

1 transaction of its business or the waste or disposition of its
2 property until the further order of the court. Notwithstanding the
3 foregoing, or any other provision of this chapter, no Federal Home
4 Loan Bank shall be stayed, enjoined, or prohibited from exercising
5 or enforcing any right or cause of action regarding collateral
6 pledged under any security agreement, or any pledge, security,
7 collateral or guarantee agreement or any other similar arrangement
8 or credit enhancement relating to such Federal Home Loan Bank
9 security agreement.

10 B. The court may at any time during a proceeding under this
11 article issue such other injunctions or orders as may be deemed
12 necessary to prevent interference with the Insurance Commissioner or
13 the proceedings, or waste of the assets of the insurer, or the
14 commencement or prosecution of any actions, or the obtaining of
15 preferences, judgments, attachments or other liens, or the making of
16 any levy against the insurer or against its assets or any part
17 thereof.

18 C. Notwithstanding any other provision of law, no bond shall be
19 required of the Insurance Commissioner as a prerequisite for the
20 issuance of any injunction or restraining order pursuant to this
21 section.

22 D. Nothing in this section shall deprive a party in interest of
23 any contractual right to pursue arbitration of any dispute under any
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1 law, and venue shall be as provided in subsection B of Section 1902
2 of this title.

3 SECTION 2. AMENDATORY 36 O.S. 2011, Section 1922, is
4 amended to read as follows:

5 Section 1922. A. The receiver shall have the power:

6 1. To hold hearings, to subpoena witnesses for the purpose of
7 compelling their attendance, to administer oaths, to examine any
8 person under oath, and to compel any persons to subscribe to their
9 testimony after it has been correctly reduced to writing; and in
10 connection therewith to require the production of any books, papers,
11 records, data or other documents, electronic or paper, that the
12 receiver deems relevant to the inquiry;

13 2. To audit the books and records of all agents of the insurer,
14 including, but not limited to, third-party administrators, and
15 affiliated and nonaffiliated management companies insofar as those
16 records relate to the business activities of the insurer;

17 3. To conduct litigation, including:

18 a. to continue to prosecute or defend, and to institute
19 in the name of the insurer or in the receiver's own
20 name, suits or other legal proceedings, in this state
21 or elsewhere,

22 b. to abandon the prosecution of claims the receiver
23 deems unprofitable to pursue further,
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- 1 c. to collect all debts and monies due and claims
2 belonging to the insurer, wherever located, and in
3 furtherance of this purpose to institute action in
4 this or other jurisdictions in order to forestall
5 garnishment and attachment proceedings against those
6 debts, including the power to sell, compound,
7 compromise or assign debts for purposes of collection
8 upon such terms and conditions as the receiver deems
9 consistent with the purpose of the Uniform Insurers
10 Liquidation Act, and pursue any creditor's remedies
11 available to enforce the insurer's claims,
- 12 d. to assert all defenses available to the insurer as
13 against third persons, including statutes of
14 limitation, statutes of frauds and the defense of
15 usury. A waiver of any defense by the insurer after a
16 petition for supervision, conservation, receivership,
17 rehabilitation or liquidation has been filed shall not
18 bind the receiver. Whenever a guaranty association
19 has an obligation to defend any suit, the receiver
20 shall defer to that obligation and may defend only in
21 cooperation with the guaranty association or in the
22 absence of the guaranty association's defense,
- 23 e. to exercise and enforce all the rights, remedies and
24 powers of any creditor, shareholder, policyholder or

1 member, including any power to avoid any transfer,
2 transaction or lien that may be avoidable under the
3 Uniform Insurers Liquidation Act or otherwise, and
4 f. to intervene in any proceeding wherever instituted
5 that might lead to the appointment of a receiver or
6 trustee for the insurer or any of its property, and to
7 act as the receiver or trustee whenever the
8 appointment is offered.

9 The receiver shall have exclusive standing in any action that
10 may exist to assert claims or defenses on behalf of the creditors,
11 members, policyholders or shareholders of the insurer or the public
12 against any person, except to the extent that a claim is personal to
13 a specific creditor, member, policyholder or shareholder and
14 recovery on the claim would not inure to the benefit of the estate.
15 If the receiver sells or dissolves the corporate entity or charter
16 of the insurer, the receiver shall have the power to apply to any
17 court in this state or elsewhere for leave to substitute the
18 receiver for the insurer as a party. This paragraph does not
19 infringe or impair any of the rights provided to a guaranty
20 association pursuant to its enabling statute or otherwise;

21 4. a. To conduct public or private sales of the insurer's
22 property, and thereby to acquire, hypothecate,
23 encumber, lease, sell, improve, transfer, abandon or
24 otherwise dispose of or deal with any property of the

