVOLUNTARY DISSOLUTION AND LIQUIDATION. The banking commissioner may close a state bank for involuntary dissolution and liquidation under this chapter if the banking commissioner determines that:

(1) the voluntary liquidation is:

(A) being conducted in an improper or illegal manner; or

(B) not in the best interests of the bank's depositors and creditors; or

(2) the bank is insolvent or imminently insolvent.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.112. APPLICATION FOR NEW CHARTER. After a state bank's charter has been voluntarily surrendered and canceled, the bank may not resume business or reopen except on application for and approval of a new charter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

#### SUBCHAPTER C. INVOLUNTARY DISSOLUTION AND LIQUIDATION

Sec. 36.201. ACTION TO CLOSE STATE BANK. (a) The banking commissioner may close and liquidate a state bank on finding that:

(1) the interests of the bank's depositors and creditors are jeopardized by the bank's insolvency or imminent insolvency; and

(2) the best interests of depositors and creditors would be served by requiring that the bank be closed and its assets liquidated.

(b) A majority of the bank's directors may voluntarily close

the bank and place it with the banking commissioner for liquidation.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 52, eff. September 1, 2007.

Sec. 36.202. NOTICE AND EFFECT OF CLOSURE; APPOINTMENT OF RECEIVER. (a) After closing a state bank under Section 36.201, the banking commissioner shall place a sign at its main entrance stating that the bank has been closed and the findings on which the closing of the bank is based. A correspondent bank of the closed bank may not pay an item drawn on the account of the closed bank that is presented for payment after the correspondent has received actual notice of closing unless it previously certified the item for payment.

(b) As soon as practicable after posting the sign at the bank's main entrance, the banking commissioner shall tender the bank to the Federal Deposit Insurance Corporation as provided by Section 36.003 or initiate a receivership proceeding by filing a copy of the notice contained on the sign in a district court in the county where the bank's home office is located. The court in which the notice is filed shall docket it as a case styled, "In re liquidation of \_\_\_\_" (inserting the name of the bank). When this notice is filed, the court has constructive custody of all the bank's assets and any action that seeks to directly or indirectly affect bank assets is considered an intervention in the receivership proceeding and is subject to this subchapter and Subchapter D.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.203. NATURE AND DURATION OF RECEIVERSHIP. (a) The court may not require a bond from the banking commissioner as receiver.

(b) A reference in this chapter to the receiver is a reference to the banking commissioner as receiver and to any successor in office, the Federal Deposit Insurance Corporation if

acting as receiver as provided by Section 36.003 and federal law, or an independent receiver appointed at the request of the banking commissioner as provided by Section 36.004.

(c) The receiver has all the powers of the directors, officers, and shareholders of the bank as necessary to support an action taken on behalf of the bank.

(d) The receiver and all employees and agents acting on behalf of the receiver are acting in an official capacity and are protected by Section 12.106. An act of the receiver is an act of the bank in liquidation. This state or a political subdivision of this state is not liable and may not be held accountable for any debt or obligation of a state bank in receivership.

(e) Section 64.072, Civil Practice and Remedies Code, applies to the receivership of a bank except as provided by this subsection. A bank receivership shall be administered continuously for the length of time necessary to complete its purposes, and a period prescribed by other law limiting the time for the administration of a receivership or of corporate affairs generally, including Section 64.072(d), Civil Practice and Remedies Code, does not apply.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 53, eff. September 1, 2007.

Sec. 36.204. CONTEST OF LIQUIDATION. (a) A state bank, acting through a majority of its directors, may intervene in an action filed by the banking commissioner closing a state bank to challenge the banking commissioner's closing of the bank and to enjoin the banking commissioner or other receiver from liquidating its assets. The bank must file the intervention not later than the second business day after the closing of the bank, excluding legal holidays. The court may issue an ex parte order restraining the receiver from liquidating bank assets pending a hearing on the injunction. The receiver shall comply with the restraining order but may petition the court for permission to liquidate an asset as necessary to prevent its loss or diminution pending the outcome of

the injunction.

(b) The court shall hear an action as quickly as possible and shall give it priority over other business.

(c) The bank or receiver may appeal the court's judgment as in other civil cases, except that the receiver shall retain all bank assets pending a final appellate court order even if the banking commissioner does not prevail in the trial court. If the banking commissioner prevails in the trial court, liquidation of the bank may proceed unless the trial court or appellate court orders otherwise. If liquidation is enjoined or stayed pending appeal, the trial court retains jurisdiction to permit liquidation of an asset as necessary to prevent its loss or diminution pending the outcome of the appeal.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 54, eff. September 1, 2007.

