

Part 3 Rehabilitation

31A-27a-301 Rehabilitation orders.

- (1)
- (a) An order to rehabilitate the business of an insurer shall:
 - (i) appoint the commissioner and the commissioner's successors in office as the rehabilitator;
 - (ii) direct the rehabilitator to:
 - (A) take possession and title of the assets of the insurer; and
 - (B) administer the assets of the insurer under the general supervision of the court; and
 - (iii) require accountings to the receivership court by the rehabilitator.
 - (b) Accountings shall be at the intervals the receivership court specifies in its order, but no less frequently than semiannually.
 - (c) Each accounting shall include a report concerning the rehabilitator's opinion as to:
 - (i) the likelihood that a plan under Section 31A-27a-303 will be prepared by the rehabilitator; and
 - (ii) the timetable for preparing the plan described in Subsection (1)(c)(i).
- (2)
- (a) In recognition of the need for a prompt and final resolution for all persons affected by a plan of rehabilitation, any appeal from an order of rehabilitation or an order approving a plan of rehabilitation shall be heard on an expedited basis.
 - (b) A stay of an order of rehabilitation or an order approving a plan of rehabilitation may not be granted unless the appellant demonstrates that extraordinary circumstances warrant delaying the recovery under the plan of rehabilitation of all other persons, including policyholders.
 - (c) If a plan of rehabilitation provides an appropriate mechanism for adjustment in the event of an adverse ruling from an appeal, a stay may not be granted.

Enacted by Chapter 309, 2007 General Session

31A-27a-302 Powers and duties of the rehabilitator.

- (1)
- (a) With court approval, the rehabilitator may take an action the rehabilitator considers necessary or appropriate to reform and revitalize the insurer, including:
 - (i) canceling:
 - (A) a policy;
 - (B) an insurance or reinsurance contract, other than life insurance, health insurance, or an annuity;
 - (C) a surety bond; or
 - (D) a surety undertaking; or
 - (ii) transferring to a solvent assuming insurer:
 - (A) a policy;
 - (B) an insurance or reinsurance contract;
 - (C) a surety bond; or
 - (D) a surety undertaking.
 - (b) The rehabilitator has all the powers of the directors, officers, and managers of the insurer, whose authority is suspended, except as redelegated by the rehabilitator.
 - (c) The rehabilitator has full power to:

- (i) direct and manage the insurer;
 - (ii) hire and discharge employees; and
 - (iii) deal with the property and business of the insurer.
- (d) The rehabilitator is not liable as the result of good faith issuance or renewal of a policy while in rehabilitation.
- (2) The rehabilitator may pursue all appropriate legal remedies on behalf of the insurer if it appears to the rehabilitator that there is or has been criminal or tortious conduct, or breach of a contractual or fiduciary obligation detrimental to the insurer by an officer, a manager, an agent, a broker, an employee, an affiliate, or other person.
- (3)
- (a) The rehabilitator may assert all defenses available to the insurer as against a third person, including statutes of limitations, statutes of frauds, and the defense of usury.
 - (b) A waiver of a defense by the insurer after a petition pursuant to Section 31A-27a-201 or 31A-27a-207 is filed does not bind the rehabilitator.
- (4) The enumeration of the powers and authority of the rehabilitator in this section:
- (a) may not be construed as a limitation upon the rehabilitator; and
 - (b) does not exclude in any manner the right to do other acts:
 - (i) not specifically enumerated or otherwise provided for; and
 - (ii) as may be necessary or appropriate for the accomplishment of or in aid of the purpose of rehabilitation.

Enacted by Chapter 309, 2007 General Session

31A-27a-303 Filing of rehabilitation plans.

- (1)
- (a) The rehabilitator shall prepare and file a plan to effect rehabilitation with the receivership court within:
 - (i) one year after the day on which the rehabilitation order is entered; or
 - (ii) such further time as the receivership court may allow.
 - (b) The receivership court may take an action described in Subsection (1)(c):
 - (i) upon application of the rehabilitator for approval of a plan; and
 - (ii) after the notice and hearings the receivership court may prescribe.
 - (c) If the conditions of Subsection (1)(b) are met, the receivership court may:
 - (i) approve the plan proposed;
 - (ii) disapprove the plan proposed; or
 - (iii)
 - (A) modify the plan proposed; and
 - (B) approve the plan as modified.
 - (d) If the plan is approved, the rehabilitator shall carry out the plan.
 - (e) In the case of a life insurer, the plan proposed may:
 - (i) include the imposition of a lien upon a policy of the insurer, if all rights of shareholders are relinquished; and
 - (ii) propose imposition of a moratorium upon loan and cash surrender rights under a policy for a period not to exceed one year from the day on which the order approving the rehabilitation plan is entered, unless the receivership court, for good cause shown, extends the moratorium.
- (2) Once a plan is filed, any party in interest may object to the plan.
- (3) A plan shall:

- (a) except as provided in Subsection (5), provide no less favorable treatment of a claim or class of claims than would occur in liquidation, unless the holder of a particular claim or interest agrees to a less favorable treatment of that particular claim or interest;
 - (b) provide adequate means for the plan's implementation;
 - (c) contain information concerning the financial condition of the insurer and the operation and effect of the plan, as far as is reasonably practicable in light of:
 - (i) the nature and history of the insurer;
 - (ii) the condition of the insurer's records; and
 - (iii) the nature of the plan; and
 - (d) provide for the disposition of the records relevant to the duties and obligations covered by the plan.
- (4) A plan may include any other provisions not inconsistent with this chapter, including:
- (a) payment of distributions;
 - (b)
 - (i) assumption or reinsurance of all or a portion of the insurer's remaining liabilities by a licensed insurer or other entity; and
 - (ii) transfer of assets and related records to the licensed insurer or other entity;
 - (c) to the extent appropriate, application of insurance company regulatory market conduct standards to any entity administering claims on behalf of the receiver or assuming direct liabilities of the insurer;
 - (d) contracting with a guaranty association or any other qualified entity to perform the administration of claims;
 - (e) annual independent financial and performance audits of any entity administering claims on behalf of the receiver that is not otherwise subject to examination pursuant to state insurance law; and
 - (f) termination of the insurer's liabilities other than those under policies of insurance as of a date certain.
- (5)
- (a) A plan may designate and separately treat one or more separate subclasses consisting only of those claims within the subclasses that are for or reduced to de minimis amounts.
 - (b) For purposes of this Subsection (5), a "de minimis amount" is an amount equal to or less than a maximum de minimis amount approved by the receivership court as being reasonable and necessary for administrative convenience.

Enacted by Chapter 309, 2007 General Session

31A-27a-304 Termination of rehabilitation.

- (1)
- (a) The rehabilitator may move for an order of liquidation whenever the rehabilitator believes further attempts to rehabilitate an insurer would:
 - (i) substantially increase the risk of loss to creditors, policyholders, or the public; or
 - (ii) be futile.
 - (b) In accordance with Section 31A-27a-305, the rehabilitator or the rehabilitator's designated representative shall coordinate with an affected guaranty association and any national association of guaranty associations to plan for transition to liquidation.
- (2) The rehabilitator shall petition the receivership court for an order of liquidation or seek an order, on good cause shown, for a longer suspension period if:

- (a) the payment of a policy obligation is suspended in substantial part for a period of six months at any time after the appointment of the rehabilitator; and
 - (b) the rehabilitator has not filed an application for approval of a plan under Section 31A-27a-303.
- (3)
- (a) The receivership court may enter an order terminating rehabilitation of an insurer:
 - (i) on petition from the rehabilitator, which may be made at any time;
 - (ii) on petition from the directors of the insurer, which may be made at any time; or
 - (iii) on the receivership court's own motion.
 - (b) Subject to Section 31A-27a-801, if the receivership court finds that rehabilitation is accomplished and that grounds for rehabilitation under Section 31A-27a-207 no longer exist, the receivership court shall order that the insurer be restored to:
 - (i) title and possession of its property; and
 - (ii) the control of the business.

Enacted by Chapter 309, 2007 General Session

31A-27a-305 Coordination with guaranty associations and orderly transition to liquidation.

- (1) No later than 30 days following the day on which an order of rehabilitation is entered the rehabilitator or the rehabilitator's designated representative shall:
- (a) consult with any potentially affected guaranty association or the affected guaranty association's designated representative to determine the extent to which the affected guaranty association will be impacted by or may assist in the efforts to rehabilitate the insurer; and
 - (b) provide appropriate information to the affected guaranty association described in Subsection (1)(a) to allow the affected guaranty association to evaluate and discharge its statutory responsibilities.
- (2)
- (a) The rehabilitator shall begin appropriate contingency planning and organizing so that an orderly transition to liquidation occurs, if liquidation is necessary.
 - (b) An orderly transition to liquidation requires, among other things, that the rehabilitator:
 - (i) to the fullest extent possible, reserve sufficient assets to continue to meet obligations under insurance policies of the insolvent insurer until guaranty associations are triggered; and
 - (ii) conduct affairs in such a way and cooperate as necessary with affected guaranty associations:
 - (A) to ensure that affected guaranty associations are provided with:
 - (I) appropriate information;
 - (II) necessary updates at reasonable intervals; and
 - (III) a reasonable period of time to plan and organize; and
 - (B) so that affected guaranty associations are able to properly discharge statutory responsibilities upon being triggered.
- (3) Appropriate information as referred to in this section:
- (a) at a minimum includes the following for lines of business written by the insurer, whether covered or not covered by a guaranty association:
 - (i) a general description of the different types of business written or assumed by the insurer;
 - (ii) claim counts and policy counts by state and by line of business;
 - (iii) claim and policy reserves;
 - (iv) account values;
 - (v) cash surrender values;

- (vi) policy loans;
 - (vii) interest crediting history;
 - (viii) premiums and mode of payment;
 - (ix) unpaid claims and amounts;
 - (x) sample policies and endorsements;
 - (xi) listing of different locations of claim files;
 - (xii) if a third party administrator is used, a copy of an executed contract and a description of the contractual arrangements; and
 - (xiii) information concerning claims in litigation or dispute, including a listing of claims with assigned defense counsel for those claims going to trial in the near future after a possible liquidation date;
- (b) includes information concerning states in which the insurer is or was licensed;
 - (c) includes information concerning time periods for which the insurer is or was licensed; and
 - (d) includes other information reasonably requested by an affected guaranty association necessary for the affected guaranty association to fulfill its statutory duties.
- (4)
- (a) The listing of information in Subsection (3) is not necessarily an exclusive list.
 - (b) To ensure that an orderly transition to liquidation occurs, information not listed in Subsection (3) may be needed and may be appropriately provided by the receiver.
- (5) In the case of a property and casualty insurer, the rehabilitator, in cooperation with affected guaranty associations, shall make all reasonable efforts to prepare the insurer's electronic policy and claims data so that, upon the entry of an order of liquidation, the data will be ready for transmission using the Uniform Data Standards as promulgated by the National Association of Insurance Commissioners.

Enacted by Chapter 309, 2007 General Session