

**CHAPTER 26.1-06.1**  
**INSURANCE COMPANY REHABILITATION AND LIQUIDATION**

**26.1-06.1-01. Construction and purpose.**

1. This chapter may not be interpreted to limit the powers granted the commissioner by other provisions of the law.
2. This chapter must be liberally construed to effect the purpose stated in subsection 3.
3. The purpose of this chapter is the protection of the interests of insureds, claimants, creditors, and the public generally; with minimum interference with the normal prerogatives of the owners and managers of insurers, through:
  - a. Early detection of any potentially dangerous condition in an insurer, and prompt application of appropriate corrective measures;
  - b. Improved methods for rehabilitating insurers, involving the cooperation and management expertise of the insurance industry;
  - c. Enhanced efficiency and economy of liquidation, through clarification of the law, to minimize legal uncertainty and litigation;
  - d. Equitable apportionment of any unavoidable loss;
  - e. Lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process, and by extending the scope of personal jurisdiction over debtors of the insurer outside this state;
  - f. Regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business; and
  - g. Providing for a comprehensive scheme for the rehabilitation and liquidation of insurance companies and those subject to this chapter as part of the regulation of the business of insurance, insurance industry, and insurers in this state. Proceedings in cases of insurer insolvency and delinquency are deemed an integral aspect of the business of insurance and are of vital public interest and concern.

**26.1-06.1-02. Persons covered.**

The proceedings authorized by this chapter may be applied to:

1. All insurers who are doing, or have done, an insurance business in this state, and against whom claims arising from that business may exist now or in the future.
2. All insurers who purport to do an insurance business in this state.
3. All insurers who have insureds residing in this state.
4. All persons subject to examination by the commissioner.
5. All other persons organized or in the process of organizing with the intent to do an insurance business in this state.
6. All nonprofit health service corporations subject to chapter 26.1-17.
7. All fraternal benefit societies subject to chapter 26.1-15.1.
8. All title insurance companies subject to chapter 26.1-20.
9. All health maintenance organizations subject to chapter 26.1-18.1.
10. All prepaid legal service companies subject to chapter 26.1-19.

**26.1-06.1-03. Definitions.**

For the purposes of this chapter:

1. "Ancillary state" means any state other than a domiciliary state.
2. "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.
3. "Delinquency proceeding" means any proceeding instituted against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer, and any summary proceeding under section 26.1-06.1-09. "Formal delinquency proceeding" means any liquidation or rehabilitation proceeding.

4. "Doing business" includes any of the following acts, whether effected by mail or otherwise:
  - a. The issuance or delivery of contracts of insurance to residents of this state;
  - b. The solicitation of applications for such contracts, or other negotiations preliminary to the execution of such contracts;
  - c. The collection of premiums, membership fees, assessments, or other consideration for such contracts;
  - d. The transaction of matters subsequent to execution of such contracts and arising out of them;
  - e. Operating under a license or certificate of authority, as an insurer, issued by the commissioner; or
  - f. Any other act specified in section 26.1-02-06 as the transaction of an insurance business.
5. "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry.
6. "Fair consideration" is given for property or obligation:
  - a. When in exchange for property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or
  - b. When property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared to the value of the property or obligation obtained.
7. "Foreign country" means any other jurisdiction not in any state.
8. "General assets" means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" includes all property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.
9. "Guaranty association" means the North Dakota insurance guaranty association created by chapter 26.1-42.1 or the North Dakota life and health insurance guaranty association created by chapter 26.1-38.1, and any other similar entity now or hereafter created by the legislative assembly for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entity now in existence in or hereafter created by the legislature of any other state.
10. "Insolvency" or "insolvent" means:
  - a. For an insurer issuing only assessable fire insurance policies:
    - (1) The inability to pay any obligation within thirty days after it becomes payable; or
    - (2) If an assessment be made within thirty days after such date, the inability to pay the obligation thirty days following the date specified in the first assessment notice issued after the date of loss.
  - b. For any other insurer, that it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of:
    - (1) Any capital and surplus required by law for its organization; or
    - (2) The total par or stated value of its authorized and issued capital stock.
  - c. As to any insurer licensed to do business in this state as of July 7, 1991, which does not meet the standard established under subdivision b, the term "insolvency" or "insolvent" means, for a period not to exceed three years from July 7, 1991, that it is unable to pay its obligations when they are due or that its admitted assets do not exceed its liabilities plus any required capital contribution ordered by the commissioner under provisions of the insurance law.
  - d. For purposes of this subsection, "liabilities" includes reserves required by statute, by rule, or by specific requirements imposed by the commissioner upon a subject company at the time of admission or a later time.

11. "Insurer" means any person who has done, purports to do, is doing, or is licensed to do an insurance business, and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision, or conservation by any other state. For purposes of this chapter, any other persons included under section 26.1-06.1-02 shall be deemed to be insurers.
12. "Policyholder" includes a certificate holder.
13. "Preferred claim" means any claim with respect to which the terms of this chapter accord priority of payment from the general assets of the insurer.
14. "Receiver" means receiver, liquidator, rehabilitator, or conservator as the context requires.
15. "Reciprocal state" means any state other than this state in which in substance and effect subsection 1 of section 26.1-06.1-17 and sections 26.1-06.1-51, 26.1-06.1-52, 26.1-06.1-54, 26.1-06.1-55, and 26.1-06.1-56 are in force, and in which provisions are in force requiring that the commissioner or equivalent official be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.
16. "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process.
17. "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any claim secured by general assets.
18. "State" means any state, district, or territory of the United States and the Panama Canal Zone.
19. "Transfer" includes the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest therein, or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor.

#### **26.1-06.1-04. Jurisdiction and venue.**

1. No delinquency proceeding may be commenced under this chapter by anyone other than the commissioner and no court has jurisdiction to entertain, hear, or determine any proceeding commenced by any other person.
2. No court of this state has jurisdiction to entertain, hear, or determine any complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of any insurer, or praying for an injunction or restraining order or other relief preliminary to, incidental to, or relating to such proceedings other than in accordance with this chapter.
3. In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served pursuant to the North Dakota Rules of Civil Procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:
  - a. If the person served is an insurance producer or other person who has at any time written policies of insurance for or has acted in any manner whatsoever on behalf of an insurer against which a delinquency proceeding has been instituted, in any action resulting from or incident to such a relationship with the insurer;
  - b. If the person served is a reinsurer who has at any time entered into a contract of reinsurance with an insurer against which a delinquency proceeding has been instituted, or is an insurance producer of or for the reinsurer, in any action on or incident to the reinsurance contract;
  - c. If the person served is or has been an officer, director, manager, trustee, organizer, promoter, or other person in a position of comparable authority or

- influence over an insurer against which a delinquency proceeding has been instituted, in any action resulting from or incident to such a relationship with the insurer;
- d. If the person served is or was at the time of the institution of the delinquency proceeding against the insurer holding assets in which the receiver claims an interest on behalf of the insurer, in any action concerning the assets; or
  - e. If the person served is obligated to the insurer in any way whatsoever in any action on, or incident to, the obligation.
4. If the court on motion of any party finds that any action should as a matter of substantial justice be tried in a forum outside this state, the court may enter an appropriate order to stay further proceedings on the action in this state.
  5. All action herein authorized must be brought in the district court in Burleigh County, North Dakota.

**26.1-06.1-05. Injunctions and orders.**

1. Any receiver appointed in a proceeding under this chapter may at any time apply for, and any district court may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to prevent:
  - a. The transaction of further business;
  - b. The transfer of property;
  - c. Interference with the receiver or with a proceeding under this chapter;
  - d. Waste of the insurer's assets;
  - e. Dissipation and transfer of bank accounts;
  - f. The institution or further prosecution of any actions or proceedings;
  - g. The obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its policyholders;
  - h. The levying of execution against the insurer, its assets, or its policyholders;
  - i. The making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;
  - j. The withholding from the receiver of books, accounts, documents, or other records including all written, printed, computer-stored, visual, and audiovisual materials relating to the business of the insurer; or
  - k. Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under this chapter.
2. The receiver may apply to any court outside of the state for the relief described in subsection 1.

