WEST VIRGINIA CODE CHAPTER 31A ARTICLE 7

WV Legislature

§31A-7-1. Purpose; construction.

(a) The purpose of this article is to:

(1) To the maximum extent possible, protect and preserve the assets of depositors, shareholders and other creditors in the financial institutions of this state;

(2) Maintain the financial integrity, stability and accountability of the financial institutions of this state;

(3) Strengthen and make more effective the authority of the state commissioner of banking to protect and preserve such assets and maintain such integrity, stability and accountability;

(4) Permit the federal deposit insurance corporation in all appropriate cases to act as receiver for a failing financial institution; and

(5) Make more practical and more flexible the conservatorship and receivership provisions of this article dealing with financial institutions that are substantially impaired, have failed or appear to be about to fail.

(b) The provisions of this article are intended to be remedial and protective, and they shall be liberally construed to carry out such intent and the purpose of this article.

WV Legislature

§31A-7-2. Definitions.

As used in this article:

(a) "Commissioner" means the commissioner of banking of West Virginia and any authorized deputy or employee thereof;

(b) "Federal law" means all the provisions of Title XII of the United States Code and all rules and regulations promulgated pursuant thereto;

(c) "Financial institution" means any bank, building and loan association, industrial bank, regulated consumer lender, credit union and any other person, firm or corporation doing business under the jurisdiction and supervision of the commissioner of banking of West Virginia;

(d) A financial institution is "about to be insolvent" when it would be unable to meet the demands of its depositors or to make adequate provision for the timely payment of its depositors if it were immediately closed for the purpose of liquidation;

(e) A financial institution is "insolvent" when it is unable to pay its debts to its depositors and other creditors in the ordinary and usual course of business or when it is in a state of balance sheet insolvency; and

(f) "Balance sheet insolvency" exists when the assets of a financial institution are less than its liabilities, exclusive of capital. For the purposes of ascertaining balance sheet insolvency, assets shall be valued at their book value, unless the commissioner of banking determines that the assets are insufficient to meet liabilities within a reasonable time making probable the liquidation of assets; and if any such determination is made, the assets shall be valued at fair market value.

WV Legislature

§31A-7-3. Conservatorship; reorganization.

(a) Whenever the commissioner considers it necessary in order to protect or preserve the assets of any financial institution in this state for the benefit of the depositors and other creditors thereof, he may appoint a conservator for such financial institution. The conservator may be an employee of the state department of banking and shall give such bond and security as the commissioner considers proper.

(b) The conservator, under the direction of the commissioner, shall take possession of the papers, books, records and assets of every description of such financial institution and take such other action as is necessary to conserve such assets pending further disposition of the business of the institution. Immediately upon taking charge of the financial institution, the conservator, in conjunction with a representative of the institution designated by the directors thereof, shall make in triplicate a complete inventory of all assets of the institution and an itemized list of all its liabilities. The original and two copies of the list shall be subscribed and sworn to by the persons making them. The original shall be filed with the commissioner as soon as practicable. One such copy shall be furnished to the institution, and the other copy shall be retained by the conservator.

(c) A conservator has all the rights, powers, duties, responsibilities and privileges that receivers have under this article and is subject to all obligations to which such receivers are subject.

(d) During the period that a conservator remains in possession of a financial institution, the legal relations of all parties with respect thereto shall, subject to the other provisions of this section, be the same as if a receiver had been appointed therefor under other pertinent provisions of this article.

(e) All reasonable and necessary expenses actually incurred in the course of any such conservatorship shall be paid out of the assets of the financial institution and are a lien on such assets, which lien has priority over any other lien. The conservator shall be paid a reasonable compensation, to be fixed by the commissioner, for his services but such compensation must not exceed the amount that would be paid to employees of the state department of banking for similar services.

(f) If the commissioner becomes satisfied that such a course of action may be pursued safely and that it is in the public interest, he may, in his discretion, terminate the conservatorship and permit the financial institution to resume the transaction of its business subject to such terms, conditions, restrictions and limitations as he imposes or the commissioner may appoint a receiver pursuant to section four of this article to take over the property and affairs of the institution.

