

Part 4 Liquidation

31A-27a-401 Liquidation orders.

- (1)
 - (a) An order to liquidate the business of an insurer shall:
 - (i) appoint the commissioner and any successor in office as the liquidator; and
 - (ii) direct the liquidator to:
 - (A) take possession of the property of the insurer; and
 - (B) administer the property subject to this chapter.
 - (b) As of the entry of the final order of liquidation, the liquidator is vested by operation of law with the title to the following, wherever located, of the insurer ordered liquidated:
 - (i) all property;
 - (ii) all contracts;
 - (iii) all rights of action; and
 - (iv) all records.
- (2) Upon issuance of the order of liquidation, the rights and liabilities of the insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate shall become fixed as of the day on which the order of liquidation is entered:
 - (a) except as provided in Sections 31A-27a-402, 31A-27a-403, and 31A-27a-605; and
 - (b) unless otherwise fixed by the liquidation court.
- (3) An order to liquidate the business of an alien insurer in this state shall be in the same terms and have the same legal effect as an order to liquidate a domestic insurer.
- (4)
 - (a) Whenever applicable, a petition for liquidation should include a request for a judicial declaration or finding of insolvency.
 - (b) After providing proper notice and hearing, the receivership court may at any time make the declaration of insolvency.
- (5) If an order of liquidation is set aside upon appeal, the insurer is not released from delinquency proceedings except in accordance with Section 31A-27a-801.

Enacted by Chapter 309, 2007 General Session

31A-27a-402 Continuance of coverage.

- (1) Notwithstanding any policy or contract language or any other statute, and unless ordered otherwise by the receivership court upon application by the receiver, a reinsurance contract by which the insurer assumes the insurance obligations of another insurer is cancelled upon entry of an order of liquidation.
- (2)
 - (a) Notwithstanding any policy or contract language or any other statute, and subject to Subsection (2)(c), the following in effect at the time of issuance of an order of liquidation shall continue in force as provided in this section until the time period specified in Subsection (2)
 - (b):
 - (i) a policy;
 - (ii) an insurance contract, other than reinsurance by which the insurer has ceded insurance obligations to another person;
 - (iii) a surety bond; or

- (iv) a surety undertaking.
- (b) Any item listed in Subsection (2)(a) continues in force:
 - (i) until the earlier of:
 - (A) 30 days from the day on which the liquidation order is entered;
 - (B) the day on which the policy coverage expires;
 - (C) the day on which the insured:
 - (I) replaces the insurance coverage with equivalent insurance with another insurer; or
 - (II) otherwise terminates the policy;
 - (D) the day on which the liquidator effects a transfer of the policy obligation pursuant to Subsection 31A-27a-405(1)(i); or
 - (E) the date proposed by the liquidator and approved by the receivership court to cancel coverage; or
 - (ii) unless further extended by the receiver with the approval of the receivership court.
- (c) This Subsection (2) does not apply to:
 - (i) life insurance;
 - (ii) disability income insurance;
 - (iii) long-term care insurance;
 - (iv) health insurance; or
 - (v) an annuity.
- (3) An order of liquidation under Section 31A-27a-401 terminates coverages at the time specified in Subsections (1) and (2) for purposes of any other statute.
- (4)
 - (a) A life insurance policy, disability income insurance policy, long-term care insurance policy, health insurance policy, or an annuity continues in force:
 - (i) if covered by an affected guaranty association or portions are covered by one or more affected guaranty associations, under applicable law;
 - (ii) subject to the terms of the policy or annuity, including any terms restructured pursuant to a court-approved rehabilitation plan; and
 - (iii) to the extent necessary to permit an affected guaranty association to discharge its statutory obligations.
 - (b) A life insurance policy, disability income insurance policy, long-term care insurance policy, health insurance policy, or an annuity not covered by one or more guaranty associations, or those portions not covered by one or more guaranty associations terminates as provided under Subsection (2), except to the extent that the liquidator proposes and the receivership court approves the use of property of the estate, consistent with Section 31A-27a-701, for the purpose of continuing the contract or coverage by transferring the contract or coverage to an assuming reinsurer.
- (5) The cancellation of a bond or surety undertaking does not release any cosurety or guarantor.
- (6) Except as otherwise provided in this chapter, the obligations of the insolvent insurer's reinsurers may not be released or discharged of a policy ceded to a reinsurer by a termination under this section.
- (7) A contract by which the insurer reinsures obligations arising under a life insurance policy, disability income insurance policy, long-term care insurance policy, or an annuity continues or terminates as provided in Section 31A-27a-513.