Sec. 36.205. NOTICE OF BANK CLOSING. (a) As soon as reasonably practicable after initiation of the receivership proceeding, the receiver shall publish notice in a newspaper of general circulation in each community where the bank's home office or a branch is located. The notice must state that:

- (1) the bank has been closed for liquidation;
- (2) depositors and creditors must present their claims for payment on or before a specified date; and
- (3) all safe deposit box holders and bailors of property left with the bank should remove their property not later than a specified date.

(b) A date that the receiver selects under Subsection (a):

- (1) may not be earlier than the 121st day after the date of the notice; and
- (2) must allow:
  - (A) the affairs of the bank to be wound up as quickly as feasible; and
  - (B) creditors, depositors, and owners of property adequate time for presentation of claims, withdrawal of

accounts, and redemption of property.

(c) The receiver may adjust the dates under Subsection (a) with the approval of the court and with or without republication of notice if additional time appears needed for those activities.

(d) As soon as reasonably practicable given the state of bank records and the adequacy of staffing, the receiver shall mail to each of the bank's known depositors, creditors, safe deposit box holders, and bailors of property left with the bank, at the mailing address shown on the bank's records, an individual notice containing the information required in a notice under Subsection (a) and specific information pertinent to the account or property of the addressee.

(e) The receiver may determine the form and content of notices under this section.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.206. INVENTORY. As soon as reasonably practicable given the state of bank records and the adequacy of staffing, the receiver shall prepare a comprehensive inventory of the bank's assets for filing with the court. The inventory is open to inspection.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.207. RECEIVER'S TITLE AND PRIORITY. (a) The receiver has the title to all the bank's property, contracts, and rights of action, wherever located, beginning on the date the bank is closed for liquidation.

(b) The rights of the receiver have priority over a contractual lien or statutory landlord's lien under Chapter 54, Property Code, judgment lien, attachment lien, or voluntary lien that arises after the date of the closing of the bank for liquidation.

(c) The filing or recording of a receivership order in a record office of this state gives the same notice that would be given by a deed, bill of sale, or other evidence of title filed or recorded by the bank in liquidation. The recording clerk shall index a recorded receivership order in the records to which the

order relates.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.208. RIGHTS FIXED. The rights and liabilities of the bank in liquidation and of a depositor, creditor, officer, director, employee, shareholder, agent, or other person interested in the bank's estate are fixed on the date of closing of the bank for liquidation except as otherwise directed by the court or as expressly provided otherwise by this subchapter or Subchapter D.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 55, eff. September 1, 2007.

Sec. 36.209. DEPOSITORIES. (a) The receiver may deposit money collected on behalf of the bank estate in:

(1) the Texas Treasury Safekeeping Trust Company in accordance with procedures established by the comptroller; or

(2) one or more state banks in this state, the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor, if the receiver, using sound financial judgment, determines that it would be advantageous to do so.

(b) If receivership money deposited in an account at a state bank exceeds the maximum insured amount, the receiver shall require the excess deposit to be adequately secured through a pledge of securities or otherwise, without approval of the court. The depository bank may secure the deposits of the bank in liquidation on behalf of the receiver, notwithstanding any other provision of Chapter 11 or 12 or this subtitle.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.210. PENDING LAWSUIT. (a) A judgment or order of a court of this state or of another jurisdiction in an action pending by or against the bank, rendered after the date the bank was closed for liquidation, is not binding on the receiver unless the receiver was made a party to the suit.

(b) Before the first anniversary of the date the bank was

closed for liquidation, the receiver may not be required to plead to any suit pending against the bank in a court in this state on the date the bank was closed for liquidation and in which the receiver is a proper plaintiff or defendant.

(c) Sections 64.052, 64.053, and 64.056, Civil Practice and Remedies Code, do not apply to a bank estate being administered under this subchapter and Subchapter D.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.211. NEW LAWSUIT. (a) Except as otherwise provided by this section, the court in which the receivership proceeding is pending under this subchapter has exclusive jurisdiction to hear and determine all actions or proceedings instituted by or against the bank or receiver after the receivership proceeding begins.

(b) The receiver may file in any jurisdiction an ancillary suit that may be helpful to obtain jurisdiction or venue over a person or property.