(g) While a financial institution is in the hands of a conservator, the commissioner may require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors, on a ratable basis, such amounts as in the opinion of the

WV Legislature

commissioner may be used safely for such purpose, subject to such priorities and preferences as are provided by law. The commissioner may, in his discretion, permit the conservator to receive deposits, and such deposits are not subject to any limitation as to payment or withdrawal. Such deposits shall be segregated and shall not be used either to liquidate any indebtedness of the financial institution existing at the time that the conservator was appointed for it or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of such institution existing at the time the conservator was appointed.

(h) Deposits received while a financial institution is in the hands of a conservator shall: (1) Be kept on hand in cash or (2) be deposited with a federal reserve bank or deposited with such financial institution as the commissioner in his discretion designates or (3) be invested in direct obligations of the United States or the State of West Virginia or in funded obligations of any political subdivision of this state approved by the commissioner.

(i) In any reorganization of any financial institution under a plan of a kind that by its own terms or under existing law requires the consent, as the case may be, of depositors and other creditors, or of stockholders, or of both depositors and other creditors and stockholders, such reorganization shall become effective only when the commissioner is satisfied that the plan of reorganization is fair and equitable to all depositors, other creditors and stockholders and that it is in the public interest and has approved the plan subject to such conditions, restrictions and limitations as he imposes, and when, after reasonable notice of such reorganization, as the case may be, depositors and other creditors of such financial institution representing at least seventy-five percent in amount of its total deposits and other liabilities; or stockholders owning at least two thirds in amount of its outstanding capital stock; or both depositors and other creditors representing at least seventy-five percent in amount of the total deposits and other liabilities and stockholders owning at least two thirds in amount of its outstanding capital stock have consented in writing to the plan of reorganization. Claims of depositors or other creditors which will be satisfied in full under the plan of reorganization shall not be included among the total deposits and other liabilities of the financial institution in determining the seventy-five percent thereof as above provided.

(j) When any such reorganization becomes effective, all books, records, and assets of the financial institution shall be disposed of in accordance with the provisions of the plan and the affairs of the financial institution shall be conducted by its board of directors in the manner provided by the plan and under such conditions, restrictions and limitations that have been imposed by the commissioner. In any such reorganization that has been approved and has become effective as provided herein, all depositors and other creditors and stockholders of the financial institution, whether or not they have consented to the plan of reorganization, are fully and in all respects subject to and bound by its provisions, and the claims of all depositors and other creditors shall be treated as if they had consented to such plan of reorganization.

(k) Fifteen days after the affairs of the financial institution have been returned to its board of directors by the conservator, either with or without a reorganization as provided in

www.Legislature

subsection (i) of this section, the provisions of subsections (g) and (h) of this section shall no longer be effective. Before the conservator returns the affairs of the institution to its board of directors, he shall publish a notice, in such form as the commissioner approves, stating the date on which the affairs of the financial institution will be returned to its board of directors and that the provisions of subsections (g) and (h) of this section will not be effective fifteen days after such date. The notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the financial institution is located. On the date of the publication of such notice, the conservator shall send a copy of such notice by registered mail to the last known address of every person who is a depositor as shown by the records of the institution. The conservator shall send a similar notice in like manner to every person making a deposit in such institution under said subsection (g) after the date of such newspaper publication and before the time when the affairs of the institution are returned to its directors.

(l) The provisions of this section shall not under any circumstances be construed to impair in any way any powers of the Governor or the commissioner provided elsewhere by law with respect to any matter covered by this section.

(m) The commissioner may prescribe such rules and regulations, not inconsistent with the provisions of this article, as he considers necessary or convenient to carry out the provisions of this section.

WV Legislature

§31A-7-4. Receivership.

(a) If the commissioner ascertains from any source that the capital of any financial institution is substantially impaired and such institution, after receiving notice from the commissioner, does not promptly make good such impairment to the satisfaction of the commissioner, or if the commissioner ascertains from any source that any financial institution is insolvent or reasonably appears about to be insolvent, the commissioner shall appoint a receiver to take full and exclusive possession and control of and title to the books, records, papers, moneys, assets, business and all other things of the financial institution. Such title shall pass to and vest in the receiver by operation of law without the execution of any instruments of conveyance, assignment, transfer or endorsement. The commissioner shall give the receiver a certificate of appointment. Immediately upon taking such possession and control, the receiver shall establish and maintain such books, records and procedures for accountability as the commissioner prescribes and may exercise all the powers, duties and authority provided for in this article.