Enacted by Chapter 309, 2007 General Session

31A-27a-403 Continuance of coverage -- Health maintenance organizations.

(1) As used in this section:

- (a) "Basic health care services" is as defined in Section 31A-8-101.
- (b) "Enrollee" is as defined in Section 31A-8-101.
- (c) "Health care" is as defined in Section 31A-1-301.
- (d) "Health maintenance organization" is as defined in Section 31A-8-101.
- (e) "Limited health plan" is as defined in Section 31A-8-101.
- (f)
 - (i) "Managed care organization" means an entity licensed by, or holding a certificate of authority from, the department to furnish health care services or health insurance.
 - (ii) "Managed care organization" includes:
 - (A) a limited health plan;
 - (B) a health maintenance organization;
 - (C) a preferred provider organization;
 - (D) a fraternal benefit society; or
 - (E) an entity similar to an entity described in Subsections (1)(f)(ii)(A) through (D).
 - (iii) "Managed care organization" does not include:
 - (A) an insurer or other person that is eligible for membership in a guaranty association under Chapter 28, Guaranty Associations;
 - (B) a mandatory state pooling plan;
 - (C) a mutual assessment company or an entity that operates on an assessment basis; or
 - (D) an entity similar to an entity described in Subsections (1)(f)(iii)(A) through (C).
- (g) "Participating provider" means a provider who, under a contract with a managed care organization authorized under Section 31A-8-407, agrees to provide health care services to enrollees with an expectation of receiving payment:
 - (i) directly or indirectly, from the managed care organization; and
 - (ii) other than a copayment.
- (h) "Participating provider contract" means the agreement between a participating provider and a managed care organization authorized under Section 31A-8-407.
- (i) "Preferred provider" means a provider who agrees to provide health care services under an agreement authorized under Subsection 31A-22-617(1).
- (j) "Preferred provider contract" means the written agreement between a preferred provider and a managed care organization authorized under Subsection 31A-22-617(1).
- (k)
 - (i) Except as provided in Subsection (1)(k)(ii), "preferred provider organization" means a person that:
 - (A) furnishes at a minimum, through a preferred provider, basic health care services to an enrollee in return for prepaid periodic payments in an amount agreed to before the time during which the health care may be furnished;
 - (B) is obligated to the enrollee to arrange for the services described in Subsection (1)(k)(i)(A); and
 - (C) permits the enrollee to obtain health care services from a provider who is not a preferred provider.
 - (ii) "Preferred provider organization" does not include:
 - (A) an insurer licensed under Chapter 7, Nonprofit Health Service Insurance Corporations; or
 - (B) an individual who contracts to render professional or personal services that the individual performs.
- (l) "Provider" is as defined in Section 31A-8-101.

