

Receivership Model Law (E) Working Group

Updated Apr. 3, 2016

Survey of States' Receivership Laws

1. States Responding to Survey

38 = AK, AR, AZ, CA, CO, CT, DC, DE, FL, HI, IL, IN, KY, LA, MA, ME, MI, MN, MO, MS, MT, NC, ND, NE, NH, NM, OH, OK, PA, SC, SD, TN, TX, UT, VT, WI, WV, WY

Grounds for Receivership

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

#Yes = 35	
#No = 3	Three states responded "no" but also reported their laws include grounds for receivership other than insolvency or impairment, so these most likely should be "yes".

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

Generally states had similar lists of grounds for receivership. Some responses were not all inclusive or specific. The following is a summary of grounds listed.

- Grounds for liquidation include any of the grounds for rehabilitation are met
- Grounds for liquidation also include ceasing transacting business for one year

- Hazardous Financial Condition
- Insurer is insolvent or about to be insolvent
- Insurer is impaired
- Assets are less than its liabilities, inclusive of unearned premiums but exclusive of capital, if any, and it has attempted or is attempting to the disadvantage of policyholders who have sustained losses to prefer or, has preferred, by reinsurance, policyholders who have sustained no losses
- The amount of a company's funds, insurance in force or premiums or number of risks is deficient
- That the insurer has failed to comply with an order of the director to make good an impairment of capital or surplus, or both.
- That an authorized control level event or mandatory control level event has occurred with respect to the insurer

- Refusing to submit books, records, accounts, or affairs to reasonable examination by director;
- Concealing or wrongfully removing records or assets;
- Refusing to be examined
- Officer, director or manager has refused to be examined under oath concerning insurer;
- Failing to remove dishonest or untrustworthy officer, manager, general agent, employee, or other person with executive authority;
- Control is placed in a person found to be untrustworthy;
- Directors are deadlocked in the management of the insurer's affairs

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- Transferring its entire property or business or entering into transaction that effectively involves merger with another insurer without approval from director
- Transacting business fraudulently

- Willful violation of charter, articles of incorporation, or any law of the state
- Company has exceeded its powers or has violated any provision of law
- Illegal conduct (such as embezzlement) that would endanger assets in an amount threatening the insurer's solvency, etc.
- Failing to pay a final judgment rendered against it upon any insurance contract issued or assumed;
- Failure to pay any obligation to the state or political subdivision, or any judgment entered in any state
- Company attempted or is attempting to compromise with its creditors on the ground that it is financially unable to pay its claims in full

- Consent by majority of directors, stockholders, members or subscribers;
- That the insurer has been the subject of an application for the appointment of a receiver, trustee, custodian or sequestrator of the insurer or its property
- Findings under Dodd-Frank by the US Treasury

- Failing to timely file annual report
- Substantial and unexplained discrepancies exist between the insurer's records and the most recent annual report or other official company reports;
- The Commissioner, upon good cause, determines that it would not be in the best interest of the policyholders, creditors, or the public to proceed with the conduct of the business of the insurer.

- Specific additional grounds for HMOs
- Specific grounds related to mutual insurance holding company issues

- Grounds for conservation – (1) any grounds for rehabilitation; (2) That any of the alien or foreign insurer's property has been sequestered by official action in its domiciliary state or in any other state. (3) That enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent. (4) That its certificate of authority to do business in this State has been revoked or that none was ever issued; and that there are residents of this State with outstanding claims or outstanding policies.

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?

Yes = 10 ¹	CA, IA, IL, LA, NH, RI, TX, UT, VT, WI
#No = 29	CT expects to pass legislation in 2016. ME law does not specifically refer to Dodd-Frank but would consider a federal

¹ Based on survey responses and staff research.

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	determination action as grounds for receivership.
#N/A, Blank = 1	

Jurisdictional Issues

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

#Yes = 12	<ul style="list-style-type: none"> - HI, LA, MO, SD - CT - via case law - IN - obligated under agency/brokerage arrangement, certain reinsurer relationships, officers, trustees or other person with authority or influence - TN – if transacting insurance business in the state - IL - Yes. But not exclusively, if the non-regulated entities are eligible debtors under the U.S. Bankruptcy Code. - MI, MN, OH, VT – refers to dependence on ownership and Parent/Subsidiary/Affiliate relationship
#No = 26	<p>Exceptions to “No” listed in various responses:</p> <ul style="list-style-type: none"> - An unauthorized insurer comes within the definition of an insurer - Receivership court would have subject matter jurisdiction over a person who is or was an agent, broker, officer, manager, trustee, organizer, promoter of an insurer in receivership. - Entities subject to the receivership statute that are not necessarily insurers per se and/or are specialized types of insurers (e.g., mutual insurance holding co., hospital and medical services corporations, health organizations, captives, title insurers) but these entities are all regulated. - Department may seek an order enjoining the non-regulated entity from interfering with the receivership proceedings or otherwise conducting business on behalf of the insurer. - 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.) - A non-regulated entity that is a subsidiary of an insurer that is the subject of a receivership proceeding would likely be considered an asset of the estate and, therefore, under the control of the receiver. - If they are owned and/or managed by the insurer, the receiver inherits those rights and powers - Unless the non-regulated entity is a "person" subject to examination by the commissioner. - The court may enter injunctions or other orders to ensure that the affiliate does not interfere with the Receiver’s rights to property of the receivership. - Affiliates of an insurer are subject to the receiver’s actions to recover assets,

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	avoid preferences and liens, avoid transfers and act as a creditor.
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5. Is a receivership action by a non-US regulator on an entity in the group recognized or supported in your state?

#Yes = 13	<p>WV - law provides that the Commissioner “may apply to the court for an order appointing him as receiver or ancillary receiver, and directing him to conserve the assets within this state, of any alien insurer” if “any of the grounds specified in sections five or six of this article” exist. Law states that the Commissioner may apply for appointment as receiver when the insurer “[h]as been the subject of an application for the appointment of a receiver.”</p> <p>ME – on domestic insurers, the existence of alien ancillary receivership recognized but not supported</p> <p>AZ - Yes, but pursuant to the ancillary receivership provisions</p> <p>FL – Yes, there is no specific statute on the subject</p> <p>IL - Yes. Such an action is recognized to the extent of the provisions contained in the Uniform Insurers Liquidation Act.</p> <p>NE – There is a mechanism to conserve or liquidate property of alien insurers, but has not been utilized. Alien is not defined in receivership act.</p> <p>NH has a "may" standard in its current law which allows for the recognition of other state and non-US regulators to be recognized by the Commissioner.</p> <p>OK - An order to liquidate the business of a United States branch of an alien insurer having trusted assets in this state shall be in the same terms as those prescribed for domestic insurers, save and except only that the assets of the business of such United States branch shall be the only assets included therein.</p> <p>PA - An order to liquidate the business of an alien insurer domiciled in the Commonwealth has the same legal effect as an order to liquidate a domestic insurer in regard to assets and business in the U.S.</p> <p>TN - The commissioner, in the commissioner's sole discretion, may institute proceedings under §§ 56-9-201 and 56-9-202, at the request of the commissioner or other appropriate insurance official of the domiciliary state of any foreign or alien insurer having property located in this state.</p> <p>KY, NM, WY – no narrative</p>
#No = 16	<p>MA - To be determined on a case by case basis</p> <p>SD – not formally recognized but law could be read broadly</p> <p>VT - depends on the foreign jurisdiction's recognition of acceptable due process standards, its procedural rules, and timely notice to the Vermont authorities. In all likelihood, an ancillary receiver representing Vermont's interests would be appointed</p>

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	<p>under the Commissioner's broad discretionary authority.</p> <p>WI - The commissioner may file ancillary proceedings or may work with the non-US receiver but there is no automatic legal recognition.</p>
#N/A, Blank = 9	<p>DE - Delaware's practice is to make a procedural and substantive analysis of the foreign order to determine whether comity principles should be applied to recognize the foreign order.</p> <p>OH has only a few alien insurers operating through other port of entry states. To the best of our knowledge, to date, Ohio has not been presented with a receivership action by a non-US regulator. In all likelihood, Ohio would be presented with a receivership action by a US state-regulator (i.e., a point of entry state) and such actions would be given full faith and credit in Ohio.</p>