Immediately upon taking charge of the financial institution, the receiver, in conjunction with a representative of the institution designated by the directors thereof, shall make in triplicate a complete inventory of all assets of the institution and an itemized list of all its liabilities. The original and two copies of the list shall be subscribed and sworn to by the persons making them. The original shall be filed with the commissioner as soon as practicable. One such copy shall be furnished to the institution, and the other copy shall be retained by the receiver.

(b) In any case where a receiver is to be appointed pursuant to subsection (a) of this section, if the involved financial institution has deposits insured by the federal deposit insurance corporation and if such corporation is required or otherwise willing to be receiver for the institution, the commissioner shall appoint the federal deposit insurance corporation as receiver for that financial institution.

(c) A receiver appointed under any provision of this article has the following general powers, duties and responsibilities:

(1) To take full and exclusive possession and control of and title to the papers, books, records, moneys, assets, business and all other things of every description and location of the financial institution and to collect all debts, dues and claims belonging to the financial institution;

(2) To sue upon and defend all rights, actions, issues, questions, claims and other matters involving the financial institution;

(3) To exercise all fiduciary functions of the financial institution as of the date of the commencement of the receivership;

(4) To borrow such sums of money as are reasonable and necessary in aiding any liquidation

WV Legislature

of the financial institution and, in connection therewith, to secure any such borrowing by the pledge, hypothecation or mortgage of the assets of the institution;

(5) Subject to the approval of the circuit court of the county in which the principal office of the financial institution is located in any case where the federal deposit insurance corporation is the receiver and subject to the approval of the commissioner in every other case, to sell any real, personal or mixed property of the financial institution and to compromise and settle any bad or doubtful debts due to or from the financial institution;

(6) In any case where the federal deposit insurance corporation is the receiver, to do all acts and undertakings permitted or required by federal law;

(7) To take all necessary or convenient actions, including the bringing of any administrative action before the commissioner or a hearing examiner or any action in any court of competent jurisdiction, to ascertain any matter concerning the depositors or creditors of the financial institution relative to the receivership of the institution or to proceed against any officer, director or stockholder of the institution to ascertain or enforce any liability thereof or for the determination or adjudication of any other matter involving the institution; and

(8) To do all other acts and undertakings, not inconsistent with the provisions of this article, necessary or convenient to carry out the provisions of this article or to effectively accomplish the intent and purpose of this article.

(d) In any case where the federal deposit insurance corporation is not the receiver, if the assets of an insolvent financial institution are not sufficient to pay in full all its depositors and creditors, without waiting to administer the assets of the institution and without delaying for any other cause but only after having first obtained the approval of the commissioner therefor, the receiver shall immediately institute all civil actions necessary for the benefit of the depositors and creditors to collect from the stockholders of the financial institution all amounts for which the stockholders are jointly or severally liable to the institution. According to the direction of the commissioner, any such action may be instituted and maintained in the name of the receiver, the financial institution or the commissioner.

(e) Before entering upon the discharge of any function under this article, each receiver other than the federal deposit insurance corporation shall enter into a bond in favor of the State of West Virginia in an amount and penalty fixed by the commissioner, with corporate surety authorized to do business in this state and approved by the commissioner, conditioned upon the faithful discharge of his duties as receiver and upon his fully accounting for and handing over as required by law all properties, moneys, funds and other things that come into the possession or control, or both, of the receiver and his agents, attorneys and other representatives. Such bond and the certificate of appointment shall be recorded in the office of the clerk of the county commission of the county in which the principal office of the financial institution is located.

(f) The provisions of section three of this article do not in any way inhibit or proscribe the

WV Legislature

appointment of a receiver under this section, and, whenever a receiver is appointed under this section, any conservatorship theretofore appointed for the same financial institution shall by operation of law immediately terminate.