(c) Exclusive venue lies in Travis County for an action or proceeding instituted against the receiver or the receiver's employee, including an employee of the department, that asserts personal liability on the part of the receiver or employee.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.212. REQUIRING RECORD OR OTHER PROPERTY IN POSSESSION OF OTHER PERSON. (a) Each bank affiliate, officer, director, shareholder, trustee, agent, servant, employee, attorney, attorney-in-fact, or correspondent shall immediately deliver to the receiver, without cost to the receiver, any record or other property of the bank or that relates to the business of the bank.

(b) If by contract or otherwise a record or other property that can be copied is the property of a person listed in Subsection (a), it shall be copied and the copy shall be delivered to the receiver. The owner shall retain the original until notification by the receiver that it is no longer required in the administration of the bank's estate or until another time the court, after notice and hearing, directs. A copy is considered to be a record of the

bank in liquidation under Section 36.225.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 56, eff. September 1, 2007.

Sec. 36.213. INJUNCTION IN AID OF LIQUIDATION. (a) On application by the receiver, the court with or without notice may issue an injunction:

(1) restraining a bank officer, director, shareholder, trustee, agent, servant, employee, attorney, attorney-in-fact, correspondent, or other person from transacting the bank's business or wasting or disposing of its property; or

(2) requiring the delivery of the bank's property or assets to the receiver subject to the further order of the court.

(b) At any time during a proceeding under this subchapter, the court may issue another injunction or order considered necessary or desirable to prevent:

(1) interference with the receiver or the proceeding;

(2) waste of the assets of the bank;

(3) the beginning or prosecution of an action;

(4) the obtaining of a preference, judgment, attachment, garnishment, or other lien; or

(5) the making of a levy against the bank or its assets.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 57, eff. September 1, 2007.

Sec. 36.214. SUBPOENA. (a) The receiver may request the court ex parte to issue a subpoena to compel the attendance and testimony of a witness before the receiver and the production of a record relating to the receivership estate. For this purpose the receiver or the receiver's designated representative may administer an oath or affirmation, examine a witness, or receive evidence. The court has statewide subpoena power and may compel



attendance and production of a record before the receiver at the bank, the office of the receiver, or another location.

(b) A person served with a subpoena under this section may file a motion with the court for a protective order as provided by Rule 166b, Texas Rules of Civil Procedure. In a case of disobedience of a subpoena or the contumacy of a witness appearing before the receiver or the receiver's designated representative, the receiver may request and the court may issue an order requiring the person subpoenaed to obey the subpoena, give evidence, or produce a record relating to the matter in question.

(c) A witness who is required to appear before the receiver is entitled to receive:

(1) reimbursement for mileage, in the amount for travel by a state employee, for traveling to or returning from a proceeding that is more than 25 miles from the witness's residence; and

(2) a fee for each day or part of a day the witness is necessarily present as a witness in an amount set by the receiver with the approval of the court of not less than \$10 a day and not more than an amount equal to the per diem travel allowance of a state employee.

(d) A payment of fees under Subsection (c) is an administrative expense.

(e) The receiver may serve the subpoena or have it served by the receiver's authorized agent, a sheriff, or a constable. The sheriff's or constable's fee for serving a subpoena must be the same as the fee paid the sheriff or constable for similar services.

(f) A subpoena issued under this section to a financial institution is not subject to Section 59.006.

(g) On certification by the receiver under official seal, a record produced or testimony taken as provided by this section and held by the receiver is admissible in evidence in any case without proof of its correctness or other proof, except the certificate of the receiver that the record or testimony was received from the person producing the record or testifying. The certified record or a certified copy of the record is prima facie evidence of the facts it contains. This section does not limit another provision of this

subchapter, Subchapter D, or another law that provides for the admission of evidence or its evidentiary value.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.103(c), eff. Sept. 1, 2001.

Sec. 36.215. EXECUTORY CONTRACT; ORAL AGREEMENT. (a) Not later than six months after the date the receivership proceeding begins, the receiver may terminate any executory contract to which the bank is a party or any obligation of the bank as a lessee. A lessor who receives notice of the receiver's election to terminate the lease before the 60th day before the termination date is not entitled to rent or damages for termination, other than rent accrued to the date of termination.

