

West's Florida Statutes Annotated

Title XXXVII. Insurance (Chapters 624-651) (Refs & Annos)

Chapter 631. Insurer Insolvency; Guaranty of Payment (Refs & Annos)

Part I. Insurer Insolvency: Rehabilitation and Liquidation (Refs & Annos)

West's F.S.A. § 631.015

631.015. Reciprocity; treatment of policyholders

[Currentness](#)

Reciprocity in the treatment of policyholders in receivership is extended to those states which, in substance and effect, enact the National Association of Insurance Commissioners Rehabilitation and Liquidation Model Act, the Uniform Insurers Liquidation Act, or the Insurer Receivership Model Act.

Credits

Added by [Laws 2002, c. 2002-25, § 5, eff. July 1, 2002](#). Amended by [Laws 2017, c. 2017-143, § 1, eff. July 1, 2017](#).

West's F. S. A. § 631.015, FL ST § 631.015

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Title XXXVII. Insurance (Chapters 624-651) (Refs & Annos)

Chapter 631. Insurer Insolvency; Guaranty of Payment (Refs & Annos)

Part I. Insurer Insolvency: Rehabilitation and Liquidation (Refs & Annos)

West's F.S.A. § 631.021

631.021. Jurisdiction of delinquency proceeding; venue; change of venue; exclusiveness of remedy; appeal; construction

[Currentness](#)

(1) The circuit court shall have original jurisdiction of any delinquency proceeding under this chapter, and any court with jurisdiction is authorized to make all necessary or proper orders to carry out the purposes of this chapter. Any delinquency proceeding in this chapter is in equity.

(2) The venue of a delinquency proceeding or summary proceeding against a domestic, foreign, or alien insurer shall be in the Circuit Court of Leon County.

(3) A delinquency proceeding pursuant to this chapter constitutes the sole and exclusive method of liquidating, rehabilitating, reorganizing, or conserving an insurer. A court may not entertain a petition for the commencement of such a proceeding unless the petition has been filed in the name of the state on the relation of the department. The Florida Insurance Guaranty Association, Incorporated, the Florida Workers' Compensation Insurance Guaranty Association, Incorporated, the Florida Health Maintenance Organization Consumer Assistance Plan, and the Florida Life and Health Guaranty Association, Incorporated, shall be given reasonable written notice by the department of all hearings that pertain to an adjudication of insolvency of a member insurer.

(4) An appeal shall lie to the District Court of Appeal, First District, from an order granting or refusing rehabilitation, liquidation, or conservation and from every order in a delinquency proceeding having the character of a final order as to the particular portion of the proceeding embraced therein.

(5) No service of process against the department in its capacity as receiver shall be effective unless served upon a person designated by the receiver and filed with the circuit court having jurisdiction over the delinquency proceeding. The designated person shall refuse to accept service if acceptance would violate a stay against legal proceedings involving an insurer that is the subject of delinquency proceedings or would violate any orders of the circuit court governing a delinquency proceeding. The person denied service may petition the circuit court having jurisdiction over the delinquency proceeding for relief from the receiver's refusal to accept service. This subsection shall be strictly construed, and any purported service on the receiver or the department that is not in accordance with this subsection shall be null and void.

(6) The domiciliary court acquiring jurisdiction over persons subject to this chapter may exercise exclusive jurisdiction to the exclusion of all other courts, except as limited by the provisions of this chapter. Upon the issuance of an order of conservation, rehabilitation, or liquidation, the Circuit Court of Leon County has exclusive jurisdiction over all assets or property of the insurer, wherever located, including property located outside the territorial limits of the state.

(7) This chapter constitutes this state's insurer receivership laws, and these laws must be construed as consistent with each other. If there is a conflict between this chapter and any other law, this chapter prevails.

Credits

Added by Laws 1959, c. 59-205, § 718; Laws 1963, c. 63-559, § 29; Laws 1969, c. 69-106, §§ 13, 35; Laws 1977, c. 77-227, § 8; Laws 1983, c. 83-38, § 3; Laws 1985, c. 85-339, § 1; [Laws 1989, c. 89-360, § 6](#). Amended by [Laws 1997, c. 97-262, § 11, eff. May 30, 1997](#); [Laws 2003, c. 2003-261, § 1341, eff. June 26, 2003](#); [Laws 2004, c. 2004-374, § 28, eff. July 1, 2004](#); [Laws 2017, c. 2017-143, § 2, eff. July 1, 2017](#).