(g) On a temporary emergency basis, when the commissioner has ascertained that the capital of a financial institution has become substantially impaired and the institution has failed, refused or neglected to make good such impairment to the commissioner's satisfaction or when the commissioner has ascertained that a financial institution is insolvent or reasonably appears about to be insolvent, the commissioner may immediately give written or oral notice of such finding to the involved financial institution and shall immediately thereupon take and retain full and exclusive possession and control of the business and property of the institution and close such institution until a receiver has been appointed for the institution in accordance with the provisions of subsection (a) of this section or until the institution has been permitted by the commissioner to resume its regular business, one or the other of which must be done by the commissioner within thirty days of the actual taking of such possession and control. When the commissioner closes an institution, he shall place an appropriate sign to that effect at the main entrance of the financial institution. Effective as of the closing of the institution a judgment lien, attachment lien or any voluntary or involuntary lien of any kind shall not attach in any way to any asset or other property of the institution and the directors, officers and agents of the institution shall not have any authority to act in any way on behalf of the institution or to convey, transfer, assign, pledge, mortgage or encumber any asset or other property thereof. Any attempt by any director, officer or agent of the financial institution to convey, transfer, assign, pledge, mortgage or encumber or otherwise establish any lien upon any asset or other property of the financial institution or in any manner to prefer any depositor, creditor, shareholder, director, officer, agent or any other person, firm or corporation after the posting of such notice or in contemplation thereof is void.

(h) In any case where a financial institution is insolvent or reasonably appears about to be insolvent and where the commissioner has failed, refused or neglected to act under the provisions of this section, any stockholder, depositor or creditor of the financial institution may petition the circuit court of the county in which the principal office of the institution is located to order the commissioner to proceed in accordance with the other pertinent provisions of this section, and the court shall expeditiously hear and decide such matter and assume jurisdiction and render a prompt decision with respect to such matter. Any such petitioner shall give notice of the contents of the petition and day, time and place of the hearing by personal service upon the commissioner in the manner prescribed by the West Virginia rules of civil procedure not less than five days before the hearing date. Upon such hearing, if the court finds that the condition of the involved financial institution is that it is insolvent or reasonably appears about to be insolvent and that the commissioner has unreasonably failed, refused or neglected to act thereupon, then the court shall order the commissioner to proceed in accordance with the other pertinent provisions of this section. If the commissioner fails, refuses or neglects to comply with such court order and such order has become final, such failure, refusal or neglect constitutes grounds for the commissioner's

WV Legislature

removal from office.

(i) Any finding made pursuant to this section by the commissioner that a financial institution is insolvent or reasonably appears about to be insolvent is conclusive as to all parties affected by such finding, including any court considering the matter.

(j) With the consent of the commissioner or by court order, as necessary, a financial institution may voluntarily submit itself to receivership or conservatorship under the provisions of this article.

WV Legislature

§31A-7-5. Provisions applicable to federal deposit insurance corporation only.

(a) The provisions of this section apply only to those cases in which the commissioner has appointed the federal deposit insurance corporation (hereinafter referred to as the "corporation") as receiver for a financial institution.

(b) When it has been appointed by the commissioner as the receiver for a financial institution pursuant to the provisions of section four of this article, the corporation shall immediately take full and exclusive possession and control of and title to the books, records, papers, moneys, assets, business and all other things of the financial institution. Immediately upon taking charge of the financial institution, the corporation, in conjunction with a representative of the institution designated by the directors thereof, shall make in triplicate a complete inventory of all assets of the institution and an itemized list of all its liabilities. The original and two copies of the list shall be subscribed and sworn to by the persons making them. The original shall be filed with the commissioner as soon as practicable. One such copy shall be furnished to the institution, and the other copy shall be retained by the corporation. Such title shall pass to and vest in the corporation by operation of law without the execution of any instruments of conveyance, assignment, transfer or endorsement. The commissioner shall file a certificate of the corporation's appointment and acceptance as soon thereafter as possible and have such certificate recorded with the clerk of the county commission of the county in which the principal office of the financial institution is located. There shall not be any bond required of the corporation. Upon the filing of such certificate, the commissioner is forever and fully relieved from all responsibility and liability with respect to the affairs of the financial institution.

