



What is Receivership?

Receivership actions include three different types of judicial proceedings—conservation, rehabilitation, and liquidation—which may be ordered by the Court to resolve problems with insurance companies not in compliance with state financial statutes. The state’s chief insurance regulator petitions the Court for the appropriate form of receivership.

Receivership proceedings are usually commenced against insolvent or financially impaired insurers in the insurer’s domiciliary state (the state in which the insurer is incorporated) and in specific courts within that state. Each state requires that the chief insurance regulator of the insurer’s domiciliary state be appointed receiver of the insurer to administer the receivership under court supervision.

What is Insolvency?

An insurance company insolvency occurs when the statutory liabilities exceed its statutory assets, or when an insurance company is unable to pay its debts as they become due in the usual course of business.

What is Conservation?

In some states, a court may enter an order of conservation upon the petition of a regulator. An order of conservation is designed to safeguard the assets of the insurance company and give the regulator an opportunity to determine the course of action that should be taken with respect to the insurer. In some states a court ordered conservation may be confidential.

What is Rehabilitation?

The chief insurance regulator may petition a state court for an order of rehabilitation as a mechanism to remedy an insurer’s problems, to protect its assets, to run off its liabilities to avoid liquidation, or to prepare the insurer for liquidation.

Grounds to petition for rehabilitation

The grounds upon which a regulator may petition the court for an order of rehabilitation vary from state to state. The regulator must allege and prove a specific statutory ground that indicates that rehabilitation of the insurer is warranted.

Updated: 6/2012

A rehabilitation proceeding is a formal court proceeding, commencing with an allegation by the insurance regulator that the insurer is financially impaired, insolvent or meets another statutory ground for rehabilitation. The insurer is served with a summons. The insurer may respond and must be afforded an opportunity to be heard. When judgment is entered, the losing party may appeal.

Contents of a Rehabilitation Order

An order of rehabilitation appoints the regulator as rehabilitator and directs the rehabilitator to take control of the insurer's assets and administer them under general court supervision. The rehabilitation order may provide the rehabilitator with title to all of the insurer's assets, books, records, accounts, property and premises, and generally includes an injunction against pending and threatened litigation. The order is typically filed with the court clerk or recorder of deeds so that creditors and the public are put on notice of the rehabilitation.

The rehabilitation order may require that the rehabilitator file reports and accountings with the court.

The rehabilitator usually has the power to act as necessary or appropriate to reform and revitalize the insurer. The rehabilitation order usually suspends the powers of the directors, officers and managers except as the rehabilitator delegates. The rehabilitator usually retains all powers not delegated.

The receiver is charged with implementing the restrictions, limitations and requirements set forth in the order of rehabilitation. The order may prohibit the insurer from writing new business or may severely limit the amount and type of new business written. Similarly, the order may impose significant restrictions or prohibit the renewal of business when the renewal is at the option of the insurer. The order may also require the insurer to modify or even cancel certain managing general agency, Third Party Administrator and general agency agreements. The order may suspend claims payments and halt the transfer of cash or loan values on life insurance contracts.

Rehabilitation Plan

In most cases the rehabilitator will attempt to formulate a plan to rehabilitate the troubled insurer. If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger or some other transformation is appropriate, then the rehabilitator typically prepares a plan to effect the necessary change(s). The plan of rehabilitation should be in the best interests of the policyholders, creditors and the insurer itself. After formulating the plan, the rehabilitator generally must submit it to the supervising court for approval. The court will then either approve, disapprove or modify the plan. State law typically requires that the court give notice and hold hearings upon any proposed plan. The rehabilitator must implement the plan's approved terms.

Similarly, the receiver should be prepared to liquidate the insurer if rehabilitation is not feasible or practical. The receiver should organize the assets, books and records of the insurer to ensure an orderly transition to liquidation.

Terminating the rehabilitation

If the receiver determines that the causes and conditions which made the rehabilitation proceedings necessary have been removed, he or she may apply to the court for an order terminating the rehabilitation.

Alternatively, the time may come when the receiver determines that further attempts at rehabilitation would substantially increase the risk of loss to policyholders, creditors, or the public. At that time, a petition for liquidation is appropriate.

What is Liquidation?

The regulator may petition the court for an order of liquidation when any of the grounds set forth in state statutes exist. In liquidation, the receiver/liquidator must identify creditors and marshal and distribute assets in accordance with statutory priorities and dissolve the insurer. In most states, the insurer must be insolvent to be placed in liquidation.

Order of Liquidation

Once a petition for liquidation is filed, the company will have an opportunity to defend itself, which can result in a trial or an evidentiary hearing. If the court determines that the regulator has sufficiently established any of the statutory grounds for liquidation, it should enter an order of liquidation, appointing the regulator as the liquidator of the insurer and vesting the liquidator with title to all of the insurer's assets and records. The order enables the liquidator to control all aspects of the insurer's operations under the general supervision of the court. Orders of liquidation may be appealed by management and/or shareholders of the insurer.

Statutes in most states provide that upon issuance of the order, all of the rights and liabilities of the insurer, its creditors and policyholders are fixed as of the date of entry of the order of liquidation. State statutes may describe the effect of the order of liquidation upon contracts of the insolvent insurer.

Upon entry of the order of liquidation, the receiver is charged with the duty to secure, marshal and distribute the assets of the estate. The power to perform these duties is provided by the order of liquidation and the state receivership statutes. It is important for the order of liquidation to include certain other items, which should be determined by applicable provisions of the law in the state of domicile of the insurer. These items typically include the appointment of the liquidator; list the powers of the liquidator as provided by state statute; provide for the immediate delivery of all books, records and assets of the insurer to the liquidator; injunctions prohibiting other parties from proceeding with actions against the liquidator, the insurer or policyholders; and may provide for notice to policyholders and cancellation of policies. If it is appropriate to trigger the guaranty associations, it is necessary for the order of liquidation to include a finding of insolvency for property and casualty guaranty associations and may be necessary in certain states for life and health guaranty associations.

Effect on Policies

In general, the courts enforce the statutes that provide for the cancellation of insurance policies upon liquidation. Courts have held that the order of liquidation effectively cancels outstanding policies and fixes the date for ascertaining debts and claims against the insolvent insurer. However, the insolvency of a life insurer presents a unique situation. The NAIC Model Acts provide for the continuation of life, health and annuity policies. Typically, life and annuity contracts (and, to a lesser extent, health contracts) are transferred to solvent third party insurers.

Deadline for filing claims

Unless established by statute, the court establishes a deadline for the filing of claims against the assets of the insolvent insurer.

What is a Guaranty Fund?

State guaranty associations are statutorily created entities (in all 50 states as well as Puerto Rico and the District of Columbia) created to protect policyholders of an insolvent insurance company. All insurance companies licensed to sell property and casualty, life and health, and workers' compensation insurance coverage in a state must be members of that state's applicable guaranty associations.

Once the liquidation is ordered, the guaranty association provides coverage to the company's policyholders who are state residents (up to the limits specified by state laws). For a complete listing of each state's laws regarding this coverage, see:

The National Organization of Life and Health Insurance Guaranty Associations

www.nolhga.com

The National Conference of Insurance Guaranty Funds

www.ncigf.org

Colorado's Guaranty Fund is established in state law:

[C.R.S. 10-4-506, Colorado Insurance Guaranty Association](#)