- (m) "Uncovered expenditure" means a cost of health care services that is covered by an organization for which an enrollee is liable in the event of the managed care organization's insolvency.
- (2) The rehabilitator or liquidator may take one or more of the actions described in Subsections (2)(a) through (g) to assure continuation of health care coverage for enrollees of an insolvent managed care organization.
 - (a)
 - (i) Subject to Subsection (2)(a)(ii), a rehabilitator or liquidator may require a participating provider or preferred provider to continue to provide the health care services the provider is required to provide under the provider's participating provider contract or preferred provider contract until the earlier of:
 - (A) 90 days after the day on which the following is filed:
 - (I) a petition for rehabilitation; or
 - (II) a petition for liquidation; or
 - (B) the day on which the term of the contract ends.
 - (ii) A requirement by the rehabilitator or liquidator under Subsection (2)(a)(i) that a participating provider or preferred provider continue to provide health care services under the provider's participating provider contract or preferred provider contract expires when health care coverage for all enrollees of the insolvent managed care organization is obtained from another managed care organization or insurer.
 - (b)
 - (i) Subject to Subsection (2)(b)(ii), a rehabilitator or liquidator may reduce the fees a participating provider or preferred provider is otherwise entitled to receive from the managed care organization under the provider's participating provider contract or preferred provider contract during the time period in Subsection (2)(a)(i).
 - (ii) Notwithstanding Subsection (2)(b)(i), a rehabilitator or liquidator may not reduce a fee to less than 75% of the regular fee set forth in the provider's participating provider contract or preferred provider contract.
 - (iii) An enrollee shall continue to pay the same copayments, deductibles, and other payments for services received from a participating provider or preferred provider that the enrollee is required to pay before the day on which the following is filed:
 - (A) the petition for rehabilitation; or
 - (B) the petition for liquidation.
 - (c) A participating provider or preferred provider shall:
 - (i) accept the amounts specified in Subsection (2)(b) as payment in full; and
 - (ii) relinquish the right to collect additional amounts from the insolvent managed care organization's enrollee.
 - (d) Subsections (2)(b) and (c) apply to the fees paid to a provider who agrees to provide health care services to an enrollee but is not a preferred or participating provider.
 - (e) If the managed care organization is a health maintenance organization, Subsections (2)(e)(i) through (vi) apply.
 - (i) A solvent health maintenance organization licensed under Chapter 8, Health Maintenance Organizations and Limited Health Plans, shall extend to the enrollees of an insolvent health maintenance organization all rights, privileges, and obligations of being an enrollee in the accepting health maintenance organization:
 - (A) subject to Subsections (2)(e)(ii), (iii), and (v);

- (B) upon notification from and subject to the direction of the rehabilitator or liquidator of an insolvent health maintenance organization licensed under Chapter 8, Health Maintenance Organizations and Limited Health Plans; and
- (C) if the solvent health maintenance organization operates within a portion of the insolvent health maintenance organization's service area.
- (ii) Notwithstanding Subsection (2)(e)(i), the accepting health maintenance organization shall give credit to an enrollee for any waiting period already satisfied under the enrollee's contract with the insolvent health maintenance organization.
- (iii) A health maintenance organization accepting an enrollee of an insolvent health maintenance organization under Subsection (2)(e)(i) shall charge the enrollee the premiums applicable to the existing business of the accepting health maintenance organization.
- (iv) A health maintenance organization's obligation to accept an enrollee under Subsection (2)(e)(i) is limited in number to the accepting health maintenance organization's pro rata share of all health maintenance organization enrollees in this state, as determined after excluding the enrollees of the insolvent insurer.
- (v)
 - (A) The rehabilitator or liquidator of an insolvent health maintenance organization shall take those measures that are possible to ensure that no health maintenance organization is required to accept more than its pro rata share of the adverse risk represented by the enrollees of the insolvent health maintenance organization.
 - (B) If the methodology used by the rehabilitator or liquidator to assign an enrollee is one that can be expected to produce a reasonably equitable distribution of adverse risk, that methodology and its results are acceptable under this Subsection (2)(e)(v).
- (vi)
 - (A) Notwithstanding Section 31A-27a-402, the rehabilitator or liquidator may require all solvent health maintenance organizations to pay for the covered claims incurred by the enrollees of the insolvent health maintenance organization.
 - (B) As determined by the rehabilitator or liquidator, payments required under this Subsection (2)(e)(vi) may:
 - (I) begin as of the day on which the following is filed:
 - (Aa) the petition for rehabilitation; or
 - (Bb) the petition for liquidation; and
 - (II) continue for a maximum period through the time all enrollees are assigned pursuant to this section.
 - (C) If the rehabilitator or liquidator makes an assessment under this Subsection (2)(e)(vi), the rehabilitator or liquidator shall assess each solvent health maintenance organization its pro rata share of the total assessment based upon its premiums from the previous calendar year.
 - (D)
 - (I) A solvent health maintenance organization required to pay for covered claims under this Subsection (2)(e)(vi) may file a claim against the estate of the insolvent health maintenance organization.
 - (II) Any claim described in Subsection (2)(e)(vi)(D)(I), if allowed by the rehabilitator or liquidator, shall share in any distributions from the estate of the insolvent health maintenance organization as a Class 3 claim.
- (f)
 - (i) A rehabilitator or liquidator may transfer, through sale or otherwise, the group and individual health care obligations of the insolvent managed care organization to one or more other