(c) As receiver the corporation may liquidate and otherwise handle the affairs of the financial institution in accordance with this section and the other pertinent provisions of this article and shall have all the powers, duties and authority given a receiver under all pertinent provisions of this article.

(d) When the affairs of a financial institution have come under the possession and control of the corporation as receiver for purposes of liquidation, with the consent of the circuit court of the county in which the principal office of the financial institution is located and without approval of the stockholders of the institution, the corporation may sell all or any part of the institution's assets, real and personal, to another financial institution, a national bank, the corporation or any successor institution or the corporation may borrow from itself, to the extent permitted by federal law, any amount necessary to facilitate the assumption of deposit liabilities by a newly chartered or existing financial institution, assigning any part or all of the assets of the financial institution as security for such loan.

(e) Whenever the corporation pays or makes available for payment the insured deposit liabilities of a closed financial institution or a financial institution under receivership, the corporation is subrogated to all of the rights of the owners of the deposits against the financial institution in the same manner and to the same extent as subrogation of the corporation is provided for in sections 1811 through 1832, inclusive, of Title XII of the

United States Code and all rules and regulations promulgated pursuant thereto.

(f) Where the corporation has become receiver of a financial institution and is proceeding under other pertinent provisions of this article, the commissioner does not have any jurisdiction or authority with respect to the corporation and the corporation may resolve all doubts, difficulties and other matters concerning its receivership and obtain all convenient or necessary approvals and other determinations from the circuit court of the county in which the principal office of the financial institution is located.

WV Legislature

§31A-7-6. Borrowing powers of receiver.

With the written consent of the commissioner, any receiver of a financial institution appointed under the provisions of this article may borrow money from and contract for loans with any finance or lending agency of the United States government or any other responsible agency or person for the purpose of furnishing immediate relief to or aiding in the reorganization, liquidation or reopening of such financial institution, protecting and preserving the assets in charge of the receiver, expediting the making of distributions and the payment of dividends to depositors and other creditors of the institution, providing for the expenses of administration and liquidation or its merger or consolidation with another financial institution, and paying the claims of secured creditors where the security is deemed by the receiver and the commissioner to be of a value in excess of the debt so secured and to be for the preservation of the assets of such institution; and to pledge, hypothecate, assign or transfer to any such responsible agency or person any assets or securities belonging to the institution as collateral security for the payment of all such loans, subject to such reasonable terms and conditions imposed by and agreed upon between the parties.

All acts of the receiver or the commissioner under this section are valid, binding and effective to transfer to any such responsible agency or person, and any successors and assigns thereof, assets and securities in accordance with the terms of any such contract of pledge, transfer or assignment.

The commissioner and receiver are not under any circumstances under any personal obligation to repay any such loan and may take any action necessary or convenient to consummate such loan and to provide for the repayment thereof and to give bond, with sufficient corporate surety authorized to do business in this state, the amount of bond to be set by and the surety to be approved by the commissioner, for the faithful performance of all undertakings in connection therewith. The authority herein conferred upon a receiver for the procuring and obtaining of such loans includes the authority to renew them from time to time, with the written consent of the commissioner.

An accurate record of all securities and exact copies of all notes withdrawn from the files of the financial institution to be pledged as collateral for borrowed money under the provisions of this section shall be kept in the files of such institution at all times.

WV Legislature

§31A-7-7. Reorganization, purchase, merger or consolidation of and by financial institutions; conversion of national bank to state bank; obligations remain effective.

Subject to the other provisions of this section, in any voluntary or involuntary proceeding to liquidate a financial institution for which a receiver has been appointed under this article, such institution, with the written consent of the commissioner, may reorganize, reclaim possession of its assets and continue in business.

Any financial institution may at any time, but only with the approval of the West Virginia board of banking and financial institutions in the case of a state banking institution and with the approval of the commissioner in the case of all other financial institutions, purchase the business and assets and assume the liabilities of or merge or consolidate with another like financial institution. With the approval of the West Virginia board of banking and financial institutions and in compliance with all applicable laws of this state and the United States, any state banking institution may purchase the business and assets and assume the liabilities of a national banking association or merge or consolidate with a national banking association to form a resulting state bank, the terms and conditions of any such assumption, purchase, merger or consolidation to be first approved by the board. With the approval of the West Virginia board of banking and financial institutions and in compliance with all applicable laws of this state and the United States, a national banking association may convert into a state bank. After any such purchase, merger or consolidation, no other association or corporation may take or use the name of any financial institution participating in such purchase, merger or consolidation.