(b) An agreement that tends to diminish or defeat the interest of the estate in a bank asset is not valid against the receiver unless the agreement:

(1) is in writing;

(2) was executed by the bank and any person claiming an adverse interest under the agreement, including the obligor, when the bank acquired the asset;

(3) was approved by the board of the bank or its loan committee, and the approval is reflected in the minutes of the board or committee; and

(4) has been continuously since its execution an official record of the bank.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.216. PREFERENCES. (a) A transfer of or lien on the property or assets of a state bank is voidable by the receiver if the transfer or lien:

(1) was made or created less than:

(A) four months before the date the bank is closed for liquidation; or

(B) one year before the date the bank is closed for liquidation if the receiving creditor was at the time an affiliate, officer, director, or principal shareholder of the bank

or an affiliate of the bank;

(2) was made or created with the intent of giving to a creditor or depositor, or enabling a creditor or depositor to obtain, a greater percentage of the claimant's debt than is given or obtained by another claimant of the same class; and

(3) is accepted by a creditor or depositor having reasonable cause to believe that a preference will occur.

(b) Each bank officer, director, shareholder, trustee, agent, servant, employee, attorney-in-fact, or correspondent, or other person acting on behalf of the bank, who has participated in implementing a voidable transfer or lien, and each person receiving property or the benefit of property of the bank as a result of the voidable transfer or lien, are personally liable for the property or benefit received and shall account to the receiver for the benefit of the depositors and creditors of the bank.

(c) The receiver may avoid a transfer of or lien on the property or assets of a bank that a depositor, creditor, or shareholder of the bank could have avoided and may recover the property transferred or its value from the person to whom it was transferred or from a person who has received it unless the transferee or recipient was a bona fide holder for value before the date the bank was closed for liquidation.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 58, eff. September 1, 2007.

Sec. 36.217. EMPLOYEES OF RECEIVER. The receiver may employ agents, legal counsel, accountants, appraisers, consultants, and other personnel the receiver considers necessary to assist in the performance of the receiver's duties. The receiver may use personnel of the department if the receiver considers the use to be advantageous or desirable. The expense of employing those persons is an administrative expense.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.218. DISPOSAL OF PROPERTY; SETTLING OF CLAIM. (a)

In liquidating a bank, the receiver on order of the court entered with or without hearing may:

- (1) sell all or part of the property of the bank;
- (2) borrow money and pledge all or part of the assets of the bank to secure the debt created, except that the receiver may not be held personally liable to repay borrowed money;
- (3) compromise or compound a doubtful or uncollectible debt or claim owed by or owing to the bank; and
- (4) enter another agreement on behalf of the bank that the receiver considers necessary or proper to the management, conservation, or liquidation of its assets.

(b) If the amount of a debt or claim owed by or owing to the bank or the value of an item of property of the bank does not exceed \$20,000, excluding interest, the receiver may compromise or compound the debt or claim or sell the property on terms the receiver considers to be in the best interests of the bank estate without obtaining the approval of the court.

(c) The receiver may with the approval of the court sell or offer or agree to sell an asset of the bank, other than a fiduciary asset, to a depositor or creditor of the bank. Payment may be in whole or part out of distributions payable to the purchasing depositor or creditor on account of an approved claim against the bank's estate. On application by the receiver, the court may designate one or more representatives to act for certain depositors or creditors as a class in the purchase, holding, and management of assets purchased by the class under this section, and the receiver may with the approval of the court advance the expenses of the appointed representative against the security of the claims of the class.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.219. COURT ORDER; NOTICE AND HEARING. If the court requires notice and hearing before entering an order, the court shall set the time and place of the hearing and prescribe whether the notice is to be given by service on specific parties, by publication, or by a combination of those methods. The court may not enter an order requested by a person other than the receiver

without notice to the receiver and an opportunity for the receiver to be heard.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.220. RECEIVER'S REPORT; EXPENSES. (a) The receiver shall file with the court:

(1) a quarterly report showing the operation, receipts, expenditures, and general condition of the bank in liquidation; and

(2) a final report regarding the liquidated bank showing all receipts and expenditures and giving a full explanation and a statement of the disposition of all assets of the bank.

(b) The receiver shall pay all administrative expenses out of money or other assets of the bank. Each quarter the receiver shall swear to and submit an itemized report of those expenses. The court shall approve the report unless an objection is filed before the 11th day after the date it is submitted. An objection may be made only by a party in interest and must specify each item objected to and the ground for the objection. The court shall set the objection for hearing and notify the parties of this action. The objecting party has the burden of proof to show that the item objected to is improper, unnecessary, or excessive.