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

<p>AZ- pursuant to ancillary receivership provisions</p> <p>FL – case-by-case basis</p> <p>IL - Deference is provided to the domiciliary state, including a foreign country, with respect to the appointment of a domestic Rehabilitator or Liquidator. The Illinois Director has statutory authority to assist the domiciliary receiver or protect local policyholder interests as either conservator or ancillary receiver.</p> <p>KY – The company would no longer qualify for a certificate of authority; therefore the Department is required to suspend the certificate of authority.</p> <p>ME - Because the domestic receivership is conducted on a legal entity basis. The receiver has no authority to seize a foreign or alien affiliate unless it's a subsidiary, in which case the attempt to take control is part of the process of marshalling assets, and by its nature is subject to the need to coordinate with the inherent authority foreign and alien jurisdictions have over assets located within their borders.</p> <p>NE - It appears that this would work only if the domicile has not established a receivership/bankruptcy proceeding. The statute allows the director to request an ancillary receivership.</p> <p>NH - NH has a "may" standard in its current law which allows for the recognition of other state and non-US regulators to be recognized by the Commissioner.</p> <p>OK - An order to liquidate the business of a United States branch of an alien insurer having trusteed assets in this state shall be in the same terms as those prescribed for domestic insurers, save and except only that the assets of the business of such United States branch shall be the only assets included therein.</p> <p>PA - For example, in the Reliance liquidation, a Canadian Court /regulator issued a receivership order relating to a Canadian insurance company in the group. The Liquidator gave the order full faith and credit.</p> <p>SD – applies as to "[a]ll insurers who are doing, or have done, an insurance business in this state, and</p>
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against whom claims arising from that business may exist now or in the future..." This could be interpreted to recognize or support a non-US regulator concerning operations in South Dakota by an alien insurer

WI - The statute give the commissioner authority to act in certain situations if a domiciliary receiver has not been appointed for alien insurers and give the discretion for the commissioner to cooperate with the domiciliary receiver.

WV - the Commissioner "may apply to the court for an order appointing him as receiver or ancillary receiver, and directing him to conserve the assets within this state, of any alien insurer" if "any of the grounds specified in sections five or six of this article" exist. W. Va. Code § 33-10-5 states, in relevant part, that the Commissioner may apply for appointment as receiver when the insurer "[h]as been the subject of an application for the appointment of a receiver." (An "alien insurer" is defined as "an insurer formed under the laws of a country other than the United States.")

WY - We can either do an ancillary receivership or take possession of and turn over company assets located in Wyoming to the receiver to preserve assets.

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

#Yes = 31	
#No = 3	<p>MA - Massachusetts has not adopted the language from the IRMA relative to full faith and credit into its receivership laws. Therefore, our courts would review stays and orders of receiverships in other states on a case by case basis pursuant to the standards and criteria provided by the U.S. Supreme Court relative to the Full Faith and Credit Clause of the United States Constitution.</p> <p>ME - The judgments that would not be given full faith and credit would be (1) an order by another state interfering with the receivership of a domestic insurer, (including a claim against the estate brought in the courts of another jurisdiction, with the exception of reciprocal-state ancillary receiverships; and (2) an order by the domiciliary state staying or nullifying an ancillary receivership.</p> <p>OK - The domiciliary receiver for the purpose of liquidating an insurer domiciled in a reciprocal state 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 located in this state, and he shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this state. He shall also be entitled to recover the other assets of the insurer located in this state, except that upon the appointment of an ancillary receiver in this state, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expense of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions, the ancillary receiver and his deputies shall have the same powers and be subject to the</p>

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	same duties with respect to the administration of such assets as a receiver of an insurer domiciled in this state. The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this state to recover any assets of such insurer to which he may be entitled under the laws of this state.
#N/A, Blank = 3	

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?)

<p>AK, AZ, LA, NM – must be a reciprocal state</p> <p>AR - reciprocal states and nonreciprocal states are treated differently. Nonreciprocal states would have to follow normal process of registering a judgment from another state to give effect to stays and orders.</p> <p>CT - "...The courts of this state shall give full faith and credit to injunctions against new actions against the liquidator or the company or the continuation of existing actions against the liquidator or the company, when such injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states...."</p> <p>DC – for reciprocal states the court would appoint an ancillary receiver who would have same powers and duties as liquidator of a District insurer, including stay actions</p> <p>DE – reciprocal and non-reciprocal are treated the same and given full faith and credit to a valid order</p> <p>FL – no specific statute. Principals of comity apply.</p> <p>IL – no specific statute. Reliance on statutory enforcement mechanism of the U.I.L.A. is dependent on the existence of a reciprocal state</p> <p>IN – for non-reciprocal – claimants must file claims in IN; for reciprocal states, claimant may file claims with the ancillary receiver or the domiciliary liquidator</p> <p>KY, TN, MI, MA – No conditions</p> <p>ME – The power of another jurisdiction to seize assets located there is recognized, whether or not the judgment is given "full faith and credit," but any claim that is also litigated in another forum automatically becomes a subordinated claim, except when the claim is brought in a recognized ancillary proceeding in a reciprocal state. Claimants in reciprocal states have the express right to elect where to bring their claims.</p> <p>MN – reciprocal states have processes for vesting of title and access to records</p> <p>MO – reciprocal states are given same treatment as if part of local receivership</p> <p>MT - Montana courts shall give full faith and credit to injunctions against the continuation of existing actions against the liquidator or insurer when included in another state's liquidation order. If the court finds that an action should as a matter of substantial justice be tried in a forum outside Montana, the court may stay further Montana proceedings.</p> <p>NC, WI, WV – reciprocal and non-reciprocal states are treated differently</p> <p>ND - The courts of North Dakota shall give full faith and credit to injunctions against the liquidator or the</p>

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company or the continuation of existing actions against the liquidator or the company, when the injunctions are included in an order to liquidate an insurer issued pursuant to corresponding provisions in other states.

NE - The statute does outline different processes for the reciprocal states versus nonreciprocal states. Domiciliary liquidators in reciprocal states are automatically vested with title to all of the assets, property, contracts, etc. of the insurer located in this state. If a domiciliary liquidator is appointed in a nonreciprocal state, the Director of this state "shall be" vested with title to all property, contracts, etc., and may petition for a conservation or liquidation order or an ancillary receivership.

NH – reciprocal and non-reciprocal are treated the same with different dates of vesting.

OK - ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are herein prescribed for ancillary receivers appointed in this state as to assets located in this state.

OH – If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding, the liquidator . . . shall thereafter act as ancillary receiver. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding, the liquidator . . . may file a motion requesting the court for permission to act as ancillary receiver

PA - The domiciliary liquidator of an insurer in a reciprocal state is vested with the title to all of the property of the insurer located in this state. If the domiciliary liquidator is not appointed in a reciprocal state, this state is vested with the title to all property located in this state. The Commissioner may petition for a receivership order or to transfer title to the domiciliary liquidator.

SD – "...corresponding provisions in other states..."

TX – Full faith and credit is given unconditionally to orders of other state receivership courts. Texas shall treat any other state as a "reciprocal state".

UT – None. this state shall treat all foreign states as reciprocal states

VT - In the Commissioner's discretion, an ancillary receiver may be appointed to assist the out-of-state receiver in the recovery and management of assets and property located in Vermont.

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

AK, AR, IL, LA - An insurer has assets, business, or claims in this state and either 1) sufficient assets in the state to justify appointment of ancillary receiver or 2) if 10 or more person resident in state having claims against insurer petition director for appointment of ancillary receiver.

KY, MN, NH, WI - if the Commissioner finds that there are sufficient assets of the insurer located in the state to justify the appointment of an ancillary receiver; or 2) if 10 or more state residents having claims against the insurer file a petition with the Commissioner requesting appointment of an ancillary receiver; or 3) if protection of creditors or policyholders in this state so requires.

CO, CT, DC, IN, MS, MT, NC, ND, NE, OH, PA, SC, SD, TN, VT - if there are sufficient assets of the insurer located in the state to justify the appointment of the ancillary receiver, or if the protection of creditors or policyholders in the state so requires.

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DE – allowed upon the appointment in the domiciliary state of such insurer of a receiver, liquidator, conservator, rehabilitator or other officer by whatever name called for the purpose of liquidating the business of such insurer.

FL - ANCILLARY RECEIVERSHIPS ARE NOT REQUIRED. THEY ARE ALLOWED WHEN THERE ARE ASSETS IN THE STATE OF FLORIDA WHICH NEED TO BE PROTECTED OR COLLECTED.

MA - An ancillary receivership may be commenced in Massachusetts on the "grounds that such foreign insurer has been placed in the hands of a receiver or that possession of such insurer has been taken by the person having supervision of such insurer in its domiciliary state, or that such insurer has had its property sequestered in its domiciliary state or any other state."