**26.1-06.1-06. Cooperation of officers, owners, and employees - Penalty.**

1. Any officer, manager, director, trustee, owner, employee, or agent of any insurer, or any other persons with authority over or in charge of any segment of the insurer's affairs, shall cooperate with the commissioner in any proceeding under this chapter, or any investigation preliminary to the proceeding. The term "person" as used in this section includes any person who exercises control directly or indirectly over activities of the insurer through any holding company or other affiliate of the insurer. "To cooperate" includes the following:
  - a. To reply promptly in writing to any inquiry from the commissioner requesting a reply;
  - b. To make available to the commissioner any books, accounts, documents, or other records or information or property of or pertaining to the insurer and in possession, custody, or control of that person; and
  - c. To be available for oral statements and interviews by the commissioner if so requested.
2. No person may obstruct or interfere with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto.

3. Any person included within subsection 1 who fails to cooperate with the commissioner, or any person who obstructs or interferes with the commissioner in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto, or who violates any valid order issued by the commissioner under this chapter is guilty of a class A misdemeanor and, after a hearing, may be subject to the imposition by the commissioner of a civil penalty not to exceed ten thousand dollars and may be subject further to the revocation or suspension of any insurance licenses issued by the commissioner.

**26.1-06.1-07. Continuation of delinquency proceedings.**

Every proceeding heretofore commenced under the laws in effect before the enactment of this chapter must be deemed to have commenced under this chapter for the purpose of conducting the proceeding henceforth, except that in the discretion of the commissioner the proceeding may be continued, in whole or in part, as it would have been continued had this chapter not been enacted.

**26.1-06.1-08. Condition on release from delinquency proceedings.**

No insurer subject to any delinquency proceedings, whether administrative or judicial, may, until all payments of or on account of the insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, have been repaid to the guaranty associations, or until a plan of repayment by the insurer has been approved by the guaranty associations:

1. Be released from the proceeding, unless the proceeding is converted into a judicial rehabilitation or liquidation proceeding;
2. Be permitted to solicit or accept new business or request or accept the restoration of any suspended or revoked license or certificate of authority;
3. Be returned to the control of its shareholders or private management; or
4. Have any of its assets returned to the control of its shareholders or private management.

**26.1-06.1-09. Court's seizure order.**

1. The commissioner may file in the district court of this state a petition alleging, with respect to a domestic insurer:
  - a. That grounds exist which justify a court order for a formal delinquency proceeding against an insurer under this chapter;
  - b. That the interests of policyholders, creditors, or the public will be endangered by delay; and
  - c. The contents of an order deemed necessary by the commissioner.
2. Upon a filing under subsection 1, the court may issue forthwith, ex parte, and without a hearing the requested order which shall direct the commissioner to take possession and control of all or a part of the property, books, accounts, documents, and other records of an insurer, and of the premises occupied by it for transaction of its business; and, until further order of the court, enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from the transaction of its business except with the written consent of the commissioner.
3. The court shall specify in the order the duration of the order which shall be such time as the court deems necessary for the commissioner to ascertain the condition of the insurer. On motion of either party or on its own motion, the court may from time to time hold such hearings as it deems necessary after such notice as it deems appropriate, and may modify the terms or duration of the seizure order. The court shall vacate the seizure order if the commissioner fails to commence a formal proceeding under this chapter after having had a reasonable opportunity to do so. An order of the court pursuant to a formal proceeding under this chapter shall ipso facto vacate the seizure order.

4. Entry of a seizure order under this section does not constitute an anticipatory breach of any contract of the insurer.
5. An insurer subject to an ex parte order under this section may petition the court at any time after the issuance of the order for a hearing and review of the order. The court shall hold a hearing and review not more than fifteen days after the request. A hearing under this subsection may be held privately in chambers and it must be so held if the insurer proceeded against so requests.
6. If, at any time after the issuance of a seizure order under this section, it appears to the court that any person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given. An order that notice be given does not stay the effect of any order previously issued by the court.

**26.1-06.1-10. Confidentiality of hearings.**

In all proceedings and judicial reviews thereof under section 26.1-06.1-09, all records of the insurer, other documents, and all insurance department files and court records and papers, so far as they pertain to or are a part of the record of the proceedings, must be and remain confidential except as is necessary to obtain compliance therewith, unless and until the district court, after hearing arguments from the parties in chambers, orders otherwise or unless the insurer requests that the matter be made public. Until such court order, all papers filed with the clerk of the district court must be held by the clerk in a confidential file.

**26.1-06.1-11. Grounds for rehabilitation.**

The commissioner may apply by petition to the district court for an order authorizing the rehabilitation of a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds:

1. The insurer is in such condition that the further transaction of business would be hazardous financially to its policyholders, creditors, or the public.
2. There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration, or diversion of the insurer's assets, forgery, or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that if established would endanger assets in an amount threatening the solvency of the insurer.
3. The insurer has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person, if the person has been found after notice and hearing by the commissioner to be dishonest or untrustworthy in a way affecting the insurer's business.
4. Control of the insurer, whether by stock ownership or otherwise, and whether direct or indirect, is in a person or persons found after notice and hearing to be untrustworthy.
5. Any person, whether an officer, manager, general agent, director, trustee, employee, or other person, who in fact has executive authority in the insurer, has refused to be examined under oath by the commissioner concerning its affairs, whether in this state or elsewhere.
6. After demand by the commissioner pursuant to sections 26.1-03-19.1 through 26.1-03-19.7, or pursuant to this chapter, the insurer has failed to promptly make available for examination any of its own property, books, accounts, documents, or other records, or those of any subsidiary or related company within the control of the insurer, or those of any person having executive authority in the insurer so far as they pertain to the insurer.
7. Without first obtaining the written consent of the commissioner, the insurer has transferred, or attempted to transfer, in a manner contrary to chapter 26.1-10 or 26.1-07, substantially its entire property or business, or has entered into any other transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.
8. The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, or sequestrator or similar

fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this state, and the appointment has been made or is imminent, and the appointment might remove the insurer or its property from the jurisdiction of this state, or might prejudice orderly delinquency proceedings under this chapter.

9. Within the previous four years the insurer has willfully violated its charter or articles of incorporation, its bylaws, any insurance law of this state, or any valid order of the commissioner.
10. The insurer has failed to pay within sixty days after due date any obligation to any state or any subdivision thereof or any judgment entered in any state, if the court in which the judgment was entered had jurisdiction over the subject matter except that the nonpayment is not a ground until sixty days after any good-faith effort by the insurer to contest the obligation has been terminated, whether it is before the commissioner or in the courts, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full.
11. The insurer has failed to file its annual report or other financial report required by statute within the time allowed by law and, after written demand by the commissioner, has failed to immediately respond with an adequate explanation.
12. The board of directors or the holders of a majority of the shares entitled to vote, or a majority of those individuals entitled to the control of those entities, request or consent to rehabilitation under this chapter.
13. Has been found after examination that, in the case of a stock insurance company, its minimum basic paid-in capital required by section 26.1-05-04 is impaired, or that, in the case of a domestic mutual insurance company, its surplus required by sections 26.1-12-08 and 26.1-12-10 is impaired.

#### **26.1-06.1-12. Rehabilitation orders.**

1. An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in this state, shall appoint the commissioner and successor commissioners in office the rehabilitator, and shall direct the rehabilitator forthwith to take possession of the assets of the insurer and to administer them under the general supervision of the court. The filing or recording of the order with the recorder, unless the board of county commissioners designates a different official, of the county in which the principal business of the company is conducted, or the county in which its principal office or place of business is located, imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder or designated official. The order to rehabilitate the insurer shall by operation of law vest title to all assets of the insurer in the rehabilitator.
2. Any order issued under this section must require accounting to the court by the rehabilitator. Accounting must be at such intervals as the court specifies in its order, but no less frequently than semiannually. Each accounting must include a report concerning the rehabilitator's opinion as to the likelihood that a plan under subsection 4 of section 26.1-06.1-13 will be prepared by the rehabilitator and the timetable for doing so.
3. Entry of an order of rehabilitation does not constitute an anticipatory breach of any contracts of the insurer nor is it grounds for retroactive revocation or retroactive cancellation of any contracts of the insurer, unless such revocation or cancellation is done by the rehabilitator pursuant to section 26.1-06.1-13.

#### **26.1-06.1-13. Powers and duties of the rehabilitator.**

1. The commissioner as rehabilitator may appoint one or more special deputies, who shall have all the powers and responsibilities of the rehabilitator granted under this section, and the commissioner may employ such counsel, clerks, and assistants as deemed necessary. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings must be fixed by the commissioner, with the approval of the court and

must be paid out of the funds or assets of the insurer. The commissioner, as rehabilitator, may, with the approval of the court, appoint an advisory committee of policyholders, claimants, or other creditors, including guaranty associations, should such a committee be deemed necessary. The committee shall serve at the pleasure of the commissioner and shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature may be appointed by the commissioner or the court in rehabilitation proceedings conducted under this chapter.