(c) The court may prescribe whether the notice of the receiver's report is to be given by service on specific parties, by publication, or by a combination of those methods.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.221. COURT-ORDERED AUDIT. The court may order an audit of the books and records of the receiver that relate to the receivership. A report of an audit ordered under this section shall be filed with the court. The receiver shall make the books and records relating to the receivership available to the auditor as required by the court order. The receiver shall pay the expenses of an audit ordered under this section as an administrative expense.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.222. SAFE DEPOSITS AND OTHER BAILMENTS. (a) A

contract between the bank and another person for bailment, of deposit for hire, or for lease of a safe, vault, or box ceases on the date specified for removal of property in the notices that were published and mailed or a later date approved by the receiver or the court. A person who has paid rental or storage charges for a period extending beyond the date designated for removal of property has a claim against the bank estate for a refund of the unearned amount paid.

(b) If the property is not removed by the date the contract ceases, the receiver shall inventory the property. In making the inventory the receiver may open a safe, vault, or box, or any package, parcel, or receptacle, in the custody or possession of the receiver. The property shall be marked to identify, to the extent possible, its owner or the person who left it with the bank. After all property belonging to others that is in the receiver's custody and control has been inventoried, the receiver shall compile a master list that is divided for each office of the bank that received property that remains unclaimed. The receiver shall publish, in a newspaper of general circulation in each community in which the bank had an office that received property that remains unclaimed, the list and the names of the owners of the property as shown in the bank's records. The published notice must specify a procedure for claiming the property unless the court, on application of the receiver, approves an alternate procedure.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.223. FIDUCIARY ACTIVITIES. (a) As soon after beginning the receivership proceeding as is practicable, the receiver shall:

- (1) terminate all fiduciary positions the bank holds;
- (2) surrender all property held by the bank as a fiduciary; and
- (3) settle the bank's fiduciary accounts.

(b) The receiver shall release all segregated and identifiable fiduciary property held by the bank to successor fiduciaries.

(c) With the approval of the court, the receiver may sell

the administration of all or substantially all remaining fiduciary accounts to one or more successor fiduciaries on terms that appear to be in the best interests of the bank's estate and the persons interested in the fiduciary accounts.

(d) If commingled fiduciary money held by the bank as trustee is insufficient to satisfy all fiduciary claims to the commingled money, the receiver shall distribute commingled money pro rata to all fiduciary claimants of commingled money based on their proportionate interests after payment of administrative expenses related solely to the fiduciary claims. The fictional tracing rule does not apply. To the extent of any unsatisfied fiduciary claim to commingled money, a claimant to commingled trust money is entitled to the same priority as a depositor of the bank.

(e) Subject to Subsection (d), if the bank has lost fiduciary money or property through misappropriation or otherwise, a claimant to the missing fiduciary money or property is entitled to the same priority as a depositor of the bank.

(f) The receiver may require a fiduciary claimant to file a proof of claim if the records of the bank are insufficient to identify the claimant's interest.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.224. DISPOSITION AND MAINTENANCE OF RECORDS. (a) On approval by the court, the receiver may dispose of records of the bank in liquidation that are obsolete and unnecessary to the continued administration of the receivership proceeding.

(b) The receiver may devise a method for the effective, efficient, and economical maintenance of the records of the bank and of the receiver's office. The method may include maintaining those records on any medium approved by the records management division of the Texas State Library.

(c) To maintain the records of the liquidated bank after the closing of the receivership proceeding, the receiver may reserve assets of an estate, deposit them in an account, and use them for maintenance, storage, and disposal of records in closed receivership estates.

(d) Records of a liquidated bank are not government records

for any purpose, including Chapter 552, Government Code, but shall be preserved and disposed of as if they were records of the department under Chapter 441, Government Code. Those records are confidential as provided by:

- (1) Subchapter D, Chapter 31;
- (2) Section 59.006; and
- (3) rules adopted under this subtitle.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 6.103(d), eff. Sept. 1, 2001.

Sec. 36.225. RECORDS ADMITTED. (a) A record of a bank in liquidation obtained by the receiver and held in the course of the receivership proceeding or a certified copy of the record under the official seal of the receiver is admissible in evidence in all cases without proof of correctness or other proof, except the certificate of the receiver that the record was received from the custody of the bank or found among its effects.

(b) The receiver may certify the correctness of a record of the receiver's office, including a record described by Subsection (a), and may certify any fact contained in the record. The record shall be received in evidence in all cases in which the original would be evidence.

(c) The original record or a certified copy of the record is prima facie evidence of the facts it contains.

