

IC 30-2-7

Chapter 7. Uniform Act Governing Secured Creditors' Dividends in Liquidation Proceedings

IC 30-2-7-1

Definitions

Sec. 1. As used in this chapter, unless the context or subject-matter requires otherwise:

(a) "Liquidation proceeding" includes all assignments for the benefit of creditors, whether voluntary or by operation of law; administration of insolvent decedents' estates; liquidations of insolvent banks; equity receiverships where the subject under receivership is insolvent; and any other proceedings for distribution of assets of any insolvent debtor, whether a person, decedent's estate, partnership, limited liability company, corporation, or business association.

(b) "Liquidator" means any person administering assets in any liquidation proceeding as defined in this chapter.

(c) "Insolvent debtor" means any insolvent person, decedent's estate, partnership, limited liability company, corporation, or business association involved in a liquidation proceeding as defined in this chapter.

(d) "Secured creditor" means a creditor who has either legal or equitable security for his debt upon any property of the insolvent debtor of a nature to be liquidated and distributed in a liquidation proceeding, or a creditor to whom is owed a debt for which such security is possessed by some indorser, surety, or other person secondarily liable.

(e) "Creditor's sale" includes any sale effected by the secured creditor by judicial process or otherwise under the terms of his contract or the applicable law for the purpose of realizing upon his security.

(Formerly: Acts 1941, c.50, s.1.) As amended by Acts 1982, P.L.171, SEC.106; P.L.8-1993, SEC.464.

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Secured creditors' claim must disclose security

Sec. 2. In a liquidation proceeding every secured creditor's claim against the general assets shall disclose the nature of the security. When a decedent's estate already in the course of administration is judicially declared insolvent or when in an equity receivership it is determined that the subject under receivership is insolvent, secured creditors having claims on file which do not comply with this section shall make disclosure within a time to be fixed by the court.

(Formerly: Acts 1941, c.50, s.2.)

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Effect of concealment

Sec. 3. Any secured creditor who with intent to evade the provisions of this chapter fails to disclose the existence of the security shall not be entitled to receive or retain dividends out of the general assets, unless he thereafter releases or surrenders to the liquidator the security which he has failed to disclose, or unless he procures such release or surrender if the security is in the possession of an indorser, surety, or other person secondarily liable for the insolvent debtor.

(Formerly: Acts 1941, c.50, s.3.) As amended by Acts 1982, P.L.171, SEC.107.

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Value of security credited upon claims

Sec. 4. Dividends paid to secured creditors shall be computed only upon the balance due after the value of all security not exempt from the claims of unsecured creditors and not released or surrendered to the liquidator, is determined and credited upon the claim secured by it.

(Formerly: Acts 1941, c.50, s.4.)

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Determination of value by secured creditor

Sec. 5. (1) By collection. When the asset constituting the security is an obligation for the payment of money, the secured creditor may determine its value by collection or by exhausting his remedies thereon and then surrendering the obligation to the liquidator.

(2) By creditor's sale. When the asset constituting the security is something other than an obligation for the payment of money, the secured creditor may determine its value by creditor's sale.

(Formerly: Acts 1941, c.50, s.5.)

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Alternative determination of value

Sec. 6. Where valuation under the provisions of section 5 of this chapter is impracticable or would cause undue delay, the court, upon petition by either the secured creditor or the liquidator, may order the value of the security determined by any of the following methods:

(1) By compromise, if the secured creditor and the liquidator agree upon a value. The liquidator may redeem such assets by payment of the agreed value, if authorized by the court.

(2) By litigation, through proceedings in the liquidation proceedings. The liquidator may redeem such assets by paying the value so determined, if authorized by the court.

(3) By liquidator's sale of the assets which, when completed and approved by the court, shall pass to the purchaser good title, free and clear of all liens of the secured creditor, such liens to be transferred to the proceeds of the sale. The order of sale may be either:

(a) conditional, requiring the sale to be made by the liquidator

only if the secured creditor does not complete a determination by collection or creditor's sale as set forth in section 5 of this chapter within a time fixed by the court; or

(b) absolute, requiring the sale to be made by the liquidator within a time fixed by the court.

Provided, that subdivision (3) shall not apply to security upon real estate or insolvent decedents' estates administered by the court.

(Formerly: Acts 1941, c.50, s.6.) As amended by Acts 1982, P.L.171, SEC.108.

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Exempt security not credited

Sec. 7. When any creditor has legal or equitable security upon assets which are exempt from process for the satisfaction of unsecured debts and are duly claimed as exempt by the insolvent debtor, the value of such security shall not be credited upon the claim. Amounts realized by the creditor from such security after liquidation proceedings are begun shall be disregarded in computing dividends, unless the dividend so computed exceeds the sum actually owing upon the claim, in which event only the amount owing shall be paid.

(Formerly: Acts 1941, c.50, s.7.)

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Uniformity of interpretation

Sec. 8. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(Formerly: Acts 1941, c.50, s.9.) As amended by Acts 1982, P.L.171, SEC.109.

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Short title

Sec. 9. This chapter may be cited as Uniform Act Governing Secured Creditors' Dividends in Liquidation Proceedings.

(Formerly: Acts 1941, c.50, s.10.) As amended by Acts 1982, P.L.171, SEC.110.