2. In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the insurance department. Any amounts so advanced for expenses of administration must be repaid to the commissioner for the use of the insurance department out of the first available money of the insurer.
3. The rehabilitator may take such action deemed necessary or appropriate to reform and revitalize the insurer. The rehabilitator shall have all the powers of the directors, officers, and managers, whose authority must be suspended, except as they are redelegated by the rehabilitator. The rehabilitator shall have full power to direct and manage, to hire, and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.
4. If it appears to the rehabilitator that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, insurance producer, employee, or other person, the rehabilitator may pursue all appropriate legal remedies on behalf of the insurer.
5. If it is determined that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, the rehabilitator shall prepare a plan to effect such changes. Upon application of the rehabilitator for approval of the plan, and after such notice and hearings as the court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section must be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the company, if all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies, for such period, and to such an extent as may be necessary.
6. The rehabilitator shall have the power under sections 26.1-06.1-25 and 26.1-06.1-26 to avoid fraudulent transfers.

#### **26.1-06.1-14. Actions by and against rehabilitator.**

1. Whenever any action or proceeding in which the insurer is a party, or is obligated to defend a party, is pending at the time a rehabilitation order against the insurer is entered, the court before which the action or proceeding is pending shall stay the action or proceeding for ninety days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. The rehabilitator shall take such action respecting the pending litigation as deemed necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The rehabilitator shall immediately consider all litigation pending outside this state and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer.
2. No statute of limitations or defense of laches runs with respect to any action by or against an insurer between the filing of a petition for appointment of a rehabilitator for that insurer and the order granting or denying that petition. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the order of rehabilitation is entered or the petition is denied. The rehabilitator may, upon an order for rehabilitation, within one



year or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered.

3. Any guaranty association or foreign guaranty association covering life or health insurance or annuities shall have standing to appear in any court proceeding concerning the rehabilitation of a life or health insurer if such association is or may become liable to act as a result of the rehabilitation.

#### **26.1-06.1-15. Termination of rehabilitation.**

1. Whenever the commissioner believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public, or would be futile, the commissioner may petition the district court for an order of liquidation. A petition under this subsection has the same effect as a petition under section 26.1-06.1-16. The district court shall permit the directors of the insurer to take such actions as are reasonably necessary to defend against the petition and may order payment from the estate of the insurer of such costs and other expenses of defense as justice may require.
2. The protection of the interests of insureds, claimants, and the public requires the timely performance of all insurance policy obligations. If the payment of policy obligations is suspended in substantial part for a period of six months at any time after the appointment of the rehabilitator and the rehabilitator has not filed an application for approval of a plan under subsection 4 of section 26.1-06.1-13, the rehabilitator shall petition the court for an order of liquidation on grounds of insolvency.
3. The rehabilitator may at any time petition the district court for an order terminating rehabilitation of an insurer. The court shall also permit the directors of the insurer to petition the court for an order terminating rehabilitation of the insurer and may order payment from the estate of the insurer of such costs and other expenses of such petition as justice may require. If the district court finds that rehabilitation has been accomplished and that grounds for rehabilitation under section 26.1-06.1-11 no longer exist, it shall order that the insurer be restored to possession of its property and the control of the business. The district court may also make that finding and issue that order at any time upon its own motion.

#### **26.1-06.1-16. Grounds for liquidation.**

The commissioner may petition the district court for an order directing the liquidation of a domestic insurer or an alien insurer domiciled in this state on the basis:

1. Of any ground for an order of rehabilitation as specified in section 26.1-06.1-11, whether or not there has been a prior order directing the rehabilitation of the insurer;
2. That the insurer is insolvent; or
3. That the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.

#### **26.1-06.1-17. Liquidation orders.**

1. An order to liquidate the business of a domestic insurer must appoint the commissioner and successor commissioners in office as liquidator and must direct the liquidator forthwith to take possession of the assets of the insurer and to administer them under the general supervision of the court. The liquidator must be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the recorder, unless the board of county commissioners designates a different official, of the county in which its principal office or place of business is located or, in the case of real estate, with the recorder of the county where the property is located, imparts the same notice as a

- deed, bill of sale, or other evidence of title duly filed or recorded with that recorder or designated official.
2. Upon issuance of the order, the rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate become fixed as of the date of entry of the order of liquidation, except as provided in sections 26.1-06.1-18 and 26.1-06.1-36.
  3. An order to liquidate the business of an alien insurer domiciled in this state must be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States must be the only assets and business included therein.
  4. At the time of petitioning for an order of liquidation, or at any time thereafter, the commissioner, after making appropriate findings of an insurer's insolvency, may petition the court for a judicial declaration of such insolvency. After providing such notice and hearing as it deems proper, the court may make the declaration.
  5. Any order issued under this section must require financial reports to the court by the liquidator. Financial reports must include the assets and liabilities of the insurer and all funds received or disbursed by the liquidator during the current period. Financial reports must be filed within one year of the liquidation order and at least annually thereafter.
  6.
    - a. Within five days of July 7, 1991, or, if later, within five days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the defendant company's policy claims obligations, including the duty to defend insureds under liability insurance policies, during the pendency of an appeal. Such plan must provide for the continued performance and payment of policy claims obligations in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation, including the ground of insolvency. In the event the defendant company's financial condition will not, in the judgment of the commissioner, support the full performance of all policy claims obligations during the appeal pendency period, the plan may prefer the claims of certain policyholders and claimants over creditors and interested parties as well as other policyholders and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such policyholders and claimants. The court shall examine the plan submitted by the commissioner and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. No action may lie against the commissioner, or any deputies, agents, clerks, assistants, or attorneys employed or appointed by the commissioner by any party based on preference in an appeal pendency plan approved by the court.
    - b. The appeal pendency plan does not supersede or affect the obligations of any insurance guaranty association.
    - c. Any such plans must provide for equitable adjustments to be made by the liquidator to any distributions of assets to guaranty associations, in the event that the liquidator pays claims from assets of the estate, which would otherwise be the obligations of any particular guaranty association but for the appeal of the order of liquidation, such that all guaranty associations equally benefit on a pro rata basis from the assets of the estate. Further, in the event an order of liquidation is set aside upon any appeal, the company may not be released from delinquency proceedings unless and until all funds advanced by any guaranty association, including reasonable administrative expenses in connection therewith relating to obligations of the company, are repaid in full, together with interest at the judgment rate of interest or unless an arrangement for repayment thereof has been made with the consent of all applicable guaranty associations.

**26.1-06.1-18. Continuance of coverage.**

1. All policies, including bonds and other noncancelable business, other than life or health insurance or annuities, in effect at the time of issuance of an order of liquidation continue in force only until the earlier of:
  - a. Thirty days from the date of entry of the liquidation orders;
  - b. The expiration of the policy coverage;
  - c. The date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy;
  - d. The liquidator has effected a transfer of the policy obligation pursuant to subdivision i of subsection 1 of section 26.1-06.1-20; or
  - e. The date proposed by the liquidator and approved by the court to cancel coverage.
2. An order of liquidation under section 26.1-06.1-17 terminates coverages at the time specified in subsection 1 for purposes of any other statute.
3. Policies of life or health insurance or annuities continue in force for such period and under such terms as provided for by any applicable guaranty association or foreign guaranty association.
4. Policies of life or health insurance or annuities, or any period or coverage of such policies, not covered by a guaranty association or foreign guaranty association terminate under subsections 1 and 2.

**26.1-06.1-19. Dissolution of insurer.**

The commissioner may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this state at the time of application for a liquidation order. The court shall order dissolution of the corporation upon petition by the commissioner upon or after the granting of a liquidation order. If the dissolution has not previously been ordered, it shall be effected by operation of law upon the discharge of the liquidator if the insurer is insolvent but may be ordered by the court upon the discharge of the liquidator if the insurer is under a liquidation order for some other reason.