managed care organizations or other insurers, if those other managed care organizations and other insurers:

- (A) are licensed to provide the same health care services in this state that are held by the insolvent managed care organization; or
- (B) have a certificate of authority to provide the same health care services in this state that is held by the insolvent managed care organization.
- (ii) The rehabilitator or liquidator may combine group and individual health care obligations of the insolvent managed care organization in any manner the rehabilitator or liquidator considers best to provide for continuous health care coverage for the maximum number of enrollees of the insolvent managed care organization.
- (iii) If the terms of a proposed transfer of the same combination of group and individual policy obligations to more than one other managed care organization or insurer are otherwise equal, the rehabilitator or liquidator shall give preference to the transfer of the group and individual policy obligations of an insolvent managed care organization as follows:
 - (A) from one category of managed care organization to another managed care organization of the same category, as follows:
 - (I) from a limited health plan to a limited health plan;
 - (II) from a health maintenance organization to a health maintenance organization;
 - (III) from a preferred provider organization to a preferred provider organization;
 - (IV) from a fraternal benefit society to a fraternal benefit society; and
 - (V) from an entity similar to an entity described in this Subsection (2)(f)(iii)(A) to a category that is similar;
 - (B) from one category of managed care organization to another managed care organization, regardless of the category of the transferee managed care organization; and
 - (C) from a managed care organization to a nonmanaged care provider of health care coverage, including insurers.
- (g) If an insolvent managed care organization has required surplus, a rehabilitator or liquidator may use the insolvent managed care organization's required surplus to continue to provide coverage for the insolvent managed care organization's enrollees, including paying uncovered expenditures.

Enacted by Chapter 309, 2007 General Session

31A-27a-404 Sale or dissolution of the insurer's corporate entity.

- (1) Notwithstanding the entry of a liquidation order, the liquidator may apply for an order to sell or dissolve the corporate entity or charter of a domestic insurer, or the United States branch of an alien insurer domiciled in this state:
 - (a) at any time after an order of liquidation of the insurer is granted; and
 - (b) consistent with this section.
- (2) Upon an application to sell the corporate entity or charter, with notice as prescribed in this chapter, the receivership court may enter an order:
 - (a) separating the corporate entity or charter, together with any of its licenses to do business and the assets the liquidator considers appropriate to the transaction, from:
 - (i) the remaining estate in liquidation;
 - (ii) all of the remaining estate's assets; and
 - (iii) the claims or interests of all claimants, creditors, policyholders, and stockholders;