Unless in conflict with a law of the United States of America, at the completion of any purchase, merger or consolidation permitted by this section and whether such financial institution is organized under the laws of this state or of the United States, the purchasing, merged or consolidated institution is substituted by operation of law in the place and stead of each of the participating financial institutions in all fiduciary relationships, titles, properties, offices, appointments, rights, powers, duties, obligations and liabilities of each participating financial institution as trustee, agent, executor, administrator, guardian, depository, registrar, transfer agent or other fiduciary and every other capacity, office or position of each of the participating financial institutions is by operation of law vested in and devolved upon the purchasing, merged or consolidated institution. Such purchasing, merged or consolidated institution shall take, receive, accept, hold, administer and discharge all grants, gifts, bequests, devises, conveyances, trusts, powers and appointments made by deed, deed of trust, will, agreement, order of court or otherwise to, in favor of or in the name of any such participating institution, whether made, executed or entered before or after such purchase, merger or consolidation and whether to vest or become effective before or after such purchase, merger or consolidation, as fully and to the same effect as if the purchasing, merged or consolidated institution had been named in such deed, deed of trust, will, agreement, order or other instrument instead of such participating institution. All acts taken or performed in its own name or in the name of or in behalf of any financial institution participating in any such purchase, merger or consolidation by any purchasing, merged or

WV Legislature

consolidated institution as trustee, agent, executor, administrator, guardian, depository, registrar, transfer agent or other fiduciary are as good, valid and effective as if this section had been applicable thereto at the time of such taking or performance.

WV Legislature

§31A-7-8. Voluntary liquidation by financial institution.

Any financial institution may, after thirty days' notice to the commissioner, cease to transact business and go into voluntary liquidation and convert its assets into money and pay the money to the persons entitled thereto.

WV Legislature

§31A-7-9. Involuntary liquidation of financial institution after revocation of certificate of authority, permit or license.

If the commissioner revokes the certificate of authority, permit or license of any financial institution other than a state bank or if the West Virginia board of banking and financial institutions revokes the certificate, permit or license of a state bank and such financial institution within a reasonable time does not comply with the laws of the state and the requirements of the commissioner or board and thereby fails to secure a new certificate, permit or license to continue in business, the commissioner shall compel such financial institution to go into liquidation, wind up its affairs and surrender its charter. In any such case, the state Attorney General, at the request of the commissioner, shall institute an action in the circuit court of the county in which the principal office of such financial institution is located, in the name of the State of West Virginia, to liquidate, wind up the affairs of and dissolve such financial institution, and such court shall either by itself or through the commissioner or a receiver appointed by the commissioner, fully liquidate, wind up the affairs of and dissolve the financial institution.

WV Legislature

§31A-7-10. Executory contracts and leases; assumption or rejection; court approval for assignments.

(a) Within the six-month period immediately following the recordation of his certificate of appointment with the county clerk, the receiver may assume or reject any executory contract or any unexpired lease of the involved financial institution. Notice of the receiver's rejection of any such contract or lease shall be given to the other party to such contract or lease not later than fifteen days before the day the termination takes effect. Sufficient notice is given when the other party to the contract or lease or any authorized agent or representative thereof is actually given in person written or oral notice of such rejection or when the receiver has mailed notice of such rejection to the other party at his last known mailing address by certified or registered mail, return receipt requested. As of the date any such termination takes effect, any claim of the other party to the contract or lease is limited to the contract payment or rent accrued up to the time of rejection plus an amount equal to six months of contract payment or rent if such payment or rent would have otherwise been due under the contract or lease had it not been terminated. If the receiver assumes any such contract or lease, he shall do so at the contract or rent amount and upon all terms set forth in the contract or lease and shall cure any default in the contract or lease.