**26.1-06.1-20. Powers of liquidator.**

1. The liquidator shall have the power:
  - a. To appoint a special deputy or deputies and to determine their reasonable compensation. The special deputy shall have all powers of the liquidator granted by this section.
  - b. To employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as the liquidator may deem necessary to assist in the liquidation.
  - c. To appoint, with the approval of the court, an advisory committee of policyholders, claimants, or other creditors including guaranty associations should such a committee be deemed necessary. The committee shall serve without compensation other than reimbursement for reasonable travel and per diem living expenses. No other committee of any nature may be appointed by the commissioner or the court in liquidation proceedings conducted under this chapter.
  - d. To fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers, and consultants with the approval of the court.
  - e. To pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of any appropriation for the maintenance of the insurance department. Any amounts so advanced for

- expenses of administration must be repaid to the commissioner for the use of the insurance department out of the first available moneys of the insurer.
- f. To hold hearings, to subpoena witnesses to compel their attendance, to administer oaths, to examine any person under oath, and to compel any person to subscribe to their testimony after it has been correctly reduced to writing; and in connection therewith to require the production of any books, papers, records, or other documents the liquidator deems relevant to the inquiry.
  - g. To audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer.
  - h. To collect all debts and moneys due and claims belonging to the insurer, wherever located, and for the following purposes:
    - (1) To institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;
    - (2) To do such other acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon such terms and conditions as deemed best; and
    - (3) To pursue any creditor's remedies available to enforce the liquidator's claims.
  - i. To conduct public and private sales of the property of the insurer.
  - j. To use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 26.1-06.1-41.
  - k. To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. The liquidator shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation.
  - l. To borrow money on the security of the insurer's assets or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation. Any such funds borrowed may be repaid as an administrative expense and have priority over any other claims in class one under the priority of distribution.
  - m. To enter into such contracts as are necessary to carry out the order to liquidate, and to affirm or disavow any contracts to which the insurer is a party.
  - n. To continue to prosecute and to institute in the name of the insurer or in the name of the liquidator, any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the liquidator deems unprofitable to pursue further. If the insurer is dissolved under section 26.1-06.1-19, the liquidator shall have the power to apply to any court in this state or elsewhere for leave to substitute the liquidator for the insurer as plaintiff.
  - o. To prosecute any action which may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer, or any other person.
  - p. To remove any or all records and property of the insurer to the offices of the commissioner or to another place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their statutory obligations.
  - q. To deposit in one or more banks in this state any amounts of money required for meeting current administration expenses and dividend distributions.
  - r. To invest all moneys not currently needed, unless the court orders otherwise.
  - s. To file any necessary documents for record in the office of any recorder or record office in this state or elsewhere where property of the insurer is located.

- t. To assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of fraud, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations.
  - u. To exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included in section 26.1-06.1-25, 26.1-06.1-26, or 26.1-06.1-27.
  - v. To intervene in any proceeding, wherever instituted, that might lead to the appointment of a receiver or trustee, and to act as the receiver or trustee whenever the appointment is offered.
  - w. To enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states.
  - x. To exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of this chapter.
2. a. If a company placed in liquidation issued liability policies on a claims-made basis, which provided an option to purchase an extended period to report claims, then the liquidator may make available to holders of such policies, for a charge, an extended period to report claims as stated herein. The extended reporting period may be made available only to those insureds who have not secured substitute coverage. The extended period made available by the liquidator begins upon termination of any extended period to report claims in the basic policy and ends at the earlier of the final date for filing of claims in the liquidation proceeding or eighteen months from the order of liquidation.
  - b. The extended period to report claims made available by the liquidator is subject to the terms of the policy to which it relates. The liquidator shall make available such extended period within sixty days after the order of liquidation at a charge to be determined by the liquidator subject to approval of the court. The offer must be deemed rejected unless the offer is accepted in writing and the charge is paid within ninety days after the order of liquidation. No commissions, premium taxes, assessments, or other fees may be due on the charge pertaining to the extended period to report claims.
3. The enumeration of the powers and authority of the liquidator in this section may not be construed as a limitation upon the liquidator, nor does it exclude in any manner the liquidator's right to do such other acts not herein specifically enumerated or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.
  4. Notwithstanding the powers of the liquidator as stated in subsections 1 and 2, the liquidator shall have no obligation to defend claims or to continue to defend claims subsequent to the entry of a liquidation order.

**26.1-06.1-21. Notice to creditors and others.**

1. Unless the 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 and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is doing business;
  - b. By first-class mail to any guaranty association or foreign guaranty association which is or may become obligated as a result of the liquidation;
  - c. By first-class mail to all insurance producers of the insurer;
  - d. By first-class mail to all persons known or reasonably expected to have claims against the insurer including all policyholders, at their last-known address as indicated by the records of the insurer; and

- e. By publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in such other locations as the liquidator deems appropriate.
2. Except as otherwise established by the liquidator with approval of the court, notice to potential claimants under subsection 1 shall require claimants to file with the liquidator their claims together with proper proofs thereof under section 26.1-06.1-35, on or before a date the liquidator shall specify in the notice. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants shall have a duty to keep the liquidator informed of any changes of address.
3.
  - a. Notice under subsection 1 to insurance producers of the insurer and to potential claimants who are policyholders must include, when applicable, notice that coverage by state guaranty associations may be available for all or part of policy benefits in accordance with applicable state guaranty laws.
  - b. The liquidator shall promptly provide to the guaranty associations any information concerning the identities and addresses of the policyholders and their policy coverages in the liquidator's possession or control, and otherwise cooperate with guaranty associations to assist them in providing to the policyholders timely notice of the guaranty associations' coverage of policy benefits, including, as applicable, coverage of claims and continuation or termination of coverages.
4. If notice is given in accordance with this section, the distribution of assets of the insurer under this chapter shall be conclusive with respect to all claimants, whether or not they received notice.

#### **26.1-06.1-22. Duties of agents.**

1. Every agent who receives notice in the form prescribed in section 26.1-06.1-21 that an insurer represented by that agent is the subject of a liquidation order, within thirty days of such notice, shall provide to the liquidator, in addition to the information the agent may be required to provide pursuant to section 26.1-06.1-06, the information in the agent's records related to any policy issued by the insurer through the agent, and, if the agent is a general agent, the information in the general agent's records related to any policy issued by the insurer through a subagent under contract with the agent, including the name and address of the subagent. A policy must be deemed issued through an agent if the agent has a property interest in the expiration of the policy, or if the agent has had possession of a copy of the declarations of the policy at any time during the life of the policy, except when the ownership of the expiration of the policy has been transferred to another.
2. Any agent failing to provide information to the liquidator as required in subsection 1, following a hearing held by the commissioner, may be subject to license suspension and payment of a penalty of not more than one thousand dollars.

#### **26.1-06.1-23. Actions by and against liquidator.**

1. Upon issuance of an order appointing a liquidator of a domestic insurer or of an alien insurer domiciled in this state, no action at law or equity or in arbitration may be brought against the insurer or liquidator, whether in this state or elsewhere, nor may any existing actions be maintained or further presented after issuance of the order. The courts of this state shall give full faith and credit to injunctions against the liquidator or the company or the continuation of existing actions against the liquidator or the company, when the injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states. Whenever, in the liquidator's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, the liquidator may intervene in the action. In any action in which the liquidator intervenes under this section, the liquidator may defend the action at the expense of the estate of the insurer.

2. The liquidator may, upon or after an order for liquidation, within two years or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered. If, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim, or for filing any claim, proof of claim, proof of loss, demand, notice, or the like, or if in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading, or doing any act, and if in any such case the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any action or do any act, required or permitted to the insurer, within a period of one hundred eighty days subsequent to the entry of an order for liquidation, or within such further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.
3. No statute of limitation or defense of laches runs with respect to any action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty days after the petition is denied.
4. Any guaranty association or foreign guaranty association shall have standing to appear in any court proceeding concerning the liquidation of an insurer if the association is or may become liable to act as a result of the liquidation.

**26.1-06.1-24. Collection and list of assets.**

1. As soon as practicable after the liquidation order, but not later than one hundred twenty days thereafter, unless extended by order of the court, the liquidator shall prepare in duplicate a list of the insurer's assets. The list must be amended or supplemented from time to time as the liquidator may determine. One copy must be filed in the office of the recorder, unless the board of county commissioners designates a different official, and one copy must be retained for the liquidator's files. All amendments and supplements must be similarly filed.
2. The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.
3. A submission to the court for disbursement of assets in accordance with section 26.1-06.1-33 fulfills the requirements of subsection 1 of this section.

**26.1-06.1-25. Fraudulent transfers prior to petition.**

1. Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this chapter, which is fraudulent under this section, may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value, and except that any purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.
2. a. A transfer of property other than real property must be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under subsection 3 of section 26.1-06.1-27.