[Notes of Decisions \(16\)](#)

West's F. S. A. § 631.021, FL ST § 631.021

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West's F.S.A. § 631.031

631.031. Initiation and commencement of delinquency proceeding

Currentness

(1) Upon a determination by the office that one or more grounds for the initiation of delinquency proceedings exist pursuant to this chapter and that delinquency proceedings must be initiated, the Director of the Office of Insurance Regulation shall notify the department of such determination and shall provide the department with all necessary documentation and evidence. If the director must notify the department of a determination regarding a property insurer, the notification must include an affidavit that identifies the grounds for rehabilitation pursuant to [s. 631.051](#); the date that each insurer was deemed impaired of capital or surplus, as the terms impairment of capital and impairment of surplus are defined in [s. 631.011](#), or insolvent, as the term insolvency is defined in [s. 631.011](#); a concise statement of the circumstances that led to the insurer's delinquency; and a summary of the actions taken by the insurer and the office to avoid delinquency. The department shall then initiate such delinquency proceedings.

(2) The department may commence any such proceeding by application to the court for an order directing the insurer to show cause why the department should not have the relief prayed for. On the return of such order to show cause, and after a full hearing, the court shall either deny the application or grant the application, together with such other relief as the nature of the case and the interests of the policyholders, creditors, stockholders, members, subscribers, or public may require. The department may also commence any such proceeding by application to the court by petition for the entry of a consent order of conservation, rehabilitation, or liquidation.

(3) An insurer subject to an order to show cause entered pursuant to this chapter must file its written response to the order, together with any defenses it may have to the department's allegations, no later than 20 days after service of the order to show cause, but no less than 15 days before the date of the hearing set by the order to show cause.

(4) A hearing held pursuant to this chapter to determine whether cause exists for the department to be appointed receiver must be commenced within 60 days after an order directing an insurer to show cause.

Credits

Added by Laws 1959, c. 59-205, § 719; Laws 1969, c. 69-106, §§ 13, 35; Laws 1977, c. 77-104, § 213; [Laws 1988, c. 88-166, § 38](#). Amended by [Laws 2003, c. 2003-261, § 1343, eff. June 26, 2003](#); [Laws 2017, c. 2017-143, § 3, eff. July 1, 2017](#); [Laws 2022, c. 2022-268, § 20, eff. May 26, 2022](#).

Notes of Decisions (1)

West's F. S. A. § 631.031, FL ST § 631.031

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Part I. Insurer Insolvency: Rehabilitation and Liquidation (Refs & Annos)

West's F.S.A. § 631.041

631.041. Automatic stay; relief from stay; injunctions

Currentness

(1) An application or petition under [s. 631.031](#) operates as a matter of law as an automatic stay applicable to all persons and entities, other than the receiver and the office, which shall be permanent and survive the entry of an order of conservation, rehabilitation, or liquidation, and which shall prohibit:

(a) The commencement or continuation of judicial, administrative, or other action or proceeding against the insurer or against its assets or any part thereof;

(b) The enforcement of a judgment against the insurer or an affiliate obtained either before or after the commencement of the delinquency proceeding;

(c) Any act to obtain possession of property of the insurer;

(d) Any act to create, perfect, or enforce a lien against property of the insurer, except that a secured claim as defined in [s. 631.011\(21\)](#) may proceed under [s. 631.191](#) after the order of liquidation is entered;

(e) Any act to collect, assess, or recover a claim against the insurer, except claims as provided for under this chapter; and

(f) The setoff or offset of any debt owing to the insurer, except offsets as provided in [s. 631.281](#).

