

31A-27a-505 Avoidance of property title transfers.

- (1) The rehabilitator or liquidator has the creditor's rights described in this Subsection (1), without regard to any knowledge of the rehabilitator or liquidator or any creditor.
 - (a)
 - (i) The rehabilitator or liquidator is considered to:
 - (A) have extended credit to the insurer on the day on which the rehabilitation or liquidation petition is filed; and
 - (B) have obtained on the day described in Subsection (1)(a)(i) a judicial lien on all the insurer's property on which a creditor under a contract could obtain a judicial lien.
 - (ii) The rehabilitator or liquidator:
 - (A) may avoid a transfer that would be avoidable by the type of creditor described in this Subsection (1)(a); and
 - (B) has all the other rights and powers of the type of creditor described in this Subsection (1)(a).
 - (b)
 - (i) The rehabilitator or liquidator is considered to:
 - (A) have extended credit to the insurer on the day on which the rehabilitation or liquidation petition filed; and
 - (B) have obtained on the day described in this Subsection (1)(b)(i), with respect to that credit extension, an execution against the insurer on that same date that is returned unsatisfied.
 - (ii) The rehabilitator or liquidator:
 - (A) may avoid a transfer that would be avoidable by the type of creditor described in this Subsection (1)(b); and
 - (B) has all the other rights and powers of the type of creditor described in this Subsection (1)(b).
 - (c) The rehabilitator or liquidator:
 - (i) is considered to be a bona fide purchaser of the insurer's real property on the day on which the rehabilitation or liquidation petition is filed; and
 - (ii) has the rights and powers of a bona fide purchaser to avoid other transfers of the insurer's realty.
- (2)
 - (a) The rehabilitator or liquidator may avoid a transfer of an interest of the insurer in property or an obligation incurred by the insurer that is voidable under applicable law by a creditor holding an unsecured claim.
 - (b) This Subsection (2) does not apply to secured claims.
- (3)
 - (a) Except as provided in Subsections (3)(b) and (c), the rehabilitator or liquidator may avoid a transfer of property of the estate that:
 - (i) occurs after the day on which the petition for rehabilitation or liquidation is filed; and
 - (ii) is not authorized under this chapter or by the court.
 - (b)
 - (i) Subject to Subsection (3)(b)(ii), a transfer is valid against the rehabilitator or liquidator to the extent of any value, including services if it occurs:
 - (A) after the day on which the petition is filed; and
 - (B) before the day on which the order for rehabilitation or liquidation is entered.
 - (ii) The value described in Subsection (3)(b)(i) does not include the satisfaction or securing of a debt:
 - (A) that arises before the day on which the petition is filed;

- (B) which is given after the date described in this Subsection (3)(b) in exchange for the transfer; and
 - (C) notwithstanding the transferee's knowledge or lack of knowledge of the petition.
- (c)
- (i) Subject to Subsection (3)(c)(ii), the rehabilitator or liquidator may not avoid a transfer of real property under Subsection (3)(a) to:
 - (A) a good faith purchaser:
 - (I) if the good faith purchaser is without knowledge of the petition for rehabilitation or liquidation; and
 - (II) for present fair consideration; or
 - (B) a purchaser at a judicial sale.
 - (ii) Notwithstanding Subsection (3)(c)(i), the rehabilitator or liquidator may avoid a transfer of real property under Subsection (3)(a) if a copy of the petition is filed in the office of the county recorder before the transfer is so far perfected that a bona fide purchaser of the property against whom applicable law permits that type of transfer to be perfected cannot acquire an interest that is superior to the interest of the good faith purchaser or judicial sale purchaser.
 - (iii) Unless a copy of the petition is filed before the transfer is perfected, a good faith purchaser of real property under a transfer which the rehabilitator or liquidator may avoid under this section has a lien on the property transferred:
 - (A) if the good faith purchaser:
 - (I) is without knowledge of the petition for rehabilitation or liquidation at the time of the transfer; and
 - (II) pays less than present fair consideration; and
 - (B) to the extent of the present consideration given.
- (4) An action or proceeding under Subsection (1) or (2) may not be commenced after the earlier of:
- (a) two years after the day on which a rehabilitator is appointed under Section 31A-27a-301 or a liquidator is appointed under Section 31A-27a-401; or
 - (b) the day on which the rehabilitation is terminated under Subsection 31A-27a-304(3) or the liquidation is terminated under Section 31A-27a-802.
- (5) An action or proceeding under Subsection (3) may not be commenced after the earlier of:
- (a) two years after the day on which the transfer sought to be avoided is made; or
 - (b) the day on which the rehabilitation is terminated under Subsection 31A-27a-304(3) or the liquidation is terminated under Section 31A-27a-802.

Enacted by Chapter 309, 2007 General Session