- b. A transfer of real property must be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.
  - c. A transfer which creates an equitable lien may not be deemed to be perfected if there are available means by which a legal lien could be created.
  - d. Any transfer not perfected prior to the filing of a petition for liquidation must be deemed to be made immediately before the filing of the successful petition.
  - e. The provisions of this subsection apply whether or not there are or were creditors who might have obtained any liens or persons who might have become bona fide purchasers.
3. Any transaction of the insurer with a reinsurer must be deemed fraudulent and may be avoided by the receiver under subsection 1 if:
- a. The transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transactions, unless the reinsurer gives a present fair equivalent value for the release; and
  - b. Any part of the transaction took place within one year prior to the date of filing of the petition through which the receivership was commenced.
4. Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection 1 is personally liable therefor and is bound to account to the liquidator.

**26.1-06.1-26. Fraudulent transfer after petition.**

1. After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value. If the transfer is not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation is constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the recorder in the county where any real property in question is located. The exercise by a court of the United States or any state or jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state may not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.
2. After a petition for rehabilitation or liquidation has been filed and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:
- a. A transfer of any of the property of the insurer, other than real property, made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value. If the transfer is not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred.
  - b. A person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property, or any part thereof, to the insurer or upon the insurer's order, with the same effect as if the petition were not pending.
  - c. A person having actual knowledge of the pending rehabilitation or liquidation must be deemed not to act in good faith.
  - d. A person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, no transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator is valid against the liquidator.



3. Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection 1 is personally liable therefor and is bound to account to the liquidator.
4. Nothing in this chapter impairs the negotiability of currency or negotiable instruments.

**26.1-06.1-27. Voidable preferences and liens.**

1. a. A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then such transfers must be deemed preferences if made or suffered within one year before the filing of the successful petition for rehabilitation, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.
  - b. Any preference may be avoided by the liquidator if:
    - (1) The insurer was insolvent at the time of the transfer;
    - (2) The transfer was made within four months before the filing of the petition;
    - (3) The creditor receiving it or to be benefited thereby or the creditor's agent acting with reference thereto had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or
    - (4) The creditor receiving it was an officer, or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer, whether or not that person held such position, or any shareholder holding directly or indirectly more than five percent of any class of any equity security issued by the insurer, or any other person, firm, corporation, limited liability company, association, or aggregation of persons with whom the insurer did not deal at arm's length.
  - c. When the preference is voidable, the liquidator may recover the property or, if it has been converted, the liquidator may recover its value from any person who has received or converted the property; except when a bona fide purchaser or lienor has given less than fair equivalent value, the bona fide purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given by the bona fide purchaser or lienor. If a preference by way of lien or security title is voidable, the court may on due notice order the lien or title to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.
2. a. A transfer of property other than real property must be deemed to be made or suffered when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee.
  - b. A transfer of real property must be deemed to be made or suffered when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee.
  - c. A transfer which creates an equitable lien may not be deemed to be perfected if there are available means by which a legal lien could be created.
  - d. A transfer not perfected prior to the filing of a petition for liquidation must be deemed to be made immediately before the filing of the successful petition.
  - e. The provisions of this subsection apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.
3. a. A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of such proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like

process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

- b. A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of subsection 2, if such consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. Such a lien could not, however, become superior and such a purchase could not create superior rights for the purpose of subsection 2 through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action or ruling.
4. A transfer of property for or on account of a new and contemporaneous consideration, which is deemed under subsection 2 to be made or suffered after the transfer because of delay in perfecting it, does not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan, has the same effect as a transfer for or on account of a new and contemporaneous consideration.
5. If any lien deemed voidable under subdivision b of subsection 1 has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under this chapter which results in a liquidation order, the indemnifying transfer or lien must also be deemed voidable.
6. The property affected by any lien deemed voidable under subsections 1 and 5 must be discharged from the lien, and that property and any of the indemnifying property transferred to or for the benefit of a surety passes to the liquidator, except that the court may on due notice order any such lien to be preserved for the benefit of the estate and the court may direct that such conveyance be executed as may be proper or adequate to evidence the title of the liquidator.
7. The district court shall have summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under this section. Reasonable notice of any hearing in the proceeding must be given to all parties in interest, including the obligee of a releasing bond or other like obligation. When an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien, and if the value is less than the amount for which the property is indemnity or less than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment to the liquidator of its value, as ascertained by the court, within such reasonable times as the court shall fix.
8. The liability of the surety under a releasing bond or other like obligation must be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator, or, when the property is retained under subsection 7, to the extent of the amount paid to the liquidator.
9. If a creditor has been preferred, and afterward in good faith gives the insurer further credit, without security of any kind, for property which becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from the creditor.
10. If an insurer, directly or indirectly, within four months before the filing of a successful petition for liquidation under this chapter, or at any time in contemplation of a proceeding to liquidate it, pays money or transfers property to an attorney at law for services rendered or to be rendered, the transactions may be examined by the court

on its own motion or must be examined by the court on petition of the liquidator and must be held valid only to the extent of the reasonable amount to be determined by the court, and the excess may be recovered by the liquidator for the benefits of the estate provided that when the attorney is in a position of influence in the insurer or an affiliate thereof, payment of any money or the transfer of any property to the attorney at law for services rendered or to be rendered must be governed by the provision of paragraph 4 of subdivision b of subsection 1.

11. a. Every officer, manager, employee, shareholder, member, subscriber, attorney, or any other person acting on behalf of the insurer who knowingly participates in giving any preference when that person has reasonable cause to believe the insurer is insolvent or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. It is permissible to infer that there is a reasonable cause to believe the insurer is insolvent or is about to become insolvent if the transfer was made within four months prior to the date of filing of the successful petition for liquidation.
- b. Every person receiving any property from the insurer or the benefit thereof as a preference voidable under subsection 1 is personally liable therefor and is bound to account to the liquidator.
- c. Nothing in this subsection prejudices any other claim by the liquidator against any person.

**26.1-06.1-28. Claims of holders of void or voidable rights.**

1. No claims of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance voidable under this chapter may be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim may not be allowed unless the money is paid or the property is delivered to the liquidator within thirty days from the date of the entering of the final judgment, except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.
2. A claim allowable under subsection 1 by reason of the avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or encumbrance, may be filed as an excused last filing under section 26.1-06.1-34 if filed within thirty days from the date of the avoidance, or within the further time allowed by the court under subsection 1.

**26.1-06.1-29. Setoffs.**

1. Mutual debts or mutual credits, whether arising out of one or more contracts between the insurer and another person in connection with any action or proceeding under this chapter, must be set off and the balance only may be allowed or paid, except as provided in subsection 2 and section 26.1-06.1-32.
2. No setoff may be allowed in favor of any person when:
  - a. The obligation of the insurer to the person would not at the date of filing of a petition for receivership entitle the person to share as a claimant in the assets of the insurer;
  - b. The obligation of the insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff;
  - c. The obligation of the insurer is owed to an affiliate of the person, or any other entity or association other than the person;
  - d. The obligation of the person is owed to an affiliate of the insurer, or any other entity or association other than the insurer;
  - e. The obligation of the person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or

- f. The obligations between the person and the insurer arise from business when either the person or the insurer has assumed risks and obligations from the other party and has ceded back to that party substantially the same risks and obligations.
3. These amendments become effective from the date of enactment and apply to all contracts entered into, renewed, extended, or amended on or after that date, and to debts or credits arising from any business written or transactions occurring after the effective date pursuant to any such contract. For purposes of this section, any change in the terms of, or consideration for, any such contract is deemed an amendment.

**26.1-06.1-30. Assessments.**

1. As soon as practicable but not more than two years from the date of an order of liquidation under section 26.1-06.1-17 of an insurer issuing assessable policies, the liquidator shall make a report to the court setting forth:
  - a. The reasonable value of the assets of the insurer;
  - b. The insurer's probable total liabilities;
  - c. The probable aggregate amount of the assessment necessary to pay all claims of creditors and expenses in full, including expenses of administration and costs of collecting the assessment; and
  - d. A recommendation as to whether or not an assessment should be made and in what amount.
2.
  - a. Upon the basis of the report provided in subsection 1, including any supplements and amendments thereto, the district court may levy one or more assessments against all members of the insurer who are subject to assessment.
  - b. Subject to any applicable legal limits on assessability, the aggregate assessment must be for the amount that the sum of the probable liabilities, the expenses of administration, and the estimated cost of collection of the assessment, exceeds the value of existing assets, with due regard being given to assessments that cannot be collected economically.
3. After levy of assessment under subsection 2, the liquidator shall issue an order directing each member who has not paid the assessment pursuant to the order, to show cause why the liquidator should not pursue a judgment therefor.
4. The liquidator shall give notice of the order to show cause by publication and by first-class mail to each member liable thereunder mailed to the member's last-known address as it appears on the insurer's records, at least twenty days before the return day of the order to show cause.
5.
  - a. If a member does not appear and serve duly verified objections upon the liquidator on or before the return day of the order to show cause under subsection 3, the court shall make an order adjudging the member liable for the amount of the assessment against the member pursuant to subsection 3, together with costs, and the liquidator shall have a judgment against the member therefor.
  - b. If, on or before the return day, the member appears and serves duly verified objections upon the liquidator, the commissioner may hear and determine the matter or may appoint a referee to hear it and make such order as the facts warrant. In the event that the commissioner determines that such objections do not warrant relief from assessment, the member may request the court to review the matter and vacate the order to show cause.
6. The liquidator may enforce any order or collect any judgment under subsection 5 by any lawful means.