ME - Never required, and have not been invoked for many years. They are allowed for insurers "having assets, business or claims in this State" if a domiciliary receiver has been appointed or if the statutory grounds for rehabilitation or liquidation are proven in Maine.

MI – same grounds as for a domestic rehabilitation or liquidation or other circumstances (see law).

WV – same conditions as when a receivership can be implemented for a domestic insurer.

MO – allowed but not required. Uncommon in MO.

OK - The Insurance Commissioner may apply to the court for an order appointing him as ancillary receiver of and directing him to liquidate the business of a foreign insurer having assets, business, or claims in this state upon the appointment in the domiciliary state of such insurer of a receiver, liquidator, conservator, rehabilitator or other officer by whatever name called for the purpose of liquidating the business of such insurer.

TX - The Commissioner may initiate an ancillary conservation of a foreign insurer if there are grounds for a seizure order, or if: 1. the insurer's property has been sequestered, garnished, or seized; 2. the insurer's certificate of authority to do business in Texas has been revoked or was never issued, and there are Texas residents with unpaid claims or in-force policies; or 3. an action is necessary to enforce a stay under a guaranty act. There are no circumstances requiring an ancillary conservation.

UT - (a) any of the foreign insurer's property is sequestered, garnished, or seized by official action in its domiciliary state or in any other state; (b) (i) the foreign insurer's certificate of authority to do business in this state is revoked or a certificate of authority is never issued; and (ii) there is a resident of this state with an unpaid claim or in-force policy; or (c) it is necessary to enforce a stay under Chapter 28, Guaranty Associations.

AZ - The director may apply to the court for an order appointing the director as ancillary receiver of and directing the director to liquidate the business of a foreign insurer having assets, business or claims in this state upon the occurrence of either: 1. The appointment in the domiciliary state of the insurer of any receiver, liquidator, conservator, rehabilitator or other officer by whatever name called for the purpose of liquidating the business of the insurer. 2. A mandatory control level event as prescribed by chapter 2, article 12 of this title, if any receiver, liquidator, conservator, rehabilitator or other officer by whatever name called is not appointed in the insurer's domiciliary state.

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

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AK - Ancillary receiver takes immediate possession of insurer's property in state, subject to rights of domiciliary receiver in a reciprocal state under AS 21.78.140 to take title to all insurer's property, books and records in the state, right to recover balances due from local agents

AR - It is not the normal practice for an ancillary receivership to be filed by Arkansas, when an admitted foreign insurer is placed in receivership. Assets located in the state would be maintained and disposed of as appropriate and as agreed to with the domiciliary receiver.

AZ - The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver.

CO - Domiciliary liquidators in other states (1) The domiciliary liquidator of an insurer domiciled in a reciprocal state shall be vested, except as to special deposits and security on secured claims, by operation of law with the title to all of the assets, property, contracts, rights of action, and agents' balances and all of the books, accounts, and other records of the insurer located in this state. ... The domiciliary liquidator shall have the immediate right to recover balances due from agents and to obtain possession of the books, accounts, and other records of the insurer located in this state, and shall also, have the right to recover all other assets of the insurer located in this state. (2) If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the commissioner of this state 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, accounts, and other records of the insurer located in this state... The commissioner of this state may petition for a conservation or liquidation order under or for an ancillary receivership, or, after approval by the district court, may transfer title to the domiciliary liquidator as the interests of justice and the equitable distribution of the assets require.

CT - Pursuant to Conn. Gen. Stat. §38a-954, the domiciliary liquidator of an insurer domiciled in a reciprocal state shall, except as to special deposits and security on secured claims, be vested by operation of law with the title to all of the assets, property, contracts and rights of action, agents' balances and all of the books, accounts and other records of the insurer located in this state. The domiciliary liquidator shall have the immediate right to recover balances due from agents and to obtain possession of the books, accounts and other records of the insurer located in this state. He also shall have the right to recover all other assets of the insurer located in this state, subject to section 38a-955. If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the Connecticut Commissioner 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, accounts and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domicile. The Connecticut Commissioner may petition for an ancillary receivership pursuant, or after approval by the Superior Court may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require. Claimants residing in this state may file claims with the liquidator or ancillary receiver, if any, in this state or with the domiciliary liquidator, if the domiciliary law permits. The claims shall be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings. Pursuant to Conn. Gen. Stat. §38a-955(c) When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in this state may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in this state. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in

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this state, and shall pay the necessary expenses of the proceedings. He shall promptly transfer all remaining assets, books, accounts and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.

DC - The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in the District, and shall pay the necessary expenses of the proceedings. He or she shall promptly transfer all remaining assets, books, accounts, and records to the domiciliary liquidator.

DE - If another State opens an ancillary receivership, then the Receiver determines what to do with any assets located in that State.

FL – Florida ancillary receiver will take possession of and/or collect the assets of the insurer which are located in Florida.

HI - §431:15-404 Ancillary formal proceedings. (a) If a domiciliary liquidator has been appointed for an insurer not domiciled in this State, the commissioner may file a petition with the circuit court of the first judicial circuit requesting appointment as ancillary receiver in this State: (1) If the commissioner finds that there are sufficient assets of the insurer located in this State to justify the appointment of an ancillary receiver; or (2) If the protection of creditors or policyholders in this State so requires. (b) The court may issue an order appointing an ancillary receiver on whatever terms it considers appropriate. The filing or recording of the order with the bureau of conveyances imparts the same notice as evidence of title. (c) When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in this State may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in this State. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this State, and shall pay the necessary expenses of the proceedings. The ancillary receiver shall promptly transfer all remaining assets, books, accounts and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and the receiver's deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this State. (d) When a domiciliary liquidator has been appointed in this State, ancillary receivers appointed in reciprocal states shall have, as to assets and books, accounts, and other records in their respective states, corresponding rights, duties and powers to those provided in subsection (c) for ancillary receivers appointed in this State.

IL - Assets are equally and uniformly conserved to ensure that claimants against such insurer are receive equal and uniform treatment.

IN - "When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in Indiana may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in Indiana. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in Indiana, and shall pay the necessary expenses of the proceedings. He shall promptly transfer all remaining assets, books, accounts and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an

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insurer domiciled in Indiana."

KY - The ancillary receiver shall have the sole right to recover assets in Kentucky not already recovered by the domiciliary receiver.

MA - The ancillary receiver will take possession of the company's assets in Massachusetts and conserve them until a determination is made as to how to best proceed. In the vast majority of cases the company's Massachusetts' assets will consist primarily of special deposits provided as a condition of being licensed in Massachusetts. In these cases, the assets will be transferred to an account for the ancillary receivership estate following the entry of an order appointing an ancillary receiver by the Court. Next steps will be dictated by the identity of the Massachusetts policyholders and whether or not it would be better for these policyholders for the assets to be distributed by the Ancillary Receiver or the Domestic Receiver.

ME - "upon the appointment of an ancillary receiver in this State, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this State, and shall pay the necessary expenses of the proceedings. All remaining assets he [sic] shall promptly transfer to the domiciliary receiver.... The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this State to recover any assets of such insurer to which he [sic] may be entitled under the laws of this State."

MI - proof of claims can be filed either with the domestic or ancillary receivership

MN - The ancillary receiver has the sole right to recover the assets of the insurer that are not already recovered by the domiciliary liquidator.

MO - The domiciliary receiver of an insurer domiciled in a reciprocal state 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 located in this state, and he shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this state. He shall also be entitled to recover the other assets of the insurer located in this state except that upon the appointment of an ancillary receiver in this state, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. All remaining assets shall be promptly transferred to the domiciliary receiver. Subject to the foregoing provisions the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets as a receiver of an insurer domiciled in this state.

MS - The Commissioner is vested by operation of law title to all property located in this state at the same time the domiciliary liquidator is vested with title in the domiciliary state.

MT - The ancillary receiver shall, as necessary, assist the domiciliary liquidator in recovering assets of the insurer located in Montana. The receiver shall liquidate from respective securities those special deposit claims and secured claims that are proved and allowed in the ancillary proceedings in Montana. Remaining assets shall be transferred to the domiciliary liquidator.

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NC - When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in NC, may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in NC. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this State, and shall pay the necessary expenses of the proceedings. He shall promptly transfer all remaining assets, books, accounts, and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this State.

ND - When a domiciliary liquidator has been appointed in a reciprocal state, the ancillary receiver appointed in this state may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in this state. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. The ancillary receiver shall promptly transfer all remaining assets, books, accounts, and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and deputies of the ancillary receiver shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.

