

40-3622. Same; contents of order; authority and responsibility of liquidator; effect of filing or recording of order; rights and liabilities of parties; insolvency of insurer, findings, petition and declaration by court; accounting by liquidator; appeal from order; appeal pendency plan; order set aside on appeal. (a) An order to liquidate the business of a domestic insurer shall appoint the commissioner and successors as liquidator and shall direct the liquidator forthwith to take possession of the assets of the insurer and to administer such assets under the general supervision of the court. The liquidator shall 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 ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of the district court of Shawnee county and the register of deeds of the county in which its principal office or place of business is located; or, in the case of real estate, with the register of deeds of the county where the property is located, shall impart the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that register of deeds would have imparted.

(b) 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 such insurer's estate shall become fixed as of the date of entry of the order of liquidation, except as provided in K.S.A. 40-3623 and 40-3638.

(c) 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.

(d) Any order issued under this section shall require accounting to the court by the liquidator. Accounts shall be at such intervals as the court specifies in its order.

(e) (1) If an order of liquidation is appealed, the commissioner may request the court to approve an appeal pendency plan for the continued performance of the defendant company's policy claims obligations including, but not limited to, the duty to defend insured's under liability policies, during the pendency of an appeal. No action shall be against the commissioner or any of the commissioner's deputies, agents, clerks, assistants or attorneys by any party based on preference in an appeal pendency plan approved by the court.

(2) The appeal pendency plan shall not supersede nor affect the obligations of any insurance guaranty decision.

(3) Any such plans shall 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 shall 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, shall be 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.

History: L. 1991, ch. 125, § 18; July 1.