

**SECTION 38-27-610.** Priority of distribution.

The priority of distribution of claims from the insurer's estate must be in accordance with the order in which each class of claims is set forth in this section. Every claim in each class must be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses may be established within any class. The order of distribution of claims is:

(1) Class 1. The costs and expenses of administration including, but not limited to:

(a) the actual and necessary costs of preserving or recovering the assets of the insurer;

(b) compensation for services rendered by the receiver in the amount of five percent of the total assets of the insurer coming into the possession of the receiver;

(c) any necessary filing fees;

(d) the fees and mileage payable to witnesses;

(e) compensation of the special deputies, attorneys, and other persons as appointed by the receiver for the efficient conduct of the receivership, rehabilitation, or liquidation;

(f) the reasonable expenses of a guaranty association or foreign guaranty association in handling claims.

(2) Class 2. Claims under policies, including claims of federal, state, and local governments, for losses incurred, loss claims, including third party claims, and claims of a guaranty association or foreign guaranty association. Claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, must be treated as loss claims. That portion of a loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, must not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death, or as proceeds of life insurance or as gratuities. No payment by an employer to his employee may be treated as a gratuity.

(3) Class 3. Claims under nonassessable policies for unearned premium or other premium refunds.

(4) Class 4. Claims of the federal government not included in items (2) or (3).

(5) Class 5. Debts due to employees for services performed to the extent that they do not exceed one thousand dollars and represent payment for services performed within one year before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. This priority is in lieu of any other similar priority authorized by law as to wages or compensation of employees.

(6) Class 6. Claims of general creditors and claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies.

(7) Class 7. Claims of state and local governments, except those under item (2). Claims, including those of a state or local governmental body for a penalty or forfeiture, are allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs. The remainder of the claims are postponed to the class of claims under item (11).

(8) Class 8. Claims filed late or any other claims other than claims under items (9), (10), and (11) of this section.

(9) Class 9. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies except premium refund claims of the federal government which must be included in the class of claims under item (4).

(10) Class 10. Payments to members of domestic mutual insurance companies are limited in accordance with law.

(11) Class 11. The claims of shareholders or other owners.

HISTORY: Former 1976 Code Section 38-5-2310 [1982 Act No. 384, Section 42] recodified as Section 38-27-610 by 1987 Act No. 155, Section 1; 1988 Act No. 334, Section 7; 1991 Act No. 13, Section 24; 2000 Act No. 312, Section 6.