NE - If the domiciliary liquidator is appointed in a reciprocal state, the ancillary receiver shall liquidate from securities those special deposit claims and secured claims which are proved, pay necessary expenses, and transfer all remaining assets to the domiciliary liquidator.

NH - Under RSA 402-C:55 III. Property Rights and Title: Ancillary Receivers in This State. When a domiciliary liquidator has been appointed in a reciprocal state, the ancillary receiver appointed in this state under paragraph I shall have the sole right to recover all the assets of the insurer in this state not already recovered by the domiciliary liquidator, except that the domiciliary liquidator shall be entitled to and have the sole right to recover balances due from agents and the books, accounts and other records of the insurer. The ancillary receiver shall have the right to recover balances due from agents and books, accounts and other records of the insurer, if such action is necessary to protect the assets because of inaction by the domiciliary liquidator. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. He shall promptly transfer all remaining assets to the domiciliary liquidator. Subject to this section, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state. IV. Property Rights and Title: Foreign Ancillary Receivers. When a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have, as to assets and books, accounts and other records located in their respective states, corresponding rights and powers to those prescribed in paragraph III for ancillary receivers appointed in this state.

OH - "When a domiciliary liquidator has been appointed in a reciprocal state, then the ancillary receiver appointed in this state may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in this state. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. He shall promptly transfer all remaining assets, books, accounts, and records to the

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domiciliary liquidator. Subject to this section, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.”

OK - An order to liquidate the assets in this state of a foreign insurer shall require the Insurance Commissioner forthwith to take possession of the property of the insurer within this state and to liquidate it subject to the orders of the court and with due regard to the rights and powers of the domiciliary receiver, as provided in this article. Upon the appointment of an ancillary receiver in this state, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expense of the proceedings. All remaining assets he shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions, the ancillary receiver and his deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets as a receiver of an insurer domiciled in this state.

PA - Assets in the state are handled by the domiciliary liquidator. Ancillary receivers appointed in reciprocal states have rights and powers to handle assets in their state corresponding to the rights and duties of ancillary receivers appointed in the commonwealth. Note: the court may appoint an ancillary receiver on whatever terms it deems appropriate. Finally, the commissioner in her sole discretion may institute proceedings at the request of the domiciliary state of any foreign or alien insurer having property located in this commonwealth.

SC - the ancillary receiver may, whenever necessary, aid and assist the domiciliary liquidator in recovering assets of the insurer located in South Carolina. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings and shall pay the necessary expenses of the proceedings. He then shall promptly transfer all remaining assets, books, accounts, and records to the domiciliary liquidator. Subject to this section, the ancillary receiver and his deputies have the same powers and are subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in South Carolina. Also, under Section 38-27-940, the filing or recording of an order appointing an ancillary receiver with a register of deeds in South Carolina imparts the same notice which a deed, bill of sale, or other evidence of title duly filed or recorded with that office would impart.

TN - The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims that are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. The ancillary receiver shall promptly transfer all remaining assets, books, accounts and records to the domiciliary liquidator.

TX - The ancillary conservator holds the assets until the domiciliary commissioner is appointed as receiver, or until an order terminating conservation is entered. The ancillary conservator must turn over to the domiciliary receiver all property subject to the ancillary conservation order. The ancillary conservator may liquidate property as necessary to cover the costs incurred in the initiation or administration of a proceeding.

UT - (3) (a) An order entered pursuant to this section shall appoint the commissioner as conservator. (b) The conservator's title to assets shall be limited to the insurer's property and records located in this state. (4) (a) Notwithstanding Subsection 31A-27a-201(3), the conservator shall hold and conserve

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the assets located in this state until: (i) the commissioner in the insurer's domiciliary state appoints its receiver; or (ii) an order terminating conservation is entered under Subsection (7). (b) Once a domiciliary receiver is appointed, the conservator shall turn over to the domiciliary receiver all property subject to an order under this section. (5) The conservator may liquidate the property of the insurer that may be necessary to cover the costs incurred in the initiation or administration of a proceeding under this section. (6) (a) The court in which an action under this section is pending may issue a finding of insolvency or an ancillary liquidation order. (b) An ancillary liquidation order shall be entered for the limited purposes of: (i) liquidating assets in this state to pay costs under Subsection (5); or (ii) activating applicable guaranty associations in this state to pay valid claims that are not being paid by the insurer. (7) The conservator may at any time petition the receivership court for an order terminating an order entered under this section.

VT - The ancillary receiver shall, as soon as practicable, liquidate special deposit claims and secured claims which are proved and allowed in ancillary proceedings in Vermont, and shall pay the necessary expenses of the proceedings. The ancillary receiver shall then transfer all remaining assets, accounts, books and records to the primary receiver.

WI - "When a domiciliary liquidator has been appointed in a reciprocal state, the ancillary receiver appointed in this state under sub. (1) shall have the sole right to recover all the assets of the insurer in this state not already recovered by the domiciliary liquidator, except that the domiciliary liquidator shall be entitled to and have the sole right to recover balances due from agents and the books, accounts and other records of the insurer. The ancillary receiver shall have the right to recover balances due from agents and books, accounts and other records of the insurer, if such action is necessary to protect the assets because of inaction by the domiciliary liquidator. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. The ancillary receiver shall promptly transfer all remaining assets to the domiciliary liquidator. Subject to this section, the ancillary receiver and the ancillary receiver's deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state. "

WV - An order to conserve the assets of a foreign or alien insurer shall require the commissioner forthwith to take possession of the assets of the insurer within this state and to conserve it, subject to the further direction of the court. An order to liquidate the assets in this state of a foreign insurer shall require the commissioner forthwith to take possession of the assets of the insurer within this state and to liquidate it subject to the orders of the court and with due regard to the rights and powers of the domiciliary receiver, as provided in this article.

Authority

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

#Yes = 35	- 8 – Supervision and Summary Orders - 22 - Seizure - 2 - Injunctions
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	<ul style="list-style-type: none"> - 13 - Conservation - 1 - Court order for a delinquency proceeding
#No, #N/A, Blank = 3 - No narrative response	

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

#Yes = 32	
#No, #N/A, Blank = 4 - No narrative response	

11. Does the Commissioner have statutory immunity as Receiver?

#Yes = 25	
#No = 12	<p>AZ – Not explicitly within the receivership statutes, however the Receiver has whatever state immunity is available and derivative judicial immunity when acting pursuant to court orders per case law.</p> <p>IL - The Receiver is entitled to qualified statutory indemnity.</p> <p>MA - our receivership laws do not provide statutory immunity for the Commissioner acting as Receiver.</p> <p>MT - The Commissioner doesn't have statutory immunity, but is indemnified in any legal action, except if the conduct did not arise out of or by reason of the liquidator's duties or employment or in the case of intentional or willful and wanton misconduct</p> <p>NE - In any proceeding under the Act, the director and his deputies shall be responsible on their official bonds for the faithful performance of their duties. In addition, there is some question about the personal liability of the receiver if his/her actions create a preference.</p> <p>NH - here is a US District Court case in NH District Court that indicates that the Commissioner has personal liability as Liquidator - from Home Insurance Liquidation proceedings</p> <p>SC - Please note that the court order of discharge will normally address liability of receiver, deputy receiver and agents thereof.</p> <p>SD - The Director is responsible on his official bond.</p> <p>MN, MS, ND, WY – No narrative response</p>
#N/A, Blank = 1	

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

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#Yes = 24	
#No = 9	<p>MN, MS, NE – no narrative response</p> <p>AZ – same as #11</p> <p>CA – Contractors and employees of the insurer may not have immunity because the commissioner did not appoint or employ them.</p> <p>CT - Conn. Gen. Stat. §38a-909 extends to the receiver and those employed by the receiver. Independent contractors retained by the receiver are not entitled to the immunity.</p> <p>DE - The Commissioner's immunity does not extend to contractors or employees of the insurer. However, language granting immunity to the insurer's employees acting at the direction of the Receiver may be added to the injunction order issued in the delinquency proceedings.</p> <p>ME - Maine Tort Claims Act expressly provides that immunity does not extend to government contractors.</p> <p>SD - See above. In practice, final Court Orders closing rehabilitations/liquidation operations typically immunize the receiver/liquidator and deputies from past and future liability.</p>
#N/A, Blank = 5	<p>SC – N/A, same as #11</p> <p>MA, ND, WY– N/A, no narrative response</p>

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

Note that a number of states responded that priority schemes only apply in liquidation, not rehabilitation. Those responses occur in each answer category, Yes/No/NA. Many responses included consideration of liquidation in the response as seen below, so responses should not be viewed as exclusive to rehabilitation unless stated as such.