(2) Upon written request of a person or entity subject to the stay against obtaining or enforcing a judgment against an insurer or affiliate provided in paragraph (1)(b) the court, with notice to the department and upon hearing, may grant relief from the stay provided the movant, who has the burden of proof, establishes by clear and convincing evidence that the judgment is not avoidable or void by a receiver and that property from which the judgment would be satisfied does not constitute premium funds or another asset which belongs to the insurer.

(3) Upon application by the department pursuant to this part for an order to show cause or upon petition, or at any time thereafter, the court may without notice issue an injunction restraining the insurer and its officers, directors, stockholders, members, subscribers, and agents and all other persons from the transaction of its business or the waste or disposition of its property until the further order of the court.

(4) The court may without notice at any time during a proceeding under this chapter issue such other injunctions or orders as may be deemed necessary to prevent interference with the department or the proceeding; waste of the assets of the insurer; the commencement or prosecution of any actions; the obtaining of preferences, judgments, attachments, or other liens; or the making of any levy against the insurer or against its assets or any part thereof.

(5) Notwithstanding any other provision of law, no bond shall be required of the department as a prerequisite for the issuance of any injunction or restraining order pursuant to this section.

(6) The estate of an insurer in rehabilitation or liquidation which is injured by any willful violation of an applicable stay or injunction shall be entitled to actual damages, including costs and attorney's fees, and, in appropriate circumstances, the receivership court may impose additional sanctions.

Credits

Added by Laws 1959, c. 59-205, § 720; Laws 1969, c. 69-106, §§ 13, 35; Laws 1983, c. 83-38, § 4; [Laws 1988, c. 88-166, § 39](#); [Laws 1991, c. 91-108, § 83](#). Amended by [Laws 2002, c. 2002-25, § 7, eff. July 1, 2002](#); [Laws 2004, c. 2004-374, § 29, eff. July 1, 2004](#); [Laws 2017, c. 2017-143, § 4, eff. July 1, 2017](#).

[Notes of Decisions \(14\)](#)

West's F. S. A. § 631.041, FL ST § 631.041

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West's F.S.A. § 631.141

631.141. Conduct of delinquency proceeding; domestic and alien insurers

[Currentness](#)

(1) Whenever under this chapter a receiver is to be appointed in a delinquency proceeding for a domestic or alien insurer, the court shall appoint the department as such receiver. The court shall order the department forthwith to take possession of the assets of the insurer and to administer the same under the orders of the court.

(2) As a domiciliary receiver, the department is 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, wherever located, as of the date of entry of the order directing it to rehabilitate or liquidate a domestic insurer or to liquidate the United States branch of an alien insurer domiciled in this state; and it shall have the right to recover the same and reduce the same to possession; except that 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.

(3) The receiver may assume or reject any executory contract or unexpired lease of the insurer.

(4) The filing or recording of the order directing possession to be taken, or a certified copy thereof, in any office where instruments affecting title to property are required to be filed or recorded imparts the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded.

(5) The department as domiciliary receiver is responsible for the proper administration of all assets coming into its possession or control. The court may at any time require a bond from it or its agents if deemed desirable for the protection of such assets.

(6) Upon taking possession of the assets of an insurer, the domiciliary receiver shall, subject to the direction of the court, immediately proceed 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.

(7) In order to preserve as much as possible the right and interest of the policyholders whose insurance policies or similar contracts are affected by the receivership proceedings, the department as a domiciliary receiver may:

(a) Use the property of the estate of the insurer to transfer the insurer's book of business, policies, or similar contracts of coverage, in whole or in part, to a solvent assuming insurer or insurers.

(b) Notwithstanding s. 631.195, share records of the insurer with the prospective solvent assuming insurer or insurers, but only to the extent necessary to undertake due diligence for a transfer contemplated under this section.

(8) The department as domiciliary receiver may pay any expenses under contracts, leases, employment agreements, or other arrangements entered into by the insurer before receivership as the department deems necessary for the purposes of this chapter. The department is not required to pay any such expenses that it determines are not necessary and may reject any contract pursuant to subsection (3).

(9) The department may assert all rights belonging to third parties, including, but not limited to, policyholders, creditors, and other claimants, except to the extent an individual claim is personal and unique to the claimant and could not inure to the benefit of the estate or to policyholders, creditors, or other claimants.