**26.1-06.1-31. Reinsurer's liability.**

1. The amount recoverable by the liquidator from reinsurers may not be reduced as a result of the delinquency proceedings unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance must be payable under one or more contracts reinsured by the assuming insurer on

the basis of reported claims allowed by the liquidation court or proof of payment of the claim by a guaranty association without diminution because of the insolvency of the ceding insurer. The payments must be made directly to the ceding insurer or to the ceding insurer's domiciliary liquidator except if:

- a. The contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or
  - b. The assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to such payees.
2. Notwithstanding subsection 1, if a life and health insurance guaranty association has elected to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, the reinsurer's liability to pay covered reinsured claims continues under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such reinsured claims may only be made by the reinsurer pursuant to the direction of the guaranty association or the guaranty association's designated successor. Any payment made at the direction of the guaranty association or the guaranty association's designated successor by the reinsurer will discharge the reinsurer of all further liability to any other party for the claim payment.

**26.1-06.1-32. Recovery of premiums owed.**

1. a. An insurance producer, premium finance company, or any other person, other than the insured, responsible for the payment of a premium is obligated to pay any unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator shall also have the right to recover from such person any part of an unearned premium that represents commission of such person. Credits or setoffs, or both, may not be allowed to an insurance producer or premium finance company for any amounts advanced to the insurer by the insurance producer or premium finance company on behalf of, but in the absence of a payment by, the insured.
  - b. An insured is obligated to pay any unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer.
2. Upon satisfactory evidence of a violation of this section, the commissioner may pursue either one or both of the following courses of action:
- a. Suspend or revoke or refuse to renew the licenses of such offending party or parties.
  - b. Impose a penalty of not more than one thousand dollars for each and every act in violation of this section by said party or parties.
3. Before taking any action as set forth in subsection 2, the commissioner shall give written notice to the person, company, association, or exchange accused of violating the law, stating specifically the nature of the alleged violation and fixing a time and place, at least ten days thereafter, when a hearing on the matter must be held. After the hearing, or upon failure of the accused to appear at the hearing, if a violation is found to have been made, the commissioner shall impose any of the penalties under subsection 2 as deemed advisable.
4. When the commissioner takes action in any or all of the ways set out in subsection 2, the party aggrieved may appeal from said action to the district court.

**26.1-06.1-33. Domiciliary liquidator's proposal to distribute assets.**

1. Within one hundred twenty days of a final determination of insolvency of an insurer by the district court, the liquidator shall make application to the court for approval of a proposal to disburse assets out of marshalled assets, from time to time as the assets become available, to a guaranty association or foreign guaranty association having obligations because of the insolvency. If the liquidator determines that there are

insufficient assets to disburse, the application required by this section must be considered satisfied by a filing by the liquidator stating the reasons for this determination.

2. The proposal to disburse assets referred to in subsection 1 must at least include provisions for:
  - a. Reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors, to the extent of the value of the security held, and the payment of claims falling within the priorities established in section 26.1-06.1-41, classes one and two;
  - b. Disbursement of the assets marshalled to date and subsequent disbursement of assets as they become available;
  - c. Equitable allocation of disbursements to each of the guaranty associations and foreign guaranty associations entitled thereto;
  - d. The securing by the liquidator from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the liquidator such assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in section 26.1-06.1-41 in accordance with such priorities. No bond may be required of any such association; and
  - e. A full report to be made by each association to the liquidator accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets, and any other matter as the court may direct.
3. The liquidator's proposal shall provide for disbursements to the associations in amounts estimated at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the liquidator, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made or to be made by the association, then disbursements must be in the amount of available assets.
4. The liquidator's proposal shall, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to any guaranty association or any foreign guaranty association covering life or health insurance or annuities or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the acts creating such associations.
5. Notice of such application must be given to the association in and to the commissioners of insurance of each of the states. Any such notice must be deemed to have been given when deposited in the United States certified mail, first-class postage prepaid, at least thirty days prior to submission of the application to the court. Action on the application may be taken by the court provided the above-required notice has been given and provided further that the liquidator's proposal complies with subdivisions a and b of subsection 2.

#### **26.1-06.1-34. Filing of claims.**

1. Proof of all claims must be filed with the liquidator in the form required by section 26.1-06.1-35 on or before the last day for filing specified in the notice required under section 26.1-06.1-21, except that proof of claims for cash surrender values or other investment values in life insurance and annuities need not be filed unless the liquidator expressly so requires.
2. The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if the claimant did not file late, to the extent that any such payment will not prejudice the orderly administration of the liquidation, under any of the following circumstances:
  - a. The existence of the claim was not known to the claimant and the claim was filed promptly once the claim became known to the claimant.

- b. A transfer to a creditor was avoided under sections 26.1-06.1-25, 26.1-06.1-26, and 26.1-06.1-27, or was voluntarily surrendered under section 26.1-06.1-28, and the filing satisfies the conditions of section 26.1-06.1-28.
  - c. The valuation under section 26.1-06.1-40, of security held by a secured creditor shows a deficiency, which is filed within thirty days after the valuation.
3. The liquidator shall permit late filing claims to share in distribution, whether past or future, as if the claims were not filed late, if the claims are claims of a guaranty association or foreign guaranty association for reimbursement of covered claims paid or expenses incurred, or both, subsequent to the last day for filing when such payments were made and expenses incurred as provided by law.
  4. The liquidator may consider any claim filed late which is not covered by subsection 2, and permit it to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late filing claimant shall receive, at each distribution, the same percentage of the amount allowed on the late filed claim as is then being paid to claimants of any lower priority. This must continue until the late filed claim has been paid in full.

**26.1-06.1-35. Proof of claim.**

1. Proof of claim must consist of a statement signed by the claimant that includes all of the following that are applicable:
  - a. The particulars of the claim including the consideration given for it;
  - b. The identity and amount of the security on the claim;
  - c. The payments made on the debt, if any;
  - d. That the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim;
  - e. Any right of priority of payment or other specific right asserted by the claimants;
  - f. A copy of the written instrument which is the foundation of the claim; and
  - g. The name and address of the claimant and the attorney who represents the claimant, if any.
2. No claim need be considered or allowed if it does not contain all the information in subsection 1 which may be applicable. The liquidator may require that a prescribed form be used, and may require that other information and documents be included.
3. At any time the liquidator may request the claimant to present information or evidence supplementary to that required under subsection 1 and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.
4. No judgment or order against an insured or the insurer entered after the date of filing of a successful petition for liquidation, and no judgment or order against an insured or the insurer entered at any time by default or by collusion need be considered as evidence of liability or of the amount of damages. No judgment or order against an insured or the insurer entered within four months before the filing of the petition need be considered as evidence of liability or of the amount of damages.
5. All claims of a guaranty association or foreign guaranty association must be in such form and contain such substantiation as may be agreed to by the association and the liquidator.

**26.1-06.1-36. Special claims.**

1. The claim of a third party which is contingent only on first obtaining a judgment against the insured must be considered and allowed as if there were no such contingency.
2. A claim may be allowed even if contingent, if it is filed in accordance with section 26.1-06.1-34. It may be allowed and may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.
3. Claims that are due except for the passage of time must be treated as absolute claims are treated, except that such claims may be discounted at the legal rate of interest.

4. Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of any order of rehabilitation or liquidation under section 26.1-06.1-12 or 26.1-06.1-17.