#Yes = 14	<p>CA - The Commissioner may settle disputes over the priority of claims, provided the settlement is reasonably related to the public interest, and not arbitrary or improperly discriminatory.</p> <p>DC - Yes, because there is no express priority scheme for a rehabilitation proceeding. However, the supervising court would have to approve distributions and the further the distribution deviates from the priority scheme for liquidations (D.C. Official Code s. 31-1340), the less likely the court would be to approve it.</p> <p>IN - A preference may be avoided by the liquidator if: (1) the insurer was insolvent at the time of the transfer; (2) the transfer was made within four (4) months before the filing of the petition; (3) the creditor receiving it or to be benefited by it or his agent acting with reference to it had, at the time when the transfer was made, reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or</p>
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	<p>(4) the creditor receiving it was an officer, or any employee or attorney or other person who was in fact in a position of comparable influence in the insurer to an officer whether or not he held such a position, or any shareholder holding directly or indirectly more than five percent (5%) of any class of any equity security issued by the insurer, or any other person, firm, limited liability company, corporation, association, or aggregation of persons with whom the insurer did not deal at arm's length."</p> <p>MA - The Court may appoint the "Commissioner of Insurance as permanent receiver and authorize him to take possession of all property and effects of the Company and to conduct its business for the purposes of rehabilitating it by taking such measure as may be proper to eliminate the causes and conditions which caused the institution of such proceeding, such to the order of the [C]our." Based upon the broad language contained in our statute, we believe that a Massachusetts Rehabilitator could, with approval from the Court, depart from the priority scheme provided for in connection with liquidations.</p> <p>MI - Yes but only with an open hearing and proper notice. Usually the departure from the priority scheme deals with payments and settlements of individual creditor claims.</p> <p>NE - Generally, yes. The purpose of rehabilitation is for the "rehabilitator to take such action as he or she deems necessary to appropriate to reform and revitalize the insurer." That said, the rehabilitator should be aware of the priority scheme and take it into consideration when submitting a plan of rehabilitation to the court for review. In the past, we have had a couple of attorneys hint that actions taken by the director as rehabilitator in a rehabilitation caused harm to a policyholder or creditor when the company went into liquidation, but no one has pursued the argument to date.</p> <p>NH – "The liquidator...may compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court. Unresolved disputes shall be determined under RSA 402-C:41. As often as practicable, he shall present to the court reports of claims against the insurer with his recommendations."</p> <p>TX - A rehabilitation plan must provide no less favorable treatment of a class of claims than would occur in liquidation, except in the following circumstances: 1. The holder of a claim agrees to a less favorable treatment of that claim, or 2. The plan provides separate treatment of subclasses of claims that are de minimis.</p> <p>UT - here is no statutory priority scheme in rehabilitation. However, in rehabilitation the receiver is required to file a plan of rehabilitation within one year to the court to approve. The law does not prohibit inclusion of a priority scheme in the plan. Although Utah has not sought approval of a rehab plan with a priority scheme, it is my understanding other states (Texas) have received court approval to utilize a priority scheme in a rehab, which may or may not deviate from the priority scheme in a liquidation under IRMA.</p>
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	WI - Yes - Determined by court case. Nickel v. Wells Fargo Bank
#No = 12	WY – No but there are some differences in priority of claims if the entity is a Health Maintenance Organization.
#N/A, Blank, other answer = 12	<p>DE – Maybe. Section 5918 of the Delaware Insurance Code sets forth the priority scheme. It is unclear from the Department's perspective if a rehabilitation can depart from the priority scheme if the particular circumstances of the rehabilitation justify such a departure.</p> <p>ME - No explicit authority, but the powers of a rehabilitator are broad - " to conduct the business of the insurer or to take such steps as are authorized by this chapter for the purpose of rehabilitating, liquidating or conserving the affairs or assets of the insurer" - and the claim priority scheme is specific to the distribution of assets on liquidation</p> <p>SD - Some provisions of Ch. 58-29B penalize various types of claims by moving priority in the case of various acts by individuals.</p>

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))

The following eight states reported no circumstances specified in law as follows:

AR - A "plan of rehabilitation" is not required by the receivership law of Ark. As a matter of practice, if a plan to rehabilitate an insurer is feasible the plan will be submitted to the Receivership Court for approval after notice to creditors, policyholders and interested parties.

CA – no statutory requirement

DE - There are no statutory requirements for a plan, but as a matter of practice rehabilitation plans are filed in all rehabilitations.

FL - WITH THE EXCEPTION OF A REHABILITATION OF A TITLE INSURANCE COMPANY, IN WHICH CASE A PLAN OF REHABILITATION IS REQUIRED, A PLAN OF REHABILITATION IS NOT REQUIRED IN A REHABILITATION PROCEEDING.

KY - There are none.

MA - Our statutes do not specifically require that a plan of rehabilitation be filed in any circumstances.

ME - Not a legal requirement, so it is up to the discretion of the receiver.

WY - No specific plan is required other than to proceed as ordered by the Court.

Circumstances were reported by the following states as:

AK, CO, CT, DC, HI, IN, MT, NC, ND, NE, OH, SC, SD, TN, WI, VT – All reported similar circumstances as "If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger, or

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other transformation of the insurer is appropriate, the rehabilitator shall prepare a plan to effect such changes.”

IL - Proposing a plan of rehabilitation is at the discretion of the Rehabilitator, if a plan is in the best interests of policyholders, creditors and the company.

LA - If the Commissioner believes it is in the best interest of policyholders, creditors and the insurer he may submit a plan to the court for approval

MI - It is required in all rehabilitation proceedings, however the court has given us leeway to do informal plans as long as the order of priority is followed.

MN - A reorganization plan is discretionary.

MO - Rehabilitation plan is typically part of periodic accounting to court.

NH - The rehabilitator may prepare a plan for the reorganization, consolidation, conversion, reinsurance, merger or other transformation of the insurer.

OK - Upon Court Order

PA - the law does not specify the circumstances which require a plan of rehabilitation.

TX - A plan of rehabilitation must be filed no later than the first anniversary of the entry of the rehabilitation order, unless extended by the receivership court.

UT - A rehabilitation plan is required.

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)).

The following 15 states responded with similar requirements as follows:

AK, DC, MI, MO, MT, NC, ND, SD, VT - in the judgment of the court, fair and equitable to all parties concerned

CO, CT, HI, IN, SC, TN - Any plan approved under this section shall be, in the judgment of the court, fair and equitable to all parties concerned. ... In the case of a life insurer, if all rights of shareholders are first relinquished, the plan proposed may include the imposition of liens upon the policies of the company. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies, for such period and to such an extent as may be necessary.

The following states responded with other requirements as follows:

IL - A plan of rehabilitation must be consistent with creditor priorities contained in the statutory distribution scheme, and notice of hearing of hearing is provided as established by the Court.

KY - The only requirement is that the plan must be filed with an approved by the Court.

LA - The Plan may have such provisions as the Commissioner deems necessary or advisable and must be approved by the Court.

ME - Discretion of the receiver

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NE - No specific requirements for the plan, though the plan "may" include things such as establishment of a trust and provisions for cancellation of outstanding stock.

OH - does not require specific information to be contained in the plan. The statute provides that any plan must be submitted to the court for approval, and further that "after such notice and hearings as the court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified."

OK – court discretion

TX - A plan must be, in the judgment of the court, fair and equitable to all parties concerned. It must: (1) provide no less favorable treatment of a claim or class of claims than would occur in liquidation, with limited exceptions (see #29); (2) provide adequate means for the plan's implementation; (3) contain information concerning the financial condition of the insurer, and the operation and effect of the plan; and (4) provide for the disposition of the books, records, documents, and other information. A plan for a life insurer may propose a moratorium on loan and cash surrender rights for a period not exceeding one year from the order approving the plan, unless the court extends the moratorium. A plan may include any other provision consistent with the act.