(10)(a) In connection with a delinquency proceeding, the department may appoint one or more special agents to act for it, and it may employ such counsel, clerks, and assistants as it deems necessary. The compensation of the special agents, counsel, clerks, or assistants and all expenses of taking possession of the insurer and of conducting the proceeding shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer. Such expenses are administrative expenses and are recoverable by the receiver in any actions in which the receiver is authorized or entitled to recover its administrative expenses. Within the limits of duties imposed upon them, special agents shall possess all the powers given to and, in the exercise of those powers, shall be subject to all duties imposed upon the receiver with respect to such proceeding.

(b) In the event that initiation of delinquency proceedings does not result in appointment of the department as receiver, or in the event that the funds or assets of an insurer for which the department is appointed as receiver are insufficient to cover the cost of compensation to special agents, counsel, clerks, or assistants and all expenses of taking, or attempting to take, possession of the insurer, and of conducting the proceeding, there is appropriated, upon approval of the Chief Financial Officer and of the Legislative Budget Commission pursuant to chapter 216, from the Insurance Regulation Trust Fund to the Division of Rehabilitation and Liquidation a sum that is sufficient to cover the unreimbursed costs.

(11) The department as domiciliary receiver may take such action as it deems necessary or appropriate to reform and revitalize the insurer. The department shall have all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the receiver. The receiver shall have full power to direct and manage the affairs of the insurer, to hire and discharge employees, and to deal with the property and business of the insurer. In the event of the liquidation of an insurer domiciled in this state, and notwithstanding any provision of chapter 605, chapter 607, chapter 617, chapter 620, or chapter 621, all officers, directors, and managers of the insurer are permanently discharged and have no further authority of any kind over the affairs or assets of the insurer, except as may be redelegated by the department.

(12) If the department as domiciliary receiver determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, it shall prepare a plan to effect such changes. Upon application of the receiver for approval of the plan, and 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. Any plan approved under this section must be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the receiver shall carry out the plan.

(13) Records created by the entity in receivership shall be disposed of in accordance with the order of the court at such time as the receiver determines that the records are not needed for the administration of the estate.

Credits

Added by Laws 1959, c. 59-205, § 730; Laws 1969, c. 69-106, §§ 13, 35; Laws 1983, c. 83-38, § 8; [Laws 1991, c. 91-108, § 85](#). Amended by [Laws 2002, c. 2002-25, § 9](#), eff. July 1, 2002; [Laws 2003, c. 2003-267, § 10](#), eff. June 26, 2003; [Laws 2004, c. 2004-374, § 31](#), eff. July 1, 2004; [Laws 2005, c. 2005-152, § 56](#), eff. July 1, 2005; [Laws 2017, c. 2017-143, § 5](#), eff. July 1, 2017; [Laws 2023, c. 2023-144, § 38](#), eff. May 25, 2023.

[Notes of Decisions \(3\)](#)

West's F. S. A. § 631.141, FL ST § 631.141

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West's F.S.A. § 631.152

631.152. Conduct of delinquency proceeding; foreign insurers

Currentness

(1) Whenever under this chapter an ancillary receiver is to be appointed in a delinquency proceeding for an insurer not domiciled in this state, the court shall appoint the department as ancillary receiver. The department shall file a petition requesting the appointment on the grounds set forth in [s. 631.091](#):

(a) If it finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver;

(b) If 10 or more persons resident in this state having claims against such insurer file a petition with the department or office requesting the appointment of such ancillary receiver; or

(c) If it finds it is necessary to obtain records to adjudicate the covered claims of Florida policyholders.

(2) 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 (except statutory deposits, special statutory deposits, and property located in this state subject to a security interest), contracts, and rights of action, and all of the books and records of the insurer located in this state, and it 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. It shall also be entitled to recover the property subject to a security interest, statutory deposits, and special statutory deposits 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 proceeding 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 proceeding in this state, and shall pay the necessary expenses of the proceeding. It shall promptly transfer all remaining assets to the domiciliary receiver. Subject to the foregoing provisions, the ancillary receiver and its agents 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.

(3) 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 it may be entitled under the laws of this state.