**26.1-06.1-37. Special provisions for third-party claims.**

1. Whenever any third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the liquidator.
2. Whether or not the third party files a claim, the insured may file a claim in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within sixty days after mailing of the notice required by section 26.1-06.1-21, whichever is later, the insured is an unexcused late filer.
3. The liquidator shall make recommendations to the court under section 26.1-06.1-41, for the allowance of an insured's claim under subsection 2 after consideration of the probable outcome of any pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense. After allowance by the court, the liquidator shall withhold any dividends payable on the claim, pending the outcome of litigation and negotiation with the insured. Whenever it seems appropriate, the liquidator shall reconsider the claim on the basis of additional information and amend recommendations made to the court. The insured must be afforded the same notice and opportunity to be heard on all changes in the recommendation as in its initial determination. The court may amend its allowance as it deems appropriate. As claims against the insured are settled or barred, the insured must be paid from the amount withheld the same percentage dividend as was paid on other claims of like property, based on the lesser of:

- a. The amount actually recovered from the insured by action or paid by agreement plus the reasonable costs and expenses of defense; or
- b. The amount allowed on the claims by the court.

After all claims are settled or barred, any sum remaining from the amount withheld must revert to the undistributed assets of the insurer. Delay in final payment under this subsection is not a reason for unreasonable delay of final distribution and discharge of the liquidator.

4. If several claims founded upon one policy are filed, whether by third parties or as claims by the insured under this section, and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed must be reduced in the same proportion so that the total equals the policy limit. Claims by the insured must be evaluated as in subsection 3. If any insured's claim is subsequently reduced under subsection 3, the amount thus freed must be apportioned ratably among the claims which have been reduced under this subsection.
5. No claim may be presented under this section if it is or may be covered by any guaranty association or foreign guaranty association.

**26.1-06.1-38. Disputed claims.**

1. When a claim is denied in whole or in part by the liquidator, written notice of the determination must be given to the claimant or the claimant's attorney by first-class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file objections to the determination with the liquidator. If no such filing is made, the claimant may not further object to the determination.
2. Whenever objections are filed with the liquidator and the liquidator does not alter the denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first-class mail to the claimant or the claimant's attorney and to any other persons directly affected, not less than ten nor more than thirty days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee who shall submit findings of fact along with a recommendation.



#### **26.1-06.1-39. Claims of surety.**

Whenever a creditor whose claim against an insurer is secured, in whole or in part, by the undertaking of another person, fails to prove and file that claim, the other person may do so in the creditor's name, and must be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that the other person discharges the undertaking. In the absence of an agreement with the creditor to the contrary, the other person is not entitled to any distribution; however, until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor must be held by the creditor in trust for such other person. The term "other person" as used in this section is not intended to apply to a guaranty association or foreign guaranty association.

#### **26.1-06.1-40. Secured creditor's claims.**

1. The value of any security held by a secured creditor must be determined in one of the following ways, as the court may direct:
  - a. By converting the same into money according to the terms of the agreement pursuant to which the security was delivered to such creditors; or
  - b. By agreement, arbitration, compromise, or litigation between the creditor and the liquidator.
2. The determination must be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount so determined must be credited upon the secured claim, and any deficiency must be treated as an unsecured claim. If the claimant surrenders the security to the liquidator, the entire claim must be allowed as if unsecured.

#### **26.1-06.1-41. 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 herein set forth. Every claim in each class must be paid in full or adequate funds retained for such 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 must be:

1. Class 1. The costs and expenses of administration during rehabilitation and liquidation, including the following:
  - a. The actual and necessary costs of preserving or recovering the assets of the insurer;
  - b. Compensation for all authorized services rendered in the rehabilitation and liquidation;
  - c. Any necessary filing fees;
  - d. The fees and mileage payable to witnesses;
  - e. Authorized reasonable attorney's fees and other professional services rendered in the rehabilitation and liquidation; and
  - f. The reasonable expenses of a guaranty association or foreign guaranty association for unallocated loss adjustment expenses.
2. Class 2. All claims under policies including such claims of the federal or any state or local government for losses incurred, ("loss claims") including third-party claims and all claims of a guaranty association or foreign guaranty association. All 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 any loss, indemnification for which is provided by other benefits, or advantages recovered by the claimant, may not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to employees may be treated as a gratuity.
3. Class 3. Claims of the federal government not included in class 2.

4. Class 4. Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the petition for liquidation or if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Principal officers and directors are not entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. Such priority must be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.
  5. Class 5. Claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors, including claims of ceding and assuming companies in their capacity as such.
  6. Class 6. Claims of any state or local government except those paid under class 2. Claims, including those of any state or local governmental body for a penalty or forfeiture, may be 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 occasioned thereby. The remainder of the claims must be postponed to the class of claims under subsection 9.
  7. Class 7. Claims filed late or any other claims other than claims under subsections 8 and 9.
  8. Class 8. Surplus or contribution notes, or similar obligations, and premium funds on assessable policies. Payment to members of domestic mutual insurance companies must be limited in accordance with law.
  9. Class 9. The claims of shareholders or other owners in their capacity as shareholders.
- If any provision of this section or the application of any provision of this section to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section, and to this end the provisions are severable.

**26.1-06.1-42. Liquidator's recommendations to the court.**

1. The liquidator shall review all claims duly filed in the liquidation and shall make such further investigation as deemed necessary. The liquidator may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court except when the liquidator is required by law to accept claims as settled by any person or organization, including any guaranty association or foreign guaranty association. Unresolved disputes must be determined under section 26.1-06.1-38. As soon as practicable, the liquidator shall present to the court a report of the claims against the insurer along with the recommendations of the liquidator. The report must include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the liquidator shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment value and the amounts owed.
2. The court may approve, disapprove, or modify the report on claims by the liquidator. The reports which are not modified by the court within a period of sixty days following submission by the liquidator must be treated by the liquidator as allowed claims, subject thereafter to later modification or to rulings made by the court pursuant to section 26.1-06.1-38. No claim under a policy of insurance may be allowed for an amount in excess of the applicable policy limits.

**26.1-06.1-43. Distribution of assets.**

Under the direction of the court, the liquidator shall pay distributions in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

**26.1-06.1-44. Unclaimed and withheld funds.**

1. All unclaimed funds subject to distribution remaining under the liquidator's control when the liquidator is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown or cannot be found, must be deposited with the state treasurer, and must be paid without interest except in accordance with section 26.1-06.1-41 to the person entitled thereto or the person's legal representative upon proof satisfactory to the state treasurer of the person's right thereto. Any amount on deposit not claimed within six years from the discharge of the liquidator must be deemed to have been abandoned and must be escheated without formal escheat proceedings and be deposited with the general fund.
2. All funds withheld under section 26.1-06.1-36 and not distributed must, upon discharge of the liquidator, be deposited with the state treasurer and paid out in accordance with section 26.1-06.1-41. Any sums remaining which under section 26.1-06.1-41 would revert to the undistributed assets of the insurer must be transferred to the state treasurer and become the property of the state under subsection 1, unless the commissioner petitions the court to reopen the liquidation under section 26.1-06.1-46.

**26.1-06.1-45. Termination of proceedings.**

1. When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer any remaining funds that are uneconomic to distribute, as may be deemed appropriate.
2. Any other person may apply to the court at any time for an order under subsection 1. If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney's fee.

**26.1-06.1-46. Reopening liquidation.**

After the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may at any time petition the district court to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, it shall so order.

**26.1-06.1-47. Disposition of records during and after termination of liquidation.**

Whenever it appears to the commissioner that the records of any liquidated insurer or any insurer in the process of liquidation are no longer useful, the commissioner may recommend to the court and the court direct which records should be retained for future reference and which records should be destroyed.

**26.1-06.1-48. External audit of the receiver's books.**

The district court may, as it deems necessary, cause audits to be made of the books of the commissioner relating to any receivership established under this chapter, and a report of each audit must be filed with the commissioner and with the court. The books, records, and other documents of the receivership must be made available to the auditor at any time without notice. The expense of each audit must be considered a cost of administration of the receivership.

**26.1-06.1-49. Conservation of property of foreign or alien insurers found in this state.**

1. If a domiciliary liquidator has not been appointed, the commissioner may apply to the district court by verified petition for an order directing the commissioner to act as conservator to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any one or more of the following grounds:
  - a. Any of the grounds in section 26.1-06.1-11;
  - b. That any of its property has been sequestered by official action in its domiciliary state, or in any other state;

- c. That enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent; and
  - d.
    - (1) That its certificate of authority to do business in this state has been revoked or that none was ever issued; and
    - (2) That there are residents of this state with outstanding claims or outstanding policies.
2. When an order is sought under subsection 1, the court shall cause the insurer to be given such notice and time to respond thereto as is reasonable under the circumstances.
3. The court may issue the order in whatever terms it deems appropriate. The filing or recording of the order with the recorder, unless the board of county commissioners designates a different official, of the county in which the principal business of the company is located, imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder, or designated official.
4. The conservator may at any time petition for and the court may grant an order under section 26.1-06.1-50 to liquidate assets of a foreign or alien insurer under conservation, or, if appropriate, an order to be appointed ancillary receiver under section 26.1-06.1-52.
5. The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also make such finding and issue such order at any time upon motion of any interested party, but if the motion is denied, all costs must be assessed against the moving party.