- (b) canceling all outstanding stock and other securities of, and other equity interests in, the corporate entity or charter, except that the cancellation may not affect any claim against the estate by holders of the equity interests;
 - (c) authorizing the issuance and sale of new stock or other securities for the purpose of transferring to one or more buyers control and ownership of the corporate entity or charter; and
 - (d) authorizing the sale of the corporate entity or charter, together with any of its licenses to do business and the general assets the liquidator considers appropriate to the transaction, free and clear from the claims or interests of all claimants, creditors, policyholders, and stockholders.
- (3)
- (a) The sale of the corporate entity or charter may be made in the manner and on the terms and conditions:
 - (i) applied for by the liquidator; and
 - (ii) ordered by the receivership court.
 - (b) A sale is subject to the domiciliary state's laws regarding acquisition of an insurer under Chapter 16, Insurance Holding Companies.
 - (c) Upon the sale of a corporate entity or chapter:
 - (i) the proceeds from the sale become a part of the property of the estate in liquidation; and
 - (ii) the then separate corporate entity or charter, together with any of its licenses to do business and the assets the liquidator considers appropriate to the transaction, is free and clear from the claims or interests of all claimants, creditors, policyholders, and stockholders of the insurer in liquidation.
 - (d) The court has broad powers to effect the disposition of a corporate entity and its charter including, without limiting the statement of broad powers, a reorganization or conversion of the corporate entity.
- (4) This section shall be liberally construed to:
- (a) accomplish its purposes to provide an expeditious and effective procedure to realize the maximum proceeds possible from the sale of a corporate entity or charter separated from an estate in liquidation; and
 - (b) ensure that a purchaser receives clear and marketable title.
- (5) If permission to sell the corporate entity or charter is not granted before discharge of the liquidator, in accordance with this section or otherwise with receivership court approval:
- (a) the receivership court may order dissolution of the corporate entity or charter;
 - (b) dissolution is considered complete by operation of law upon the discharge of the liquidator if the insurer is insolvent; or
 - (c) dissolution may be ordered by the receivership court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason.

Enacted by Chapter 309, 2007 General Session

31A-27a-405 Powers of the liquidator.

- (1) The liquidator may:
- (a)
 - (i) hold hearings, subpoena a witness to compel the witness' attendance, administer oaths, examine a person under oath, and compel a person to subscribe to that person's testimony after the testimony is correctly reduced to writing; and

- (ii) in connection with a power listed in Subsection (1)(a)(i), require the production of a record that the liquidator considers relevant to the inquiry;
- (b) audit the records of all agents of the insurer to the extent that those records relate to the business activities of the insurer;
- (c) collect all debts and money due and claims belonging to the insurer, wherever located, and for this purpose to:
 - (i) institute action in another jurisdiction, to forestall garnishment and attachment proceedings against the debt;
 - (ii) in addition to paying other Class 1 claims described in Subsection 31A-27a-701(2)(a), if the payment assists or results in the collection or recovery of property of the insurer that provides a net benefit to creditors of the estate, pay Class 1 administrative costs of the estate:
 - (A) upon approval of the receivership court; and
 - (B) only to the extent of the collection or recovery of the property;
 - (iii) do any other act as is necessary or expedient to collect, conserve, or protect the insurer's property, including the power to sell, compound, compromise, or assign a debt for purposes of collection upon the terms and conditions that the liquidator considers consistent with this chapter; and
 - (iv) pursue any creditor's remedies available to enforce a claim of the insurer;
- (d) conduct public and private sales of the property of the insurer;
- (e) subject to Subsection (6), use property of the estate of an insurer under a liquidation order to transfer:
 - (i)
 - (A) a policy obligation; or
 - (B)
 - (I) the insurer's obligations under a surety bond or a surety undertaking; and
 - (II) collateral held by the insurer with respect to the reimbursement obligations of the principals under the surety bond or surety undertaking;
 - (ii) to a solvent assuming insurer; and
 - (iii) if the transfer can be arranged without prejudice to applicable priorities under Section 31A-27a-701;
- (f) subject to Subsection (4), acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of the estate:
 - (i) at its market value; or
 - (ii) upon terms and conditions that are fair and reasonable;
- (g) execute, acknowledge, and deliver any deed, assignment, release, or other instrument necessary or proper to effectuate a sale of property or other transaction in connection with the liquidation;
- (h)
 - (i) subject to Subsection (7), borrow money for the purpose of facilitating the liquidation:
 - (A) on the security of the property of the estate; or
 - (B) without security; and
 - (ii) execute and deliver a document necessary to the transaction to borrow money;
- (i)
 - (i) enter into a contract necessary to carry out the order to liquidate; and
 - (ii) subject to Section 31A-27a-113, assume or reject an executory contract or unexpired lease to which the insurer is a party;
- (j)

