



Ohio Revised Code

Section 3903.21 Liquidator - powers and duties.

Effective: September 10, 1989

Legislation: House Bill 38 - 117th General Assembly

(A) The liquidator may do any of the following:

(1) Appoint one or more special deputies to act for him under sections 3903.01 to 3903.59 of the Revised Code, and determine the deputies' reasonable compensation. Special deputies have all the powers of the liquidator granted by this section. Special deputies shall serve at the pleasure of the liquidator.

(2) Employ employees and agents, actuaries, accountants, appraisers, consultants, and such other personnel as he may consider necessary to assist in the liquidation;

(3) Fix the reasonable compensation of employees and agents, actuaries, accountants, appraisers, and consultants with the approval of the court;

(4) Pay reasonable compensation to persons appointed and 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 superintendent of insurance may advance the costs so incurred out of any appropriation for the maintenance of the department of insurance. Any amounts so advanced for expenses of administration shall be repaid to the superintendent for the use of the department out of the first available money of the insurer.

(5) Hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to his testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, records, or other documents which he considers relevant to the inquiry;

(6) Collect all debts and moneys due and claims belonging to the insurer, wherever located. For this



purpose, the liquidator may do any of the following:

- (a) Institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;
 - (b) 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 he considers best;
 - (c) Pursue any creditor's remedies available to enforce his claims.
- (7) Conduct public and private sales of the property of the insurer;
- (8) 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 3903.42 of the Revised Code.
- (9) 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 may 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.
- (10) 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;
- (11) 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;
- (12) Continue to prosecute and to commence in the name of the insurer or in his own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims he considers unprofitable to pursue further. If the insurer is dissolved under section 3903.20 of the Revised Code, he shall have the power to apply to any court in this state or elsewhere for leave



to substitute himself for the insurer as plaintiff.

(13) 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;

(14) Remove any or all records and property of the insurer to the offices of the superintendent 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.

(15) Deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions;

(16) Invest all sums not currently needed, unless the court orders otherwise;

(17) File any necessary documents for record in the office of any recorder of deeds or record office in this state or elsewhere where property of the insurer is located;

(18) Assert all defenses available to the insurer as against third persons, including, but not limited to, statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a complaint in liquidation has been filed does 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 association.

(19) 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 under sections 3903.26 to 3903.28 of the Revised Code;

(20) Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver, conservator, rehabilitator, liquidator, or trustee, and to act as the receiver, conservator, rehabilitator, liquidator, or trustee whenever the appointment is offered;



(21) Enter into agreements with any receiver, conservator, rehabilitator, liquidator, or superintendent of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states;

(22) Exercise all powers now held or hereafter conferred upon receivers, conservators, rehabilitators, or liquidators by the laws of this state not inconsistent with the provisions of sections 3903.01 to 3903.59 of the Revised Code;

(23) Apply to the court for permission to sell the insurer as a going concern. If the court determines that the sale of the insurer as a going concern is in the best interest of the estate and that the sale will not diminish the value of the claims of shareholders and creditors, the court shall order that the insurer be discharged from all of its liabilities, that the outstanding shares of the insurer be canceled, that for no additional consideration new shares of the insurer be issued in the name of the liquidator, that the liquidator be vested with the title to the new shares which shares shall be deemed validly issued, fully paid, and nonassessable pursuant to applicable law, and that the liquidator be authorized to sell the shares, together with such tax credits, of the insurer as the liquidator determines to be in the best interests of the estate. The sale may be at public or private sale and under such terms and conditions as the liquidator determines to be in the best interests of the estate. Upon confirmation of the sale by the court, the purchasers of the shares shall be vested with title to those shares, including any tax credits, of the insurer free and clear of all claims and defenses. The proceeds from the sale of the shares shall become a part of the estate in liquidation.

A sale under this division (A)(23) does not affect the rights and liabilities of the insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate as fixed under division (B) of section 3903.18 of the Revised Code. No person is entitled to any priority or preference rights in the proceeds of the sale except as so fixed.

As used in this division (A)(23), "shareholder" has the same meaning as in division (F) of section 1701.01 of the Revised Code and also includes any secured party or other person or holder who has or claims to have any interest of any kind in any shares of the insurer.

This division (A)(23) applies retrospectively and shall be liberally construed to accomplish its purpose to provide a more expeditious and effective procedure for marshalling the assets of the estate



in order to realize the maximum amount possible from the sale of those assets and ensure that the purchasers receive clear and marketable titles.

(B) The enumeration, in this section, of the powers and authority of the liquidator shall not be construed as a limitation upon him, nor shall it exclude in any manner his 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.