**26.1-06.1-50. Liquidation of property of foreign or alien insurers found in this state.**

1. If no domiciliary receiver has been appointed, the commissioner may apply to the district court by verified petition for an order directing the commissioner to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state, on any of the following grounds:
  - a. Any of the grounds in section 26.1-06.1-11 or 26.1-06.1-16; or
  - b. Any of the grounds specified in subdivisions b, c, and d of subsection 1 of section 26.1-06.1-49.
2. When an order is sought under subsection 1, the court shall cause the insurer to be given such notice and time to respond thereto as is reasonable under the circumstances.
3. If it appears to the court that the best interests of creditors, policyholders, and the public require, the court may issue an order to liquidate in whatever terms it deems appropriate. The filing or recording of the order with the recorder, unless the board of county commissioners designates a different official, of the county in which the principal business of the company is located or the county in which its principal office or place of business is located, imparts the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder, or designated official.
4. If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall thereafter act as ancillary receiver under section 26.1-06.1-52. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under section 26.1-06.1-52.
5. On the same grounds as are specified in subsection 1, the commissioner may petition any appropriate federal district court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction, or any lesser part thereof that the commissioner deems desirable for the protection of the policyholders and creditors in this state.
6. Once the assets of a foreign or alien insurer have been liquidated by the commissioner under this section, the court may order the commissioner to pay claims of residents of

this state against the insurer under such rules as to the liquidation of insurers under this chapter as are otherwise compatible with the provisions of this section.

**26.1-06.1-51. Domiciliary liquidators in other states.**

1. The domiciliary liquidator of an insurer domiciled in a reciprocal state, except as to special deposits and security on secured claims under subsection 3 of section 26.1-06.1-52, is vested by operation of law with the title to all of the assets, property, contracts and rights of action, insurance producers' balances, and all of the books, accounts, and other records of the insurer located in this state. The date of vesting must be the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state. Otherwise, the date of vesting must be the date of entry of the order directing possession to be taken. The domiciliary liquidator shall have the immediate right to recover balances due from insurance producers and to obtain possession of the books, accounts, and other records of the insurer located in this state. The domiciliary liquidator shall also have the right to recover all other assets of the insurer located in this state, subject to section 26.1-06.1-52.
2. If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of this state is vested by operation of law with the title to all of the property, contracts and right of action, and all of the books, accounts, and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domicile. The commissioner of this state may petition for a conservation or liquidation order under section 26.1-06.1-49 or 26.1-06.1-50, or for an ancillary receivership under section 26.1-06.1-52, or after approval by the district court may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.
3. Claimants residing in this state may file claims with the liquidator or ancillary receiver, if any, in this state or with the domiciliary liquidator, if the domiciliary law permits. The claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings.

**26.1-06.1-52. Ancillary formal proceedings.**

1. If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the commissioner may file a petition with the district court requesting appointment as ancillary receiver in this state:
  - a. If the commissioner finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver; or
  - b. If the protection of creditors or policyholders in this state so requires.
2. The court may issue an order appointing an ancillary receiver in whatever terms it shall deem appropriate. The filing or recording of the order with the recorder in this state imparts that same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that recorder.
3. When a domiciliary liquidator has been appointed in a reciprocal state, the ancillary receiver appointed in this state may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in this state. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. The ancillary receiver shall promptly transfer all remaining assets, books, accounts, and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and deputies of the ancillary receiver shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.
4. When a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have, as to assets and books, accounts, and other

records in their respective states, corresponding rights, duties, and powers to those provided in subsection 3 for ancillary receivers appointed in this state.

**26.1-06.1-53. Ancillary summary proceedings.**

The commissioner has sole discretion to institute proceedings under sections 26.1-06.1-09 and 26.1-06.1-10 at the request of the commissioner or other appropriate insurance official of the domiciliary state of any foreign or alien insurer having property located in this state.

**26.1-06.1-54. Claims of nonresidents against insurers domiciled in this state.**

1. In a liquidation proceeding begun in this state against an insurer domiciled in this state, claimants residing in foreign countries or in states not reciprocal states must file claims in this state, and claimants residing in reciprocal states may file claims either with the ancillary receivers, if any, in their respective states, or with the domiciliary liquidator. Claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceeding.
2. Claims belonging to claimants residing in reciprocal states may be proved either in the liquidation proceeding in this state as provided in this chapter, or in ancillary proceedings, if any, in the reciprocal states. If notice of the claims and opportunity to appear and be heard is afforded the domiciliary liquidator of this state as provided in subsection 2 of section 26.1-06.1-55 with respect to ancillary proceedings, the final allowance of claims by the courts in ancillary proceedings in reciprocal states is conclusive as to amount and as to priority against special deposits or other security located in such ancillary states, but is not conclusive with respect to priorities against general assets under section 26.1-06.1-41.

**26.1-06.1-55. Claims of residents against insurers domiciled in reciprocal states.**

1. In a liquidation proceeding in a reciprocal state against an insurer domiciled in that state, claimants against the insurer who reside within this state may file claims either with the ancillary receiver, if any, in this state, or with the domiciliary liquidator. Claims must be filed on or before the last dates fixed for the filing of claims in the domiciliary liquidation proceeding.
2. Claims belonging to claimants residing in this state may be proved either in the domiciliary state under the law of that state, or in ancillary proceedings, if any, in this state. If a claimant elects to prove a claim in this state, the claimant shall file the claim with the liquidator in the manner provided in sections 26.1-06.1-34 and 26.1-06.1-35. The ancillary receiver shall make a recommendation to the court as under section 26.1-06.1-42. The ancillary receiver shall also arrange a date for hearing if necessary under section 26.1-06.1-38 and shall give notice to the liquidator in the domiciliary state, either by certified mail or by personal service at least forty days prior to the date set for hearing. If the domiciliary liquidator, within thirty days after the giving of such notice, gives notice in writing to the ancillary receiver and to the claimant, either by certified mail or by personal service, of intention to contest the claim, the domiciliary liquidator is entitled to appear or to be represented in any proceeding in this state involving the adjudication of the claim.
3. The final allowance of the claim by the courts of this state must be accepted as conclusive as to amount and as to priority against special deposits or other security located in this state.

**26.1-06.1-56. Attachment, garnishment, and levy of execution.**

During the pendency of a liquidation proceeding in this or any other state, whether the liquidation proceeding is identified as such or not, no action or proceeding in the nature of an attachment, garnishment, or levy of execution may be commenced or maintained in this state against the delinquent insurer or its assets.

**26.1-06.1-57. Interstate priorities.**

1. In a liquidation proceeding in this state involving one or more reciprocal states, the order of distribution of the domiciliary state shall control as to all claims of residents of this and reciprocal states. All claims of residents of reciprocal states must be given equal priority of payment from general assets regardless of where such assets are located.
2. The owners of special deposit claims against an insurer for which a liquidator is appointed in this or any other state must be given priority against the special deposits in accordance with the statutes governing the creation and maintenance of the deposits. If there is a deficiency in any deposit, so that the claims secured by it are not fully discharged from it, the claimants may share in the general assets, but the sharing must be deferred until general creditors, and claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.
3. The owner of a secured claim against an insurer for which a liquidator has been appointed in this or any other state may surrender the security and file a claim as a general creditor, or the claim may be discharged by resort to the security in accordance with section 26.1-06.1-40, in which case the deficiency, if any, must be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors.

**26.1-06.1-58. Subordination of claims for noncooperation.**

If an ancillary receiver in another state or foreign country, whether called by that name or not, fails to transfer to the domiciliary liquidator in this state any assets within the control of the ancillary receiver, other than special deposits, diminished only by the expenses of the ancillary receivership, if any, the claims filed in the ancillary receivership, other than special deposit claims or secured claims, must be placed in the class of claims under subsection 7 of section 26.1-06.1-41.

**26.1-06.1-59. Separability.**

If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances may not be affected thereby.