



DEPARTMENT OF FINANCIAL SERVICES

Division of Rehabilitation and Liquidation
www.myfloridacfo.com/division/receiver

VIA EMAIL TO: JKoenigsman@naic.org

February 1, 2016

James Kennedy
Chair, Receivership Model Law (E) Working Group
Jane Koenigsman, Senior Manager I - NAIC Life/Health Financial Analysis
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, MO 64108

Re: NAIC Receivership Model Law Working Group
Requested Comments Regarding Key Attributes Survey Results

Dear Chairman Kennedy and Ms. Koenigsman:

The Florida Department of Financial Services, Division of Rehabilitation and Liquidation, appreciates the opportunity to provide comments on the results of the 2015 Survey of States' Receivership Laws. Our specific comments to the individual questions/topics are provided in the following pages. We have focused our review on our response to two questions regarding each receivership topic that was explored in the survey.

- Is improvement needed to this portion of existing receivership laws and practices?
- Do we have recommendations for enhancing consistency between states' receivership laws?

We hope that the enclosed will be of benefit to the Receivership Model Law (E) Working Group in its review of these issues and will be available during any upcoming conference calls/meetings to discuss our comments as necessary.

Again, thank you for the opportunity to comment. If you have questions regarding Florida's responses, please contact me at 850/413-4409.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Schwantes", with a horizontal line extending to the right.

Mary Schwantes

FLORIDA COMMENTS ON RESULTS OF NAIC 2015 SURVEY OF STATES' RECEIVERSHIP LAWS

Submitted to NAIC: 2/1/16

1. States Responding to Survey

FLORIDA COMMENTS/CONCERNS:

- N/A. No comment is required.

2. Can a receivership be commenced prior to insolvency or impairment?

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No. Florida statutes provide numerous and sufficient grounds for receivership, although insolvency or impairment are the most frequently used grounds.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

No. It appears that the majority of the state statutes, including Florida's, provide for causes other than insolvency and impairment for which to initiate receivership proceedings.

- a. **If yes, explain grounds for receivership. (For example, is hazardous financial condition a ground for receivership?)**

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No. Florida statutes provide numerous and sufficient grounds for receivership, although insolvency or impairment are the most frequently used grounds. Many of Florida's grounds for receivership are listed in the above summary.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

No. It appears that the majority of the state statutes, including Florida's, provide for causes other than insolvency and impairment for which to initiate receivership proceedings.

3. Does the state law contain a provision substantially similar to the *NAIC Guideline for Implementation of State Orderly Liquidation Authority*, or any other provision specifying that a determination under Title II of the Dodd Frank Act is a ground for receivership?

FLORIDA COMMENTS/CONCERNS:

• **IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?**

Florida law currently provides that the Department may petition for receivership if a company “Has been or is the subject of an application for the appointment of a receiver, trustee, custodian, or sequestrator of the insurer or its property otherwise than pursuant to the provisions of this code, but only if such an appointment has been made or is imminent.” See section 631.051(10), F.S. Although Florida statutes do not specifically refer to Dodd-Frank, Florida would consider a federal determination/appointment of receiver as grounds for Florida receivership under the above referenced statute and/or under s. 631.051(3), F.S., under which a company is “found by the office [Office of Insurance Regulation] to be in such condition or is using or has been subject to such methods or practices in the conduct of its business, as to render its further transaction of insurance presently or prospectively hazardous to its policyholders, creditors, stockholders, or the public.” Nevertheless, Florida might consider recommending additional receivership grounds for state adoption, similar to those set out in the *NAIC Guideline for Implementation of State Orderly Liquidation Authority*, in order to better clarify jurisdiction, etc., in the event of a federally determined insolvency of a qualifying insurance company. However, the actual process for the entry of a receivership order should be left to the individual states.

• **DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES’ RECEIVERSHIP LAWS?**

As this appears to be an issue of national concern with wide variance among the states, consideration should be given to promoting the adoption of grounds, similar to those set out in the *NAIC Guideline for Implementation of State Orderly Liquidation Authority*, in order to better clarify jurisdiction, etc., in the event of a federally determined insolvency of a qualifying insurance company. However, the actual process for the entry of a receivership order should be left to the individual states.

4. Are non-regulated entities that are operationally related to insurers subject to receivership under insurance laws in your state?

FLORIDA COMMENTS/CONCERNS:

• **IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?**

No. In Florida, the receiver may request the court for an order joining the entities into receivership if necessary under common law theories (e.g. pierce the corporate veil, etc.). Absent additional information regarding experienced problems in this area, the application of relevant common law theories on a case by case basis on these matters is believed to be sufficient at this time.

- **DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?**

Not at this time. However, Florida would be interested in hearing more from other states on their experiences in these areas.

- 5. Is a receivership action by a non-US regulator on an entity in the group recognized or supported in your state?**

FLORIDA COMMENTS/CONCERNS:

- **IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?**

Not at this time. Florida receivership statutes provide for the conservation and liquidation of alien insurers but do not specifically recognize or support a receivership action by a non-US regulator on an entity in the group. Nevertheless, Florida general laws could support such receivership actions, on a case by case basis.

- **DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?**

Not at this time. However, Florida would be interested in hearing more from other states on their experiences in these areas.

- b. If yes, explain how a receivership action by a non-US regulator on an entity in the group recognized or supported in your state.**

FLORIDA COMMENTS/CONCERNS:

- **IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?**

Not at this time. Florida receivership statutes provide for the conservation and liquidation of alien insurers but do not specifically recognize or support a receivership action by a non-US regulator on an entity in the group. Nevertheless, Florida general laws could support such receivership actions, on a case by case basis.