(b) With the approval of the circuit court of the county in which the principal office of the involved financial institution is located, the receiver may assign to any new financial institution created to carry on the business of the involved financial institution any executory contract or unexpired lease not in default or the default of which has been cured. In any such case, before the court approves any such assignment, the receiver must prove to the court and the court must find that the proposed assignment involves a risk no greater to the new financial institution than that undertaken by the involved financial institution at the time the contract or lease was originally executed.

(c) Notwithstanding any provision in any executory contract or unexpired lease to the contrary, an executory contract or unexpired lease of a financial institution for which a receiver has been appointed under the provisions of this article may not be terminated or modified in any way after the appointment of the receiver solely because of a provision in such contract or lease that is conditioned upon the appointment of a receiver or conservator for the institution or upon the insolvency or financial condition of the institution at any time before a distribution of its proceeds pursuant to section twelve of this article.

WV Legislature

§31A-7-11. General subrogation rights of Federal Deposit Insurance Corporation.

In all cases where the federal deposit insurance corporation pays or makes available for payment the insured deposit liabilities of a closed financial institution or a financial institution under receivership, the federal deposit insurance corporation, whether or not it is receiver of such institution, is subrogated to all of the rights of the owners of the deposits against the financial institution in the same manner and to the same extent as subrogation of the corporation is provided for in sections 1811 through 1832, inclusive, of Title XII of the United States Code in the closing of a national banking association.

WV Legislature

§31A-7-12. Payment of expenses and debts; order of priority; rights of secured creditors.

(a) Each receiver shall pay the expenses and just debts of the involved financial institution in the manner specified by this section. The receiver shall divide all claims against the institution into the general classes set forth in this section with the highest priority being given to the first listed class and then to each subsequent class as it is ranked. All such payments must be approved by the commissioner and shall be made from the following general classes in accordance with the following order of priority:

(1) First, the commissioner's costs of administration, including, but not limited to, all expenses actually incurred by the receiver in the course of the receivership; all expenses actually incurred by the commissioner pursuant to any provision of this article; all costs actually incurred in the determination of any contested claim or other contested case under this article; the payment of reasonable compensation to any receiver, conservator, hearing examiner, attorney, accountant or other person duly appointed or employed for the purpose of carrying out any provision of this article; and all other expenses expressly authorized by other provisions of this article;

(2) Second, wage claims for all wages due and owing employees of the financial institution for the ninety-day period immediately preceding the date of appointment of the receiver up to an amount not to exceed $1,500 per employee;

(3) Third, all depositors of the financial institution;

(4) Fourth, all state, federal and local taxes due for the period during which the financial institution carried on its business;

(5) Fifth, excluding all claims of shareholders of the financial institution, all claims of creditors of the financial institution, whether by contract, judgment or otherwise; and

(6) Sixth, all the remaining proceeds to the shareholders of the financial institution.

(b) Before the receiver makes any payment under subsection (a) of this section, he shall receive and approve or reject all claims against the financial institution in the manner provided for in section thirteen of this article. All approved claims shall be paid according to the order of priority set in subsection (a) of this section. With respect to subsection (a) of this section, payment in full of all costs provided for in subdivision (1) must be made before any payment can be made in any other subdivision; next, payment in full of all wage claims provided for in subdivision (2) must be made before any payment can be made in any following subdivision; next, payment in full of all depositors provided for in subdivision (3) must be made before any payment can be made in any following subdivision; next, payment in full of all taxes provided for in subdivision (4) must be made before any payment can be made in any following subdivision; next, all creditors' claims provided for in subdivision (5) must be made before any shareholders can be paid anything; and, last, all remaining

WV Legislature

proceeds shall be paid to the shareholders. If at any time a situation develops in which proceeds are available to be paid within a particular subdivision but such proceeds are not sufficient to fully pay the creditors in that class, then the receiver shall pay each creditor in that class his pro rata share of the proceeds.

(c) The provisions of this section shall not be construed or applied so as to take away or modify in any way the rights of a secured creditor who has properly filed and perfected a security interest in any property of the financial institution in compliance with other applicable law, except that the receiver may postpone payment of a claim relating thereto to allow for orderly administration.

WV Legislature

§31A-7-13. Claims procedure.