(d) A copy of an original record or another record that is maintained on a medium approved by the records management division of the Texas State Library, within the scope of this section, and produced by the receiver or the receiver's authorized representative under this section:

- (1) has the same effect as the original record; and
- (2) may be used the same as the original record in a judicial or administrative proceeding in this state.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.226. RESUMPTION OF BUSINESS. (a) A state bank closed under Section 36.201 may not be reopened without the



approval of the banking commissioner unless a contest of liquidation under Section 36.204 is finally resolved adversely to the banking commissioner and the court authorizes the bank's reopening.

(b) The banking commissioner may place temporary limits on the right of withdrawals by or payments to individual depositors and creditors of a bank reopened under this section. The limits:

(1) must apply equally to all unsecured depositors and creditors;

(2) may not defer a withdrawal by or payment to a secured depositor or creditor without the person's written consent; and

(3) may not postpone the right of full withdrawal or payment of unsecured depositors or creditors for more than 18 months after the date that the bank reopens.

(c) As a depositor or creditor of a reopened bank, this state or a political subdivision of this state may agree to temporary limits that the banking commissioner places on payments or withdrawals.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.227. ASSETS DISCOVERED AFTER CLOSE OF RECEIVERSHIP.

(a) The banking commissioner shall report to the court discovery of an asset having value that:

(1) the banking commissioner discovers after the receivership was closed by final order of the court; and

(2) was abandoned as worthless or unknown during the receivership.

(b) The court may reopen the receivership proceeding for continued liquidation if the value of the asset justifies the reopening.

(c) If the banking commissioner suspects that the information may have been intentionally or fraudulently concealed, the banking commissioner shall notify appropriate civil and criminal authorities to determine any applicable penalties.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER D. CLAIMS AGAINST RECEIVERSHIP ESTATE

Sec. 36.301. FILING CLAIM. (a) This section applies only to a claim by a person, other than a shareholder acting in that capacity, who has a claim against a state bank in liquidation, including a claimant with a secured claim and a claimant under a fiduciary relationship who has been ordered by the receiver to file a proof of claim under Section 36.223.

(b) To receive payment of a claim, the person must present proof of the claim to the receiver:

(1) at a place specified by the receiver; and

(2) within the period specified by the receiver under Section 36.205.

(c) A claim that is not filed within the period specified by the receiver may not participate in a distribution of the assets by the receiver, except that, subject to court approval, the receiver may accept a claim filed not later than the 180th day after the date notice of the claimant's right to file a proof of claim is mailed to the claimant.

(d) A claim accepted and approved under Subsection (c) is subordinate to an approved claim of a general creditor.

(e) Interest does not accrue on a claim after the date the bank is closed for liquidation.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 59, eff. September 1, 2007.

Sec. 36.302. PROOF OF CLAIM. (a) A proof of claim must be in writing, be signed by the claimant, and include:

(1) a statement of the claim;

(2) a description of the consideration for the claim;

(3) a statement of whether collateral is held or a security interest is asserted against the claim and, if so, a description of the collateral or security interest;

(4) a statement of any right of priority of payment for the claim or other specific right asserted by the claimant;

(5) a statement of whether a payment has been made on the claim and, if so, the amount and source of the payment, to the extent known by the claimant;

(6) a statement that the amount claimed is justly owed by the bank in liquidation to the claimant; and

(7) any other matter that is required by the court.

(b) The receiver may designate the form of the proof of claim. A proof of claim must be filed under oath unless the oath is waived by the receiver. A proof of claim filed with the receiver is considered filed in an official proceeding for purposes of Chapter 37, Penal Code.

(c) If a claim is founded on a written instrument, the original instrument, unless lost or destroyed, must be filed with the proof of claim. After the instrument is filed, the receiver may permit the claimant to substitute a copy of the instrument until the final disposition of the claim. If the instrument is lost or destroyed, a statement of that fact and of the circumstances of the loss or destruction must be filed under oath with the claim.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.303. JUDGMENT AS PROOF OF CLAIM. (a) A judgment entered against a state bank in liquidation before the date the bank was closed for liquidation may not be given higher priority than a claim of an unsecured creditor unless the judgment creditor in a proof of claim proves the allegations supporting the judgment to the receiver's satisfaction.

(b) A judgment against the bank taken by default or by collusion before the date the bank was closed for liquidation may not be considered as conclusive evidence of the liability of the bank to the judgment creditor or of the amount of damages to which the judgment creditor is entitled.