UT - (3) A plan shall: (a) except as provided in Subsection (5), provide no less favorable treatment of a claim or class of claims than would occur in liquidation, unless the holder of a particular claim or interest agrees to a less favorable treatment of that particular claim or interest; (b) provide adequate means for the plan's implementation; (c) contain information concerning the financial condition of the insurer and the operation and effect of the plan, as far as is reasonably practicable in light of: (i) the nature and history of the insurer; (ii) the condition of the insurer's records; and (iii) the nature of the plan; and (d) provide for the disposition of the records relevant to the duties and obligations covered by the plan. (4) A plan may include any other provisions not inconsistent with this chapter, including: (a) payment of distributions; (b) (i) assumption or reinsurance of all or a portion of the insurer's remaining liabilities by a licensed insurer or other entity; and (ii) transfer of assets and related records to the licensed insurer or other entity; (c) to the extent appropriate, application of insurance company regulatory market conduct standards to any entity administering claims on behalf of the receiver or assuming direct liabilities of the insurer; (d) contracting with a guaranty association or any other qualified entity to perform the administration of claims; (e) annual independent financial and performance audits of any entity administering claims on behalf of the receiver that is not otherwise subject to examination pursuant to state insurance law; and (f) termination of the insurer's liabilities other than those under policies of insurance as of a date certain. (5) (a) A plan may designate and separately treat one or more separate subclasses consisting only of those claims within the subclasses that are for or reduced to de minimis amounts

The following states responded with no requirements as follows:

AZ, MA, MN, PA, WI - none

DE - There are no statutory requirements setting forth specific provisions in a rehabilitation plan. In practice, Delaware plans will typically include a description of assets, description of impairment, notice and an opportunity to be heard by all affected parties.

FL - FLORIDA STATUTES PROVIDE SPECIFIC REQUIREMENTS FOR A REHABILITATION PLAN INVOLVING THE REHABILITATION OF A TITLE INSURANCE COMPANY. OTHERWISE, THERE ARE NO SPECIFIC

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STATUTORY REQUIREMENTS FOR A REHABILITATION PLAN.

WY - No specific plan is required other than to proceed as ordered by the Court.

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

<p>#Yes = 3</p>	<p>IN - Upon issuance of the order of liquidation, the rights and liabilities of any insurer and of its creditors, policyholders, shareholders, members and all other persons interested in its estate become fixed as of the date of entry of the order of liquidation, except as provided in certain sections of IC 27-9.</p> <p>TX – See #15 above.</p> <p>UT - A plan shall: (a) except as provided in Subsection (5), provide no less favorable treatment of a claim or class of claims than would occur in liquidation, unless the holder of a particular claim or interest agrees to a less favorable treatment of that particular claim or interest;</p>
<p>#No = 32</p>	<p>DC - Not exactly. The District's receivership statute does specify: "Whenever the Commissioner believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders, or the public, or would be futile, the Commissioner may petition the Superior Court of the District of Columbia for an order of liquidation. "</p> <p>MI - No but that would be part of the analysis of remaining in rehabilitation or filing for a liquidation order.</p> <p>NE - No specific requirement, other than that the plan must be "fair and equitable to all parties concerned."</p> <p>PA – This is a standard the Receiver is cognizant of and generally tries to meet.</p> <p>TN - Tennessee does not have a statute that expressly provides that a creditor should be no worse off in rehabilitation than in liquidation. In addition TCA § 56-8-317 provides for creditor preferences in relation to liquidation, and an equivalent statute does not exist for rehabilitation.</p>
<p>#N/A, Blank = 3</p>	<p>ME - The law does not explicitly grant such a right. On the other hand, the law does not explicitly authorize claims to be discharged in rehabilitation either. An objecting creditor might assert the right to be no worse off than liquidation in an action to enforce a claim under 24-A M.R.S.A. § 4368, or might petition the court to convert the rehabilitation into a liquidation.</p>

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?

<p>#Yes = 28 #No = 6</p>	<p>Note that most responses regardless of Yes/No/NA referred to the ability to sell or dissolve “with approval from the court”.</p>
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#N/A, Blank = 4	
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18. Does the transfer of assets and liabilities require the consent of any creditor?

#Yes = 1	NH - 402-C:26 Notice to Creditors and Others. – I. Notice Required. (a) General Requirements. The liquidator shall give notice of the liquidation order as soon as possible ... to all persons known or reasonably expected to have claims against the insurer, including all policyholders...
#No = 33	
#N/A, Blank = 4	MI - Transfer of assets and liabilities would normally occur during rehabilitation and possibly liquidation. These types of transactions would require proper notification to interested parties and a hearing on the transfer and a creditor/interested party would be given the right to object.

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

#Yes = 6	<p>CO & IN responded similarly with - After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value, or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid for that real property, for which amount the transferee shall have a lien on the property so transferred. The commencement of a proceeding in rehabilitation or liquidation shall be constructive notice upon the recording of a copy of the petition for or order of rehabilitation or liquidation with the recorder of deeds in the county where any real property in question is located.</p> <p>OH - The ORC does not contain a provision which specifically states that a transfer of assets and liabilities does not constitute a default. However, ORC 3903.10(D) provides: "Entry of a seizure order or other order under this section does not constitute an anticipatory breach of any contract of the insurer." Additionally, ORC 3903.21(A)(23) – "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."</p> <p>TX - Tex. Ins. Code § 443.013 (b) provides that neither the filing of a petition commencing delinquency proceedings nor the entry of an order for a delinquency proceeding constitutes a breach or anticipatory breach of any contract.</p> <p>UT - The relevant statute here is not as clear as it could be. However, we interpret the law to be able to answer in the affirmative.</p> <p>VT - Entry of a seizure order [under this Chapter 145] shall not constitute an</p>
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	anticipatory breach of any contract of the insurer. 8 VSA 7042(d)
#No = 26 #N/A, Blank = 6	

Qualified Financial Contracts

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

Yes = 22 ² :	AZ, CT, CO, DE, IL, IN, IA, KS, MA, ME, MD, MI, MN, MO, NE, NJ, NY, OH, TN, TX, UT, VA
#No = 20	AK, AR, CA, DC, FL, HI, KY, LA, MS, MT, NC, ND, OK, PA, SC, SD, VT, WI, WV, WY
#N/A, Blank = 2	NH, NM

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

#Yes = 16	Same states as "yes" to #20 = AZ, CO, CT, DE, IL, IN, MA, ME, MI, MN, MO, NE, OH, TN, TX, UT
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i. If not exempted, is there a limit on the duration of the stay?

All #20a responses are "exempted" so this question is not applicable.

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?

#Yes = 2	CO - 10-3-540.5(4) (4) If a receiver for an insurer makes a transfer of one or more netting agreements or qualified financial contracts, the receiver shall use its best efforts to notify any person who is party to the netting agreements or qualified financial contracts of the transfer by 12 noon of the receiver's local time on the business day following the transfer. For purposes of this subsection (4), "business day" means a day other than a Saturday, Sunday, or any day on which either the New York stock exchange or the federal reserve bank of New York is closed. MI - With the exception of the Federal Home Loan Bank 500.8115a (b) (i)
#No = 15	CT - legislation is anticipated in 2016.

² Based on survey results and staff research.

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Stays

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

#Yes = 10	CT, DE, FL, LA, MO, ND, NH, TX, UT, WY
#No = 28	AK, AR, AZ, CA, CO, DC, HI, IL, IN, KY, MA, ME, MI, MN, MS, MT, NC, NE, NM, OH, OK, PA, SC, SD, TN, VT, WI, WV

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

#Yes = 28	AK, AR, CA, CO, CT, DC, DE, FL, HI, IN, LA, ME, MI, MN, MO, MS, MT, NC, NE, NH, OH, PA, SC, SD, TN, TX, UT, WY
#No = 9	AZ, IL, KY, MA, ND, OK, VT, WI, WV
#N/A, Blank = 1	NM

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

#Yes = 34	AK, AR, AZ, CA, CO, CT, DC, DE, FL, HI, IL, IN, KY, LA, ME, MI, MN, MO, MS, MT, NC, ND, NE, NH, OH, PA, SC, SD, TN, TX, UT, VT, WI, WY
#No = 1	WV - the Court may order such a stay however.
#N/A, Blank = 3	MA - Our receivership statutes do not contain automatic stay language. Because of this all of our receivership petitions contain a request that a stay be ordered by the receivership court upon entry of a receivership order. Our statutes do provide, however, that "during the pendency of delinquency proceedings in the commonwealth or any other state, no action or proceeding in the nature of an attachment, garnishment, or levy on execution shall be commenced or maintained in the courts of the commonwealth against the delinquent insurer or its assets." NM, OK – no narrative response

24. Does the stay apply to Actions against insureds?

#Yes = 18	AZ, CA, CO, IL, IN, ME, MI, MN, MO, NC, NE, NH, SC, TN, TX, UT, VT, WY
#No = 16	AK, AR, CT, DC, DE, FL, HI, KY, LA, MS, ND, OH, PA, SD, WI, WV
#N/A, Blank = 4	MA - Actions against certain insured are addressed via a provision in our Property and Casualty Guaranty Fund Statute which provides for a six month stay (more with the permission of the receivership court) for actions against insureds. MT - Rehabilitation: stay applies to actions against insureds. Liquidation: stay does not apply to actions against insureds. NM, OK – no narrative response

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25. Are stays imposed in rehabilitation and liquidation proceedings?