- (i) continue to prosecute or to institute in the name of the insurer or in the liquidator's own name a suit or other legal proceeding, in this state or elsewhere; and
 - (ii) abandon the prosecution of a claim the liquidator considers unprofitable to pursue further;
 - (k) if the insurer is dissolved under Section 31A-27a-404, apply to a court in this state or elsewhere for leave to substitute the liquidator for the insurer as a party;
 - (l) subject to Subsection (8), prosecute or assert with exclusive standing an action that may exist on behalf of the public or a creditor, member, policyholder, or shareholder of the insurer against a person, except to the extent that:
 - (i) a claim is personal to a specific creditor, member, policyholder, or shareholder; and
 - (ii) recovery on the claim would not inure to the benefit of the estate;
 - (m) subject to Subsection (8), take possession of a record or property of the insurer as may be convenient for the purposes of efficient and orderly execution of the liquidation;
 - (n) deposit in one or more banks in this state sums required for meeting current administration expenses and dividend distributions;
 - (o) invest all sums not currently needed, unless the receivership court orders otherwise;
 - (p) file any necessary document for record in the office of a recorder of deeds or record office in this state or elsewhere where property of the insurer is located;
 - (q) subject to Subsection (9), assert all defenses available to the insurer as against a third person, including statutes of limitations, statutes of frauds, and the defense of usury;
 - (r) exercise and enforce all the rights, remedies, and powers of a creditor, shareholder, policyholder, or member, including any power to avoid a transfer or lien that may be voidable under this chapter or otherwise;
 - (s)
 - (i) intervene in a proceeding wherever instituted that might lead to the appointment of a receiver or trustee for the insurer or any of its property; and
 - (ii) act as the receiver or trustee whenever the appointment is offered;
 - (t) enter into an agreement with a receiver or commissioner of any other state; and
 - (u) exercise all powers held on or conferred after April 30, 2007, on a receiver by the laws of this state not inconsistent with this chapter.
- (2) The liquidator is vested with all the rights of the one or more entities in receivership.
- (3) The enumeration of the powers and authority of the liquidator in this section:
- (a) may not be construed as a limitation upon the liquidator; and
 - (b) does not exclude in any manner the right to do other acts:
 - (i) not specifically enumerated or otherwise provided for; and
 - (ii) to the extent necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.
- (4)
- (a) The liquidator may take the following actions as provided in this Subsection (4):
 - (i) hypothecate, encumber, lease, sell, transfer, abandon, or otherwise dispose of or deal with property of the insurer;
 - (ii) settle or resolve a claim brought by the liquidator on behalf of the insurer; or
 - (iii) commute or settle a claim of reinsurance under a contract of reinsurance.
 - (b) The liquidator may take an action described in Subsection (4)(a) at the liquidator's discretion if the property or claim has a market or settlement value, as shown on the receivership's financial statements, that does not exceed:
 - (i) the lesser of:
 - (A) \$1,000,000; or
 - (B) 10% of the general assets of the estate; or

