

THE INSURANCE CODE OF 1956 (EXCERPT)
Act 218 of 1956

500.8121 Powers of liquidator; extended reporting period; powers and authority not exclusive; delaying sale of assets.

Sec. 8121. (1) The liquidator shall have the power to do the following:

(a) To appoint a special deputy, including, but not limited to, the Michigan life and health insurance guaranty association with its consent or the Michigan property and casualty guaranty association with its consent to act for him or her under this chapter and to determine the special deputy's reasonable compensation. The special deputy shall have all powers of the liquidator granted by this chapter and shall serve at the pleasure of the liquidator.

(b) To employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and such other personnel as he or she considers necessary to assist in the liquidation.

(c) To fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, court's appraisers, and consultants with the court's approval.

(d) 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 insurer's business and property. If the insurer's property does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the incurred costs out of an appropriation for the maintenance of the insurance bureau. Amounts advanced for expenses of administration shall be repaid to the commissioner for the use of the insurance bureau out of the first available money of the insurer.

(e) To hold hearings, to subpoena witnesses to compel their attendance, to administer oaths, to examine a person under oath, and to compel a person to subscribe to his or her testimony after it has been correctly reduced to writing; and in connection with these powers to require the production of books, papers, records, or other documents that he or she considers relevant to the inquiry.

(f) To collect all debts and money due and claims belonging to the insurer, wherever located, and for the following purposes:

(i) To institute timely action in other jurisdictions to forestall garnishment and attachment proceedings against debts.

(ii) To do other acts as are necessary or expedient to collect, conserve, or protect the assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions as he or she considers best.

(iii) To pursue a creditor's remedies available to enforce the creditor's claims.

(g) To conduct public and private sales of the insurer's property.

(h) To use assets of the insurer's estate 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 8142.

(i) To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of, or deal with, insurer property at its market value or upon terms and conditions as are fair and reasonable. He or she shall also have power to execute, acknowledge, and deliver any and all deeds, assignments, releases, and other instruments necessary or proper to effectuate the sale of property or other transaction in connection with the liquidation except that for trustee assets, any instruments necessary or proper shall be executed only pursuant to court order.

(j) To borrow money on the security of the insurer's assets or to borrow money without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation.

(k) To enter into contracts necessary to carry out the order to liquidate, and to affirm or disavow any contracts to which the insurer is a party.

(l) To continue to prosecute and to institute in the name of the insurer or in his or her own name suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims he or she considers unprofitable to pursue further. If the insurer is dissolved under section 8120, he or she shall have the power to apply to any court in this state or elsewhere for leave to substitute himself or herself for the insurer as plaintiff.

(m) To prosecute an action that may exist on behalf of the creditors, members, policyholders, or shareholders of the insurer against an officer of the insurer or another person.

(n) To remove records and property of the insurer to the commissioner's offices 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.

(o) To deposit in 1 or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions.

(p) To invest all sums not currently needed, unless the court orders otherwise.

(q) To file any necessary documents for recording in the office of any register of deeds in this state or elsewhere where property of the insurer is located.

(r) 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 a defense by the insurer after a petition in liquidation has been filed does not bind the liquidator. If a guaranty association or foreign guaranty association has an obligation to defend a suit, the liquidator shall give precedence to that obligation and may defend only in the absence of a defense by the guaranty associations.

(s) To exercise and enforce all the rights, remedies, and powers of a creditor, shareholder, policyholder, or member, including the power to avoid a transfer or lien that may be given by the general law and that is not included in sections 8126 to 8128.

(t) To intervene in a 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.

(u) To enter into agreements with a receiver or commissioner of another state or country relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states or countries.

(v) 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) 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 those policies, for a charge, an extended period to report claims as stated in this chapter. The extended reporting period shall be made available only to those insureds who have not secured substitute coverage. The extended period made available by the liquidator shall begin upon termination of an extended period to report claims in the basic policy and shall end at the earlier of the final date for filing of claims in the liquidation proceeding or 18 months from the order of liquidation.

(3) 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 the extended period within 60 days after the order of liquidation at a charge to be determined by the liquidator subject to the court's approval. The offer shall be considered rejected unless the offer is accepted in writing and the charge is paid within 90 days after the order of liquidation. Commissions, premium taxes, assessments, or other fees shall not be due on the charge pertaining to the extended period to report claims.

(4) The enumeration in this section of the powers and authority of the liquidator shall not be construed as a limitation upon him or her, and it shall not exclude in any manner his or her right to do other acts not specifically enumerated in this section or otherwise provided for if necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

(5) The liquidator may delay the sale of the assets of the company if the liquidator determines a delay in the sale would be prudent in order to obtain a more favorable rate of return on the sale of the assets.

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