#Yes = 26	AR, AZ, CA, CO, CT, DC, DE, FL, IL, IN, LA, MI, MN, MO, MS, MT, NH, OH, PA, SC, TN, TX, UT, VT, WI, WY
#No = 7	HI, KY, NC, ND, NE, SD, WV
#N/A, Blank = 5	AK, MA, ME, NM, OK

26. Are stays imposed in only liquidation proceedings?

#Yes = 2	HI – See #22 SD - Triggered by appointment of a Liquidator.
#No, #N/A, or Blank = 36	

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

Operations

#Yes = 20	<p>AK - YES / NO: No limit on duration in liquidation proceedings. In rehabilitation proceedings, stay is limited to period of time necessary for receiver to obtain proper representation and prepare for further proceeding</p> <p>AR – 90 days</p> <p>CA - No as to the insurer. Yes as to the insured—60 days from the date that an order of receivership has been entered by a superior court.</p> <p>CT - Conn. Gen. Stat. §38a-917 - rehabilitations - the stay if for 90 days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings. Conn. Gen. Stat. §38a-926 - liquidations - no express time limitation; however the Connecticut Insurance Guaranty Association Act provides for a six month stay of pending actions against the insurer or insured party defended by the insolvent insurer. under Conn. Gen. Stat. §38a-851.</p> <p>DC - Yes, the automatic stay for rehabilitations is limited to "90 days" or "any additional time necessary."</p> <p>IN - Any court in Indiana before which any action or proceeding in which the insurer is a party or is obligated to defend a party is pending when a rehabilitation order against the insurer is entered shall stay the action or proceeding for ninety (90) days and for any additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings.</p> <p>ME - 60 days, which commence on "the date the insolvency is determined" (P&C), or on "the date an order of liquidation, rehabilitation or conservation is final" (L&H). Any</p>
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	<p>stay beyond then would not be automatic, but would be subject to the court's injunctive powers; the P&C law expressly gives the court the power to extend the stay "solely as is deemed necessary to permit proper defense by the association of all pending causes of action."</p> <p>MI - For rehabilitation 90 days, generally six months for liquidations</p> <p>MO - Rehabilitation - 90 days, Liquidation, no limit.</p> <p>MT - Rehabilitation: stay is effective 90 days plus additional time necessary for rehabilitator to obtain proper representation and prepare for further proceedings. Liquidation: stay is indefinite.</p> <p>NC - Stays are in effect for 120 days in rehabilitation.</p> <p>ND - Whenever any action or proceeding in which the insurer is a party, or is obligated to defend a party, is pending at the time a rehabilitation order against the insurer is entered, the court before which the action or proceeding is pending shall stay the action or proceeding for ninety days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings.</p> <p>NE - 90 days and such additional time as is necessary for the rehabilitator or obtain proper representation and prepare for further proceedings.</p> <p>OH - In a rehabilitation proceeding, the stay is limited to "ninety days and such additional time as is necessary for the rehabilitator to obtain proper representation and prepare for further proceedings."</p> <p>PA - The duration of the stay against the insurer in liquidation is not limited. In rehabilitation, the duration of the stay is set by and extended by the Court by order.</p> <p>SD - Normal statute of limitations plus 2 years, except that actions can be brought within 2 years of the filing of the liquidation petition.</p> <p>TN - The stay for rehabilitation is 90 days or additional time as needed. There is no limit on the stay for a liquidation.</p> <p>TX - Stay of an action against an insured is 90 days, unless extended by the court. Stay of an act against property of the insurer continues until the property is no longer owned by the receivership estate. Stay of any other act continues until the delinquency proceeding is closed or dismissed.</p> <p>UT - Yes, 90 days after the day on which the receiver is appointed, unless extended by the court for good cause and notice to affected parties.</p> <p>VT - The receiver must request a specific term of the stay, which can be extended with the permission of the court.</p>
#No = 15	<p>AZ - It is up to the receiver to request the stay and set a duration if appropriate.</p> <p>IL - The stay of an action against the insurer is not of limited duration. Actions against an insured arising out of an insolvency of involving the trigger of a property and casualty guaranty fund are limited to 120 days.</p>

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	<p>MA - The length of the stay (other than for actions against insureds) is within the discretion of the receivership court.</p> <p>SC – no limitation in liquidation</p> <p>WY - There are limitations on the stay only if the insurer is insolvent.</p>
#N/A, Blank = 3	

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

<p>AK - Application to court to appoint director as receiver and entry of order of rehabilitation or liquidation</p> <p>AR- The Liquidation Division is responsible for the day-to-day operations of receiverships and ancillary receiverships, and also administers the Arkansas Property & Casualty Guaranty Fund and the Arkansas Life and Health Insurance Guaranty Association.</p> <p>AZ- The Director is the Receiver, but has a Deputy Receiver as part of the Department staff. The AZ Attorney General's Office files the receivership petition in Maricopa County Superior Court, but typically one of the first petitions is to hire outside legal counsel and a Special Deputy Receiver.</p> <p>CA - In California, the Insurance Commissioner’s Conservation and Liquidation Office (“CLO”) is responsible for all receiverships (i.e., conservations and liquidations). The CLO comprises non-civil service employees who are at-will employees.</p> <p>CO- It is handled as needed through our Attorney's General office.</p> <p>CT- The Insurance Commissioner of the State of Connecticut serves as the court appointed receiver. The Insurance Department General Counsel has responsibility for managing the insurance company receiverships on behalf of the Insurance Commissioner.</p> <p>DC- The Commissioner of the District of Columbia Department of Insurance, Securities and Banking (DISB) petitions for receivership orders. DISB's Office of the General Counsel coordinates with the District's Office of the Attorney General for the filing of petitions and all other pleadings. Typically, a Special Deputy to the Receiver is appointed to handle day-to-day administration under the Receiver's supervision. There is no separate "receiver's office."</p> <p>DE- Delaware maintains a Bureau of Rehab and Liquidation to perform and assist in the administrative functions of the Receiverships.</p> <p>FL- THE FLORIDA DEPARTMENT OF FINANCIAL SERVICES ITSELF (I.E., AS OPPOSED TO THE CHIEF FINANCIAL OFFICER OR OTHER INDIVIDUAL) IS THE COURT APPOINTED RECEIVER OF INSURANCE ENTITIES PLACED IN RECEIVERSHIP. THE FUNCTIONS OF THE RECEIVER ARE HANDLED BY THE DEPARTMENT'S DIVISION OF REHABILITATION AND LIQUIDATION. THIS DIVISION HAS APPROXIMATELY 121 POSITIONS (100 OF WHICH ARE FILLED) WHICH HANDLE THE VARIOUS RECEIVERSHIPS. THE RECEIVER CONTRACTS FOR SERVICES ONLY AS NEEDED.</p> <p>HI - HRS Chapter 431, Article 15</p> <p>IL – The Director of Insurance serves as statutory conservator, rehabilitator, or liquidator. The Director maintains an office and staff to assist in fulfilling these responsibilities organized as Office of the Special</p>
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Deputy Receiver.

IN – A delinquency proceeding under this chapter may only be commenced by the commissioner.

KY – The **function is housed within the Department of Insurance**. The Financial Standards Division, in consultation with the Legal Division makes recommendations to the Commissioner on when a receivership is appropriate. If the action is approved a Verified Petition is filed in the local Circuit Court to place the company in either rehabilitation or liquidation and appointing the Commissioner as Rehabilitator or Liquidator.

LA – The Receivership Function is outlined in the Receivership statutes in 22:2001 et seq. There is a **special attorney in the office of the Commissioner who oversees Receivership matters**. The Commissioner generally appoints Contract Receivers but is not required to do so. All legal actions are statutorily handled by the Attorney General who may use outside counsel. Such counsel is named and appointed by the Commissioner and approved by the Attorney General.

MA – **Massachusetts does not have a separate Liquidation Office** so all of our receivership functions are handled internally at the Division of Insurance and by outside consultants. While each receivership is different, in most cases the Commissioner will retain outside counsel and other experts as needed once a decision has been made to place a company into receivership. Once the receivership order is entered designated receivership staff within the Division of Insurance, as well as the Attorney General's Office, will work with outside counsel and experts in regard to the administration of the proceeding.