- (ii) an amount increased from the amount described in Subsection (4)(b)(i), if the receivership court increases the amount upon a petition of the liquidator and a showing that compliance with this Subsection (4)(b) is:
 - (A) burdensome to the liquidator in administering the estate; and
 - (B) unnecessary to protect the material interests of creditors.
- (c) In all instances other than those described in Subsection (4)(b), the liquidator may take an action described in Subsection (4)(a) only after obtaining approval of the receivership court as provided in Section 31A-27a-107.
- (d) The liquidator may, at the liquidator's discretion, request the receivership court to approve a proposed action as provided in Section 31A-27a-107:
 - (i) if the value of the property or claim appears to be less than the threshold provided in Subsection (4)(b) but cannot be ascertained with certainty; or
 - (ii) for any other reason as determined by the liquidator.
- (e)
 - (i) After obtaining approval of the receivership court as provided in Section 31A-27a-107, the liquidator may transfer rights to payment under a ceding reinsurance agreement covering policy to a third party transferee.
 - (ii) The transferee has the rights to collect and enforce collection of the reinsurance for the amount payable to the ceding insurer or to its receiver:
 - (A) without diminution because:
 - (I) of the insolvency; or
 - (II) the receiver failed to pay all or a portion of the claim; and
 - (B) on the basis of the amounts paid or allowed pursuant to Section 31A-27a-511.
 - (iii) The transfer of the rights described in Subsection (4)(e)(ii) does not give rise to any defense regarding the reinsurer's obligations under the reinsurance agreement regardless of whether the agreement or other applicable law prohibits the transfer of rights under the reinsurance agreement.
 - (iv) Except as provided in this Subsection (4), a transfer of rights pursuant to this Subsection (4)(e) may not impair any right or defense of the reinsurer that:
 - (A) exists before the transfer; or
 - (B) would have existed in the absence of the transfer.
 - (v) Except as otherwise provided in this Subsection (4), a transfer of rights pursuant to this Subsection (4)(e) does not relieve the transferee or the liquidator from an obligation owed to the reinsurer pursuant to the reinsurance or other agreement.
- (5)
 - (a) The liquidator is not obligated to defend an action against the insurer or insured.
 - (b) If a defense is an obligation of the insurer, an insured not defended by a guaranty association may:
 - (i) provide its own defense; and
 - (ii) include the cost of the defense as part of the insured's claim.
 - (c) The right of the liquidator to contest coverage on a particular claim is preserved without the necessity for an express reservation of rights.
- (6) Once a liquidator makes a transfer described in Subsection (1)(e), the estate has no further liability under a transferred policy, surety bond, or surety undertaking after the transfer is made if:
 - (a) all insureds, principals, third party claimants, and obligees under the policy, surety bond, or surety undertaking consent; or
 - (b) the receivership court so orders.

- (7) Funds borrowed under Subsection (1)(h):
 - (a) may be repaid as an administrative expense; and
 - (b) have priority over any other claims in Class 1 under the priority of distribution.
- (8)
 - (a) Subsection (1)(l) does not infringe or impair any of the rights provided to an affected guaranty association pursuant to its enabling statute or otherwise.
 - (b) Notwithstanding Subsection (1)(m), an affected guaranty association shall have reasonable access to the records of the insurer necessary for the affected guaranty association to carry out its statutory obligations.
- (9)
 - (a) 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 liquidator.
 - (b) Notwithstanding Subsection (1)(q), when an affected guaranty association determines it has an obligation to defend a suit, the liquidator:
 - (i) shall defer to that obligation; and
 - (ii) may defend only in cooperation with the affected guaranty association.

Enacted by Chapter 309, 2007 General Session

31A-27a-406 Notice to creditors and others.

- (1) Unless the receivership court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible:
 - (a) by first-class mail or electronic communication as permitted by the receivership court to the following at their last-known address:
 - (i) all of the insurer's agents, brokers, or producers of record with a current appointment or current license to represent the insurer; and
 - (ii) all other agents, brokers, or producers that the liquidator considers appropriate;
 - (b) by first-class mail or electronic communication as permitted by the receivership court to:
 - (i) all current policyholders;
 - (ii) all pending claimants; and
 - (iii) as determined by the receivership court, former policyholders and other creditors; and
 - (c) by publication:
 - (i) once in a newspaper of general circulation in:
 - (A) the county in which the insurer has its principal place of business; and
 - (B) other locations that the liquidator considers appropriate; and
 - (ii) as required in Section 45-1-101.
- (2) The notice of the entry of an order of liquidation shall contain or provide directions for obtaining the following information:
 - (a) a statement that the insurer has been placed in liquidation;
 - (b) a statement:
 - (i) explaining that certain acts are stayed under Section 31A-27a-108; and
 - (ii) describing any additional injunctive relief ordered by the receivership court;
 - (c) a statement whether, and to what extent, the insurer's policies continue in effect;
 - (d) to the extent applicable, a statement that coverage by guaranty associations may be available for all or part of policy benefits in accordance with applicable state guaranty laws;
 - (e) a statement of:
 - (i) the deadline for filing claims, if established; and