- **DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?**

Not at this time. However, Florida would be interested in hearing more from other states on their experiences in these areas.

6. Are stays and orders of receiverships in other states given full faith and credit in your state?

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

No

7. What conditions, if any, are placed on giving effect to stays and orders of other states? (e.g., are "reciprocal" and "nonreciprocal" states treated differently?)

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

No

8. Under what circumstances are ancillary receiverships allowed or required?

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

No

9. How are assets located in the state handled if there is an ancillary receivership?

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

No

10. Are judicial actions prior to rehabilitation or liquidation available (e.g., seizure or conservation orders)?

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

No

a. If yes, can these orders be obtained on an ex parte basis

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

No

11. Does the Commissioner have statutory immunity as Receiver?

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

No

12. Does immunity extend to contractors or employees of the insurer acting at the Receiver's direction?

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

No

13. Can the Receiver depart from the priority scheme in a rehabilitation proceeding?

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No. Florida has no priority scheme in a rehabilitation proceeding, thus allowing more flexibility in options to return a rehabilitation company to full statutory compliance.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

No

14. Under what circumstances is a plan of rehabilitation required? (i.e. Some state's laws require a rehabilitation plan only in certain circumstances, for example if the Rehabilitator proposes to reorganize the insurer (e.g., "old" IRLMA Section 18))

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

No. Florida would have concerns regarding the mandatory filing of a rehabilitation plan.

15. What are the requirements of a rehabilitation plan? (i.e. Some laws may have specific requirements for a plan, such as requiring that the plan contain certain information (e.g., "new" IRMA Section 403)).

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

No. Florida would have concerns regarding the mandatory filing of a rehabilitation plan.

16. Are there statutory requirements specifying that a creditor should be no worse off in rehabilitation than in liquidation?

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

No.

17. Does the Receiver have authority to sell or dissolve the corporate entity or charter of an insurer separate from the claims of its creditors?

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

No.

18. Does the transfer of assets and liabilities require the consent of any creditor?

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

No.

19. Is there a provision that specifies that a transfer does not constitute a default?

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

No.

20. Does the receivership law address early termination rights in qualified financial contracts (QFCs)?

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

No. However, this may be an area in which we might reconsider our position based upon national needs.

a. If 20 is yes, are rights under a QFC exempted from the stay?

FLORIDA COMMENTS/CONCERNS:

- N/A. Florida does not have receivership statutes specific to QFCs.

i. If not exempted, is there a limit on the duration of the stay?

FLORIDA COMMENTS/CONCERNS:

- N/A. Florida does not have receivership statutes specific to QFCs.

b. If 20 is yes, does the law incorporate the NAIC Guideline for Stay on Termination of Netting Agreements and Qualified Financial Contracts that imposes a 24-hour stay?

FLORIDA COMMENTS/CONCERNS:

- N/A. Florida does not have receivership statutes specific to QFCs.

For Questions 21 – 23, Florida’s Comments/Concerns are the same.

21. Is there an automatic stay upon filing of a receivership?

22. Is there an automatic stay upon Entry of a receivership order?

23. Does the stay apply to actions against the insurer?

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No. The duration of Florida’s automatic stay is unlimited.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES’ RECEIVERSHIP LAWS?

An automatic stay should be available to all receivers in all states. While Article 108 of the Insurer Receivership Model Act could be a starting point for discussing/promoting consistency between the states’ receivership laws in this area, states must have the ability to alter the language to comply with their own state statutes. Additionally, the duration of Florida’s current automatic stay is unlimited while that proposed by IRMA is limited in both scope and duration. The flexibility provided by Florida’s current automatic stay provision is preferable to less flexible statutory schemes.

24. Does the stay apply to Actions against insureds?

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No. Florida’s guaranty association statutes contain stays as to actions against insureds which are sufficient for their purposes.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

No.

For Questions 25 – 27, Florida's Comments/Concerns are the same.

25. Are stays imposed in rehabilitation and liquidation proceedings?

26. Are stays imposed in only liquidation proceedings?

27. Is there a limitation on the duration of the stay?

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

No. The duration of Florida's automatic stay is unlimited.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

An automatic stay should be available to all receivers in all states. While Article 108 of the Insurer Receivership Model Act could be a starting point for discussing/promoting consistency between the states' receivership laws in this area, states must have the ability to alter the language to comply with their own state statutes. Additionally, the duration of Florida's current automatic stay is unlimited while that proposed by IRMA is limited in both scope and duration. The flexibility provided by Florida's current automatic stay provision is preferable to less flexible statutory schemes.

28. How is the receivership function organized in your state?

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

Not at this time.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

Not at this time.

29. What requirements and qualification exist for those acting on behalf of the Receiver?

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

Not at this time.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

Not at this time.

30. Are there an internal governance process for the Receiver's office?

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

Not at this time.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

Not at this time.

31. What reports of the Receiver's activities and expenditures are required?

FLORIDA COMMENTS/CONCERNS:

- IS IMPROVEMENT NEEDED TO THIS PORTION OF EXISTING RECEIVERSHIP LAWS AND PRACTICES?

Not at this time.

- DO WE HAVE RECOMMENDATIONS FOR ENHANCING CONSISTENCY BETWEEN STATES' RECEIVERSHIP LAWS?

Not at this time.