ME – The Superintendent has the statutory power to appoint special deputies. However, there is no specific process in place because we have not had an adjudicated domestic insolvency since 1975.

MI – The Director of Receiverships reports directly to the Commissioner (now Director). **The Director of Receiverships acts a receiver and is state employee**. In some isolated cases outside receivers are hired through a bid process

MN – Minnesota **does have a specific receivership office** established, as Minnesota has had few receiverships to address. **Receiverships would be managed as part of the insurance analysis section**, under the supervision of the Commissioner's staff.

MO – **Receivership counsel supervises** in house receiverships with small asset estates and special deputies manage larger asset estates with supervision by receivership counsel.

MS – By Mississippi Statute Title 83 Chapter 24

MT - Commissioner files petition for rehabilitation or liquidation order in district court, and is then appointed accordingly. The Commissioner then appoints a special deputy receiver and other staff as appropriate. **Montana has no separate liquidation department**, and at times contracts with outside parties to assist in liquidations

NC - Receiverships are **handled either internally by the NCDI or in conjunction with outside consultants**.

ND - The Receiver is appointed by and acts on behalf of the Insurance Commissioner. There is **no separate Receiver's office in North Dakota**. No proceeding may be commenced by anyone other than the commissioner.

NE - The Director of Insurance is appointed as either Rehabilitator or Liquidator and **then he/she appoints special deputies** (typically contractors with receivership experience) to carry out the

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receivership functions. **Most all services are contracted outside the Department**, including legal counsel for the Rehabilitator/Liquidator and any other experts needed to assess the condition of the insurer. The special deputy will determine which staff are necessary to continue the business of the insurer and/or wind-down the insurer and manage the day-to-day operations.

NH - NH hires a special deputy receiver who acts with full authority of the office of the Commissioner but has their own staff and experts. The department pays for an state Attorney General to support the receiver and the state's interests.

NM - See NMSA 1978 Sections 59A-41-1 et seq.

OH - Upon the filing of a complaint with the court of proper jurisdiction and if the requisite conditions are found to exist, the Superintendent of Insurance shall be appointed rehabilitator (ORC 3903.12) or liquidator (ORC 3903.17) of the insurer. In either capacity, the **Superintendent may employ special deputies, clerks or assistants** considered necessary to facilitate the rehabilitation (ORC 3903.14) or the liquidation (ORC 3903.21). Persons appointed under these sections serve at the pleasure of the Superintendent and have all of the powers and responsibilities of the Superintendent as rehabilitator or liquidator.

OK - Oklahoma Receivership Office Inc ("ORO"), a non-profit corporation of which the Insurance Commissioner is President, oversees the receivership function. Contract Assistant Receivers are appointed for each estate. The Assistant Receivers either use their own staff/contractors, utilize the staff of the ORO or a combination thereof to perform the receivership tasks.

PA - Commissioner is receiver ex officio. The **Deputy Insurance Commissioner carries out the function through his office and staff**. The Liquidator has the power to hire personnel. See 40 P.S. s. 221.23(1), (2), (3).

SC - Generally, responsibility for receiverships falls within the Office of General Counsel and the Deputy Director of Financial Services. Outside consultants may be contracted with to serve as special deputies.

SD - Handled by financial solvency staff, Legal, and the staff of the appropriate area (P/C or L/H). There is **no standing office in SD DOI** for these.

TN - Commissioner is receiver by statute and **then appoints contracted special deputy receivers ("SDRs")**. The SDRs then contract for additional personnel to administer the receivership, including their own legal counsel.

TX - In most cases, the Receiver will appoint a Special Deputy Receiver (SDR) based on a competitive bidding process. **The Rehabilitation & Liquidation Oversight Division oversees the activities of the SDRs.**

UT - The commissioner is the receiver. The **commissioner contracts with a special deputy**, who in turn contracts with other professionals as needed in the particular matter.

VT - Receiverships in Vermont are generally conducted under the purview and oversight of the Superior Court. Vermont adopted an early version of the Insurer Receivership Model Act ("IRMA") circa 1991. Such body of statutory law is contained in Chapter 145 of Title 8, Vermont Statutes Annotated, titled "Supervision, Rehabilitation, and Liquidation of Insurers" (8 VSA 7031-7100, as amended). The current version of IRMA, circa 2007, has not been adopted by the State of Vermont.

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WI - The commissioner acts as receiver.

WV - Whenever a receiver is to be appointed in delinquency proceedings for a domestic or alien insurer, the court shall appoint the insurance commissioner as the receiver.

WY - The commissioner is appointed as the receiver. The **commissioner may contract with others** to assist. See WS 26-28-112.

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

Most responses specifically state there are no specific requirements and qualifications in state statute.

However general expectations appeared similar and included one or more such as the following:

- For outside legal counsel, the lawyers and firms must be on a list of "approved" outside counsel on file with the Attorney General's Office (procurement issues and conflict checks). Depending on the type of service necessary, the non-lawyer services may need to be provided by an entity that has completed the state's procurement process
- Outside counsel are required at a minimum to have prior experience working on other insurance company receiverships
- Top tier law firms for recent receiverships
- High-quality, professional services in accord with applicable professional standards.
- Relevant professional certification and licensing
- Experience and qualifications necessary to meet the responsibilities and relevant to the administration of insurance receiverships
- --- experience in either insurance law and regulation, public and statutory accounting, reinsurance, insurance taxation and all lines of insurance claims, have administered receivership estates
- ---Persons considered experts in the receivership field and have sufficient previous experience to provide appropriate guidance and make decisions on behalf of the Rehabilitator/Liquidator
- ---Experienced and qualified deputy receivers who have a proven track record, depending on the size and complexity of the pending liquidation proceedings
- Competent and of good moral character, and must not have conflicts in carrying out his or her duties
- A special deputy rehabilitator shall be an active or retired senior executive from a successful insurer
- Must appear in the NAIC Directory to Assist Receivers

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

#Yes = 10

CA - The CLO's CEO reports to the California Department of Insurance Oversight Committee, which comprises the Chief Deputy Commissioner, General Counsel, and Deputy Commissioner for Financial Surveillance.

DE – no narrative response

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	<p>FL - THE DIVISION OF REHABILITATION AND LIQUIDATION HAS NUMEROUS POLICIES AND PROCEDURES IN PLACE FOR HANDLING THE RECEIVERSHIP PROCESSES.</p> <p>IL - Director serves as statutory receiver. Receivership office is governed by a board of directors affirmed by the Director. Receivership office and every receivership estate with assets exceeding \$500k are subject to annual independent CPA audit and audit work-paper review by the State Auditor General. Every receivership estate is subject to the supervision of a state Circuit Court Judge, including quarterly reports of estate assets, receipts and disbursements. 215 ILCS 5/200; 215 ILCS 5/201; 215 ILCS 5/202</p> <p>MI - These is a set of internal audit standards and procedures. Outside CPA firms audit compliance with those policies and procedures every two years.</p> <p>MO - Receivership counsel reports to the Director. All receivership activities subject to regular audit by the Missouri State Auditor.</p> <p>OK - Oklahoma Receivership Office, Inc has established procedures to provide internal governance for employees and officers.</p> <p>PA - The receivership office is subject to financial audit.</p> <p>TN - There are internal governance procedures in place for the Receiver's office.</p> <p>TX - The Rehabilitation & Liquidation Oversight Division has adopted procedures for reviewing the performance of SDRs, and is subject to internal and external audits.</p>
#No or #N/A= 28	<p>Most No and N/A responses reference not having a separate receivership office.</p> <p>NE – Yes, there is oversight by the Rehabilitator/Liquidator for those performing the work.</p> <p>OH - The internal governance process is not defined by statute but determined by the Superintendent pursuant to her authority under ORC 3903.14.</p>

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

<p>All of the responses indicated reporting is required. Nearly all indicated reporting to an applicable court of the receivership's status and/or financial reporting at intervals that varied from monthly, quarterly, semi-annually, annually, and/or routinely "at the discretion of the court". Responses varied in terms of the content of the reporting, such as:</p> <ul style="list-style-type: none">---status of rehabilitation plan---balance of assets and liabilities---changes in assets and liabilities---income and expenses; funds received and disbursed---evaluation of claims; distribution plans/recommendations; names and addresses of claimant---audits required by the court---balance of funds allocable to the insurer
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---amount of assessments for companies with assessable policies

---distributions and closures of estates

Many responses also indicated internal reporting to the Commissioner or other authority (e.g. Governor) of the receivership's status, expenditures, & other financial reporting. Intervals of this reporting also varied.