- (ii) the requirements for filing a proof of claim pursuant to Section 31A-27a-601 on or before that date;
 - (f) a statement of the date, time, and location of any initial status hearing scheduled at the time the notice is sent;
 - (g) a description of the process for obtaining notice of matters before the receivership court; and
 - (h) other information as the liquidator or the receivership court considers appropriate.
- (3) If notice is given in accordance with this section, the distribution of property of the insurer under this chapter is conclusive with respect to all claimants, whether or not the claimant received notice.
- (4)
- (a) Notwithstanding the other provisions of this section, the liquidator has no duty to locate any person if:
 - (i) no address is found in the records of the insurer; or
 - (ii) a mailing is returned to the liquidator because of inability to deliver at the address shown in the insurer's records.
 - (b) In the circumstances described in Subsection (4)(a), the notice by publication as required by this chapter or actual notice received is sufficient notice.
 - (c) Written certification by the liquidator or other knowledgeable person acting for the liquidator that a notice is deposited in the United States mail, postage prepaid, or that the notice is electronically transmitted is prima facie evidence of mailing and receipt.
 - (d) A claimant has a duty to keep the liquidator informed of any change of address.
- (5) Notwithstanding Subsection (1):
- (a) upon application of the liquidator, the receivership court may find that notice by publication as required in this section is sufficient notice to those persons holding an occurrence policy:
 - (i) that expired more than four years before the day on which the order of liquidation is entered; and
 - (ii) under which there are no pending claims; or
 - (b) the receivership court may order other notice to those persons that the receivership court considers appropriate.

Amended by Chapter 388, 2009 General Session

31A-27a-407 Duties of agents.

- (1)
- (a) At the request of the liquidator, an agent receiving notice of the entry of the liquidation order shall provide notice of that order:
 - (i) on a form prescribed by the liquidator;
 - (ii) to:
 - (A) each policyholder of a policy issued through the agent; and
 - (B) other person named in a policy issued through the agent; and
 - (iii) within:
 - (A) 15 days of the day on which the agent receives the notice; or
 - (B) a longer time as the liquidator may require.
 - (b) Within 30 days of the mailing required by Subsection (1)(a), the agent shall provide as prescribed by the liquidator:
 - (i) a certification of mailing; and
 - (ii) a list of insureds to which notice is provided.
- (2)

- (a) A person who represents the insurer as an agent and receives notice in the form prescribed in Section 31A-27a-406, shall, within 30 days of the day on which the notice being sent, provide to the liquidator:
 - (i) the information the agent is required to provide pursuant to Section 31A-27a-110, if any;
 - (ii) the information in the agent's records related to any policy issued by the insurer through the agent; and
 - (iii) if the agent is a general agent, the information in the general agent's records related to any policy issued by the insurer through an agent under contract to the general agent, including the name and address of the subagent.
- (b) Except where the ownership of the expiration of the policy is transferred to another, a policy is considered issued through an agent if the agent:
 - (i) has a property interest in the expiration of the policy; or
 - (ii) has had in the agent's possession a copy of the declarations of the policy at any time during the life of the policy.
- (3) If an agent fails to provide information to the liquidator as required in Subsection (2), the commissioner after holding a hearing may:
 - (a) impose against the agent a penalty of not more than \$1,000; and
 - (b) suspend the agent's license.
- (4) Notwithstanding an agent's property interest, if any, in the expiration of a policy, the liquidator has the exclusive power to determine whether, and under what terms, to cancel or transfer the policy.

Enacted by Chapter 309, 2007 General Session