

40-3625. Same; authority and responsibility of liquidator; limitation. (a) The liquidator shall have the power:

- (1) To appoint a special deputy or deputies to act for the liquidator under this act, and to determine reasonable compensation for such deputies. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator;
- (2) to employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants and other personnel necessary to assist in the liquidation;
- (3) to appoint an advisory committee of policyholders, claimants or other creditors including guaranty associations should such a committee be deemed necessary. Such committee shall serve at the pleasure of the commissioner and shall serve without compensation other than reimbursement for personal travel and per diem living expenses. No other committee of any nature shall be appointed by the commissioner or the court in liquidation proceedings conducted under this act;
- (4) to fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants with the approval of the court;
- (5) 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;
- (6) 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 testimony of the person after the testimony has been correctly reduced to writing; and in connection therewith to require the production of any books, papers, records or other documents which are relevant to the inquiry. Such hearings shall be held in accordance with the Kansas administrative procedure act;
- (7) to audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer;
- (8) to collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose:
 - (A) To institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;
 - (B) to do such other acts as are necessary or expedient to collect, conserve or protect such insurer's assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon reasonable terms and conditions; and
 - (C) to pursue any creditor's remedies available to enforce claims;
- (9) to conduct public and private sales of the property of the insurer;
- (10) 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 K.S.A. 40-3641, and amendments thereto;
- (11) 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;
- (12) 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 1 under the priority of distribution;
- (13) 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, except that no liquidator shall have the power to disavow, reject or repudiate:
 - (A) Any federal home loan bank security agreement; or
 - (B) any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such security agreement;
- (14) to continue to prosecute and to institute in the name of the insurer or in the liquidator's name any and all suits and other legal proceedings, in this state or outside this state, and to abandon the prosecution of unprofitable claims. If the insurer is dissolved under K.S.A. 40-3624, and amendments thereto, the liquidator shall have the power to apply to any court in this state or elsewhere for leave to substitute such liquidator for the insurer as plaintiff;
- (15) to prosecute any action which may exist on behalf of the creditors, members, policyholders or shareholders of the insurer against any officer of the insurer, or any other person;
- (16) to remove any or all records and property of the insurer to the offices of the commissioner or to such other 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;
- (17) to deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions;
- (18) to invest all sums not currently needed, unless the court orders otherwise;
- (19) to file any necessary documents for record in the office of any register of deeds or record office in this state or elsewhere where property of the insurer is located;
- (20) to assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds 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;
- (21) 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 with K.S.A. 40-3629 through 40-3631, and amendments thereto;
- (22) 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;

(23) 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; and

(24) to exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of this act.

(b) The enumeration, in this section, of the powers and authority of the liquidator shall not be construed as limitation upon the liquidator, nor shall it exclude in any manner the right to do such other acts not specifically enumerated or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

(c) Notwithstanding the powers of the liquidator as stated in subsections (a) and (b), the liquidator shall have no obligation to defend claims or to continue to defend claims subsequent to the entry of a liquidation order.

History: L. 1991, ch. 125, § 21; L. 2014, ch. 3, § 3; July 1.