(a) Within a reasonable time after taking possession and control of the property and business of the financial institution, the receiver shall require all parties who may have claims against the financial institution to present their claims and provide satisfactory proof thereof within such reasonable time, not to be more than sixty days from the date of receipt of any mailed notice and not to be more than sixty days from the date of publication of any published notice, as the receiver specifies.

(b) Notice shall be given by mailing to each known stockholder, depositor, creditor and other possible claimant of the institution at his last known mailing address, as shown on the books of the financial institution, by certified or registered mail, return receipt requested, a written notice form and proof of claim form, each of which shall be prescribed by the commissioner and must be uniform for all involved parties and must clearly state in plain language that, due to the precarious condition of the financial institution, the receiver has been appointed by the commissioner to preserve and protect the assets thereof and to pay the expenses and just debts thereof and that each involved party must present his claim against the institution along with satisfactory proof thereof, which may be done by returning to the receiver the properly filled out proof of claim form accompanied by a true copy of such proof, within the specified time or he will lose all rights to payment upon the claim. If he does not know the mailing address of an involved party or if any mailed notice is returned undeliverable, the receiver shall make a reasonably diligent effort to ascertain the mailing address and whereabouts of such party and, if it is ascertained, shall mail the notice form and proof of claim form to such party at such address in the manner herein before provided. If the receiver is not able to ascertain the mailing address and whereabouts of any such party, for each such party, and all heirs and assignees thereof, and also for all unknown and unascertainable parties, and all heirs and assignees thereof, who may have claims against the institution, notice shall be given by publication of the prescribed notice form and proof of claim form as a Class III- O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the principal office of the involved financial institution is located. Any such legal publication and any mailed notice shall contain such additional information and statements concerning the receivership and the financial institution as the commissioner requires or as the receiver, with the consent of the commissioner, considers necessary or advisable.

(c) In the case of all deliverable mailed notices, within sixty days following the date set for submission of such claims and, in the case of all parties for whom notice by publication has been given, within sixty days following the date set for submission of such claims, the receiver shall approve or reject, in whole or in part, the claims submitted to him Any party not submitting a claim to the receiver within the prescribed time loses all rights to payment upon the claim. The receiver shall notify in writing each party whose claim has been wholly or partly rejected of such rejection and the reasons therefor not later than fifteen days after the rejection. Within ten days after receipt of such rejection notice, such party may contest the rejection and obtain a fair hearing thereupon in the manner provided for in section

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fourteen of this article. With the consent of the commissioner, the receiver shall pay all valid claims in the manner provided for in this article.

WV Legislature

§31A-7-14. Hearings; judicial review.

Except to the extent another provision of this article expressly authorizes a person to directly take action in a court of competent jurisdiction, any person who is adversely affected by any whole or partial rejection of a claim provided for in section thirteen of this article or by any other order, demand, action, refusal, failure to act, denial or requirement of the receiver under the provisions of this article for the financial institution with which such person is involved and any person who is adversely affected by any order, demand, action, refusal, failure to act, denial or requirement of the commissioner (other than the promulgation of any rules and regulations, which shall be done in accordance with the pertinent provisions of chapter twenty-nine-a of this code) under the provisions of this article is entitled to a hearing thereupon before a hearing examiner appointed by the commissioner for such purpose. Any such hearing shall be conducted and decided by the hearing examiner in the time and manner provided for the hearing of contested cases in article five, chapter twenty-nine-a of this code, and judicial review of the hearing examiner's decision may be had in the time and manner provided for judicial review of contested cases in section four of said article five and in article six of said chapter twenty-nine-a. Each hearing examiner appointed under this section shall be qualified to act as such by reason of his training, education or experience, but a stockholder, creditor, depositor or other person affiliated in any way, directly or indirectly, with the involved financial institution may not be a hearing examiner. All costs and expenses of any such hearing and any judicial review thereof shall be paid as part of the expenses of administration of a receivership as provided for in section twelve of this article.

WV Legislature

§31A-7-15. Exclusivity of powers and procedures of article.

The provisions of this article provide full and exclusive powers and procedures for the conservatorship, receivership and liquidation of a financial institution, and a receiver or conservator for a financial institution shall not under any circumstances be appointed nor shall a conservatorship, receivership or liquidation of a financial institution under any circumstances be conducted except in the manner provided for in this article.

WV Legislature