(c) A judgment against the bank entered after the date the bank was closed for liquidation may not be considered as evidence of liability or of the amount of damages.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.304. SECURED CLAIM. (a) The owner of a secured

claim against a bank in liquidation may:

(1) surrender the security and file a claim as a general creditor; or

(2) apply the security to the claim and discharge the claim.

(b) If the owner applies the security and discharges the claim, any deficiency shall be treated as a claim against the general assets of the bank on the same basis as a claim of an unsecured creditor. The amount of the deficiency shall be determined as provided by Section 36.305, except that if the amount of the deficiency has been adjudicated by a court in a proceeding in which the receiver has had notice and an opportunity to be heard, the court's decision is conclusive as to the amount.

(c) The value of security held by a secured creditor shall be determined under supervision of the court by:

(1) converting the security into money according to the terms of the agreement under which the security was delivered to the creditor; or

(2) agreement, arbitration, compromise, or litigation between the creditor and the receiver.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.305. UNLIQUIDATED OR UNDETERMINED CLAIM. (a) A claim based on an unliquidated or undetermined demand shall be filed within the period provided by Subchapter C for the filing of a claim. The claim may not share in any distribution to claimants until the claim is definitely liquidated, determined, and allowed. After the claim is liquidated, determined, and allowed, the claim shares ratably with the claims of the same class in all subsequent distributions.

(b) For purposes of this section, a demand is considered unliquidated or undetermined if the right of action on the demand accrued while the bank was closed for liquidation and the liability on the demand has not been determined or the amount of the demand has not been liquidated.

(c) If the receiver in all other respects is in a position to close the receivership proceeding, the proposed closing is

sufficient grounds for the rejection of any remaining claim based on an unliquidated or undetermined demand. The receiver shall notify the claimant of the intention to close the proceeding. If the demand is not liquidated or determined before the 61st day after the date of the notice, the receiver may reject the claim.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.306. SET-OFF. (a) Mutual credits and mutual debts shall be set off and only the balance allowed or paid, except that a set-off may not be allowed in favor of a person if:

(1) the obligation of the bank to the person on the date the bank was closed for liquidation did not entitle the person to share as a claimant in the assets of the bank;

(2) the obligation of the bank to the person was purchased by or transferred to the person after the date the bank was closed for liquidation or for the purpose of increasing set-off rights; or

(3) the obligation of the person or the bank is as a trustee or fiduciary.

(b) On request, the receiver shall provide a person with an accounting statement identifying each debt that is due and payable. A person who owes the bank an amount that is due and payable against which the person asserts a set-off of mutual credits that may become due and payable from the bank in the future shall promptly pay to the receiver the amount due and payable. The receiver shall promptly refund, to the extent of the person's prior payment, mutual credits that become due and payable to the person by the bank in liquidation.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.307. ACTION ON CLAIM. (a) Not later than six months after the last day permitted for the filing of claims or a later date allowed by the court, the receiver shall accept or reject in whole or in part each filed claim against the bank in liquidation, except for an unliquidated or undetermined claim governed by Section 36.305. The receiver shall reject a claim if the receiver doubts its validity.

(b) The receiver shall mail written notice to each claimant specifying the disposition of the person's claim. If a claim is rejected in whole or in part, the receiver in the notice shall specify the basis for rejection and advise the claimant of the procedures and deadline for appeal.

(c) The receiver shall send each claimant a summary schedule of approved and rejected claims by priority class and notify the claimant:

(1) that a copy of a schedule of claims disposition including only the name of the claimant, the amount of the claim allowed, and the amount of the claim rejected is available on request; and

(2) of the procedure and deadline for filing an objection to an approved claim.

(d) The receiver or an agent or employee of the receiver, including an employee of the department, is not liable, and a cause of action may not be brought against the person, for an action taken or not taken by the person relating to the adjustment, negotiation, or settlement of a claim.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.308. OBJECTION TO APPROVED CLAIM. The receiver with court approval shall set a date for objection to an approved claim. On or before that date a depositor, creditor, other claimant, or shareholder of the bank may file an objection to an approved claim. The objection shall be heard and determined by the court. If the objection is sustained, the court shall direct an appropriate modification of the schedule of claims.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 60, eff. September 1, 2007.

Sec. 36.309. APPEAL OF REJECTED CLAIM. (a) The receiver's rejection of a claim may be appealed in the court in which the receivership proceeding is pending. The appeal must be brought within three months after the date of service of notice of the

rejection.