1 insurer at its market value or upon such terms and
2 conditions as are fair and reasonable, and to settle
3 or resolve any claim or lawsuit brought by the
4 receiver on behalf of the insurer or pending when a
5 petition for supervision, conservation, receivership,
6 rehabilitation or liquidation is filed, or commute or
7 settle any claim of reinsurance under any contract of
8 reinsurance,

9 b. to transfer either proceeds of or rights to payment
10 under ceding reinsurance agreements covering policies
11 to a third-party transferee. A transfer of rights to
12 payment shall only be made with the consent of the
13 reinsurer and in conjunction with the transfer to such
14 person of all rights and obligations relating to the
15 transferred ceding reinsurance agreement and of all
16 property, including any guarantees or other credit
17 enhancement, securing any claims of each party under
18 each reinsurance agreement. The consent of a
19 reinsurer under this subparagraph shall not be
20 unreasonably withheld. If the receiver believes that
21 the consent of a reinsurer was unreasonably withheld,
22 the receiver may petition the receivership court to
23 order binding arbitration. The arbitration shall be
24 conducted in accordance with the arbitration

1 procedures in the reinsurance contract, or if no such
2 provisions exist, in accordance with the procedures of
3 the American Arbitration Association. A transferee
4 under this subparagraph shall have the rights to
5 collect and enforce collection of the reinsurance for
6 the amount payable to the ceding insurer or to its
7 receiver, without diminution because of the insolvency
8 or because the receiver has failed to pay all or a
9 portion of the claim. The transfer of these rights
10 shall not give rise to any defense regarding the
11 reinsurer's obligations under the reinsurance
12 agreement regardless of whether the agreement or other
13 applicable law prohibits the transfer of rights under
14 the reinsurance agreement. Except as provided in this
15 subparagraph, any transfer of rights pursuant to this
16 provision shall not impair any rights or defenses of
17 the reinsurer that existed prior to the transfer or
18 would have existed in the absence of the transfer.
19 Except as otherwise provided in this subparagraph, any
20 transfer of rights pursuant to this provision shall
21 not relieve the transferee or the receiver from
22 obligations owed to the reinsurer pursuant to the
23 reinsurance or other agreement, and
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1 c. to execute, acknowledge and deliver any deeds,
2 assignments, releases and other instruments necessary
3 or proper to effectuate any sale of property or other
4 transaction in connection with the liquidation or
5 rehabilitation and to file any necessary documents for
6 record in the office of any recorder of deeds or
7 record office in this state or elsewhere where
8 property of the insurer is located;

9 5. a. To use property of the estate to transfer policy
10 obligations to a solvent assuming insurer, if the
11 transfer can be arranged without prejudice to
12 applicable priorities under Section 1927.1 of this
13 title,

14 b. to use property of the estate to transfer the
15 insurer's obligations under surety bonds and surety
16 undertakings, and collateral held by the insurer with
17 respect to the reimbursement obligations of the
18 principals under those surety bonds and surety
19 undertakings, to a solvent assuming insurer, if the
20 transfer can be arranged without prejudice to
21 applicable priorities under Section 1927.1 of this
22 title; and if the receivership court so orders, the
23 estate shall have no further liability under the
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1 transferred policies, surety bonds, or surety
2 undertakings after the transfer is made, and
3 c. upon the issuance of an order of liquidation and a
4 finding of insolvency, policies or portions of
5 policies of life, disability income, long-term care or
6 health insurance or annuities covered by one or more
7 guaranty associations, under applicable law, shall
8 continue in force, subject to the terms of the policy,
9 including any terms restructured pursuant to a court-
10 approved rehabilitation plan, to the extent necessary
11 to permit the guaranty associations to discharge their
12 statutory obligations. Policies or portions of
13 policies of life, disability income, long-term care or
14 health insurance or annuities, not covered by one or
15 more guaranty associations, and other types of
16 policies, shall terminate by operation of law, except
17 to the extent the receiver proposes and the
18 receivership court approves the use of property of the
19 estate, consistent with subparagraphs a and b of this
20 paragraph, for the purpose of continuing the contracts
21 or coverage by transferring them to an assuming
22 reinsurer;

23 6. To borrow money on the security of the property of the
24 estate or without security and to execute and deliver all documents

1 necessary to that transaction for the purpose of facilitating the
2 liquidation or rehabilitation. Any such funds borrowed may be
3 repaid as an administrative expense and have priority over any other
4 claims in Class 1 under the priority of distribution in Section
5 1927.1 of this title;

6 7. To enter into contracts, and to assume or reject any
7 executory contract or unexpired lease to which the insurer is a
8 party; provided, however, if the receiver is bound by any provision
9 of any contract of or by the insurer which requires arbitration,
10 such arbitration shall be conducted in the State of Oklahoma;
11 notwithstanding the foregoing, or any other provision of this
12 chapter, no receiver shall have the power to reject, disavow or
13 repudiate any Federal Home Loan Bank security agreement, or any
14 pledge, security, collateral or guarantee agreement or any other
15 similar arrangement or credit enhancement relating to such Federal
16 Home Loan Bank security agreement;

17 8. To take possession of the records and property of the
18 insurer. Guaranty associations shall have reasonable access to the
19 records of the insurer necessary for them to carry out their
20 statutory obligations;

21 9. To deposit in one or more banks in this state sums required
22 for meeting current administration expenses and dividend
23 distributions;

24 10. To invest the assets of the estate;

1 11. To enter into agreements with any receivers or
2 commissioners of any other states; and

3 12. To exercise all powers now held or hereafter conferred upon
4 receivers by the applicable statutory and common law of this state
5 not inconsistent with the provisions of the Uniform Insurers
6 Liquidation Act.

7 B. The receiver is vested with all the rights of the entity or
8 entities in receivership.

9 C. The enumeration, in this section, of the powers and
10 authority of the receiver shall not be construed as a limitation
11 upon the receiver, nor shall it exclude in any manner the right to
12 do other acts not specifically enumerated or otherwise provided for,
13 to the extent necessary or appropriate for the accomplishment of or
14 in aid of the purpose of liquidation or rehabilitation.

15 D. The receiver shall not be obligated to defend any action
16 against the insurer or insured. An insured not defended by a
17 guaranty association may provide his or her own defense, and include
18 the cost of the defense as part of any claim of the insured against
19 the estate, if the defense was an obligation of the insurer. The
20 right of the receiver to contest coverage on a particular claim
21 shall be deemed preserved without the necessity of an express
22 reservation of rights.

23 SECTION 3. AMENDATORY 36 O.S. 2011, Section 1926, is
24 amended to read as follows:

1 Section 1926. A. Every transfer made or suffered to be made
2 and every obligation incurred by an insurer within one (1) year
3 prior to the filing of a successful petition for rehabilitation or
4 liquidation under the Insurance Code is fraudulent as to then
5 existing and future creditors if made or incurred without fair
6 consideration or with actual intent to hinder, delay or defraud
7 either existing or future creditors. A transfer made or an
8 obligation incurred by an insurer ordered to be rehabilitated or
9 liquidated under the Insurance Code, which is fraudulent under this
10 section, may be avoided by the receiver, except as to a person who
11 in good faith is a purchaser, lienor, or obligee for a present fair
12 equivalent value, and except that any purchaser, lienor or obligee,
13 who in good faith has given a consideration less than fair for such
14 transfer, lien, or obligation, may retain the property, lien or
15 obligation as security for repayment. The court may, on due notice,
16 order any such transfer or obligation to be preserved for the
17 benefit of the estate, and in that event, the receiver shall succeed
18 to and may enforce the rights of the purchaser, lienor, or obligee.

19 B. Every director, officer, employee, stockholder, member,
20 agent, subscriber, and any other person acting on behalf of such
21 insurer who shall be concerned in any such act or deed and every
22 person receiving thereby any property of such insurer or the benefit
23 thereof shall be personally liable therefor and shall be bound to
24 account to the Insurance Commissioner.

1 C. The Insurance Commissioner as receiver in any proceeding
2 under this article may avoid any transfer of or lien upon the
3 property of an insurer which any creditor, stockholder, subscriber
4 or member of such insurer might have avoided and may recover the
5 property so transferred unless such person was a bona fide holder
6 for value prior to the date of the granting of an order to show
7 cause under this article. Such property or its value may be
8 recovered from anyone who has received it except a bona fide holder
9 for value as herein specified.

10 D. Any transaction of the insurer with a reinsurer shall be
11 deemed fraudulent and may be avoided by the receiver under this
12 section if:

13 1. The transaction consists of the termination, adjustment or
14 settlement of a reinsurance contract in which the reinsurer is
15 released from any part of its duty to pay the originally specified
16 share of losses that had occurred prior to the time of the
17 transactions, unless the reinsurer gives a present fair equivalent
18 value for the release; and

19 2. Any part of the transaction took place within one (1) year
20 prior to the date of filing of the petition through which the
21 receivership was commenced.

22 E. Notwithstanding subsection A of this section, or any other
23 provision of this chapter, no receiver shall avoid any transfer of,
24 or any obligation to transfer, money or any other property arising

1 under or in connection with any Federal Home Loan Bank security
2 agreement, or any pledge, security, collateral or guarantee
3 agreement or any other similar arrangement or credit enhancement
4 relating to such Federal Home Loan Bank security agreement.

5 However, a transfer may be avoided under this section if it was made
6 with actual intent to hinder, delay or defraud either existing or
7 future creditors.

8 SECTION 4. It being immediately necessary for the preservation
9 of the public peace, health and safety, an emergency is hereby
10 declared to exist, by reason whereof this act shall take effect and
11 be in full force from and after its passage and approval.

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13 COMMITTEE REPORT BY: COMMITTEE ON INSURANCE, dated 04/04/2013 - DO
14 PASS.

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