(b) If the action is timely brought, review is de novo as if originally filed in the court and subject to the rules of procedure and appeal applicable to civil cases. This action is separate from the receivership proceeding and is not initiated by a claimant's attempt to appeal the action of the receiver by intervening in the receivership proceeding.

(c) If the action is not timely brought, the action of the receiver is final and not subject to review.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.310. PAYMENT OF CLAIM. (a) Except as expressly provided otherwise by this subchapter or Subchapter C, without the approval of the court the receiver may not make a payment on a claim, other than a claim for an obligation incurred by the receiver for administrative expenses.

(b) The receiver may periodically make partial distribution to the holders of approved claims if:

(1) all objections have been heard and decided as provided by Section 36.308;

(2) the time for filing appeals has expired as provided by Section 36.309; and

(3) a proper reserve is established for the pro rata payment of:

(A) rejected claims that have been appealed; and

(B) any claims based on unliquidated or undetermined demands governed by Section 36.305.

(c) As soon as practicable after the determination of all objections, appeals, and claims based on previously unliquidated or undetermined demands governed by Section 36.305, the receiver shall distribute the assets of the bank in satisfaction of approved claims other than claims asserted in a person's capacity as a shareholder.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 61, eff. September 1, 2007.

Sec. 36.311. PRIORITY OF CLAIMS AGAINST INSURED BANK. The distribution of assets from the estate of a bank the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor shall be made in the same order of priority as assets would be distributed on liquidation or purchase of assets and assumption of liabilities of a national bank under federal law. Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.312. PRIORITY OF CLAIMS AGAINST UNINSURED BANK. (a) The priority of distribution of assets from the estate of a bank the deposits of which are not insured by the Federal Deposit Insurance Corporation or its successor shall be in accordance with the order of each class as provided by this section. Every claim in each class shall be paid in full, or adequate money shall be retained for that payment, before a member of the next class receives any payment. A subclass may not be established within a class, except for a preference or subordination within a class expressly created by contract or other instrument or in the certificate of formation.

(b) Assets shall be distributed in the following order of priority:

- (1) administrative expenses;
- (2) approved claims of secured creditors to the extent of the value of the security as provided by Section [36.304](#);
- (3) approved claims of beneficiaries of insufficient commingled fiduciary money or missing fiduciary property and approved claims of depositors of the bank;
- (4) other approved claims of general creditors not falling within a higher priority under this section, including unsecured claims for taxes and debts due the federal government or a state or local government;
- (5) approved claims of a type described by Subdivisions (1)-(4) that were not filed within the period prescribed by this subchapter; and
- (6) claims of capital note or debenture holders or holders of similar obligations and proprietary claims of



shareholders or other owners according to the terms established by issue, class, or series.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 62, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 14, eff. June 14, 2013.

Sec. 36.313. EXCESS ASSETS. (a) If bank assets remain after the receiver has provided for unclaimed distributions and all of the liabilities of the bank in liquidation, the receiver shall distribute the remaining assets to the shareholders of the bank.

(b) If the remaining assets are not liquid or if they otherwise require continuing administration, the receiver may call a meeting of the shareholders of the bank. The receiver shall give notice of the meeting:

(1) in a newspaper of general circulation in the county where the home office of the bank was located; and

(2) by written notice to the shareholders of record at their last known addresses.

(c) At the meeting, the shareholders shall appoint one or more agents to take over the affairs to continue the liquidation for the benefit of the shareholders. Voting privileges are governed by the bank's bylaws and certificate of formation. If a quorum cannot be obtained at the meeting, the banking commissioner shall appoint an agent. An agent appointed under this subsection shall execute and file with the court a bond approved by the court, conditioned on the faithful performance of all the duties of the trust.

(d) Under order of the court the receiver shall transfer and deliver to the agent or agents for continued liquidation under the court's supervision all assets of the bank remaining in the receiver's hands. The court shall discharge the receiver from further liability to the bank and its depositors, creditors, and shareholders.

(e) The bank may not resume business and the charter of the bank is void on the date the court issues the order directing the

receiver to transfer and deliver the remaining assets of the bank to the agent or agents.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 237 (H.B. 1962), Sec. 63, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 575 (S.B. 804), Sec. 15, eff. June 14, 2013.

Sec. 36.314. UNCLAIMED PROPERTY. After completion of the liquidation, any unclaimed property remaining in the hands of the receiver shall be tendered to the comptroller as provided by Chapter 74, Property Code.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.