(4) [Section 631.141\(10\)\(b\)](#) applies to ancillary delinquency proceedings opened for the purpose of obtaining records necessary to adjudicate the covered claims of Florida policyholders.

Credits

Added by Laws 1959, c. 59-205, § 731; Laws 1969, c. 69-106, §§ 13, 35; [Laws 1991, c. 91-108, § 86](#). Amended by [Laws 2003, c. 2003-261, § 1346](#), eff. June 26, 2003; [Laws 2011, c. 2011-226, § 5](#), eff. July 1, 2011; [Laws 2016, c. 2016-10, § 79](#), eff. May 10, 2016; [Laws 2017, c. 2017-143, § 6](#), eff. July 1, 2017; [Laws 2023, c. 2023-144, § 73](#), eff. May 25, 2023.

[Notes of Decisions \(2\)](#)

West's F. S. A. § 631.152, FL ST § 631.152

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West's F.S.A. § 631.1522

631.1522. Unrecorded obligations and defenses and claims of affiliates

Currentness

(1) In any proceeding or claim by the receiver, an affiliate, a controlled or controlling person, or a present or former officer, manager, director, trustee, or shareholder of the insurer may not assert any defense unless:

(a) Evidence of the defense was recorded in the books and records of the insurer at or about the time the events giving rise to the defense occurred; and

(b) If required by statutory accounting practices and procedures, such events were timely reported on the insurer's official financial statements filed with the office.

(2) An affiliate, a controlled or controlling person, or a present or former officer, manager, director, trustee, or shareholder of the insurer may not assert any claim unless:

(a) The obligations were recorded in the books and records of the insurer at or about the time the obligations were incurred; and

(b) If required by statutory accounting practices and procedures, the obligations were timely reported on the insurer's official financial statements filed with the office.

(3) This section does not bar claims based on unrecorded or unreported transactions by the receiver against any affiliate, controlled or controlling person, or present or former officer, manager, director, trustee, or shareholder of the insurer.

Credits

Added by [Laws 2017, c. 2017-143, § 8, eff. July 1, 2017](#).

West's F. S. A. § 631.1522, FL ST § 631.1522

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West's F.S.A. § 631.181

631.181. Filing and proof of claim

Currentness

(1)(a) Proof of a claim shall be filed with the receiver in the form required by subsection (2) on or before the last day for filing specified in the notice required under subsection (3), except that proof of claim for cash surrender values or other investment values in life insurance and annuities need not be filed unless the receiver expressly so requires. Claims filed after the deadline may not share in distributions from the estate except to the extent allowed by exceptions specified in this section.

(b) The court may permit a claimant making a late filing to share in distributions, whether past or future, as if the claimant were not late, to prevent manifest injustice to the extent that any such payment will not prejudice the orderly administration of the liquidation, under any of the following circumstances:

1. The existence of the claim was not known to the claimant and the claimant filed her or his claim as promptly thereafter as reasonably possible after learning of it.
2. A transfer to the claimant was avoided under [ss. 631.261](#) and [631.262](#).
3. The valuation under [s. 631.191](#) of security held by a secured creditor shows a deficiency, which is filed within 30 days after the valuation.

(c) The court shall permit late-filed claims to share in distributions, whether past or future, as if they were not late, if such claims are claims of a guaranty association or foreign guaranty association for reimbursement of covered claims paid or expenses incurred, or both, subsequent to the last day for filing when such payments were made and expenses incurred as provided by law.

(d) The court may consider any claim filed late which is not covered by paragraph (b) and permit it to receive distributions which are subsequently declared on any claims of a lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive, at each distribution, the same percentage of the amount allowed on her or his claim as is then being paid to claimants of any lower priority. This payment of percentages shall continue until her or his claim has been paid in full.

(2)(a) Proof of a claim shall consist of a statement signed by the claimant that includes all of the following information which is applicable:

1. The particulars of the claim, including the consideration given for it.
2. The identity and amount of the security on the claim.
3. The payments made on the debt, if any.
4. A statement that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim.
5. Any right of priority of payment or other specific right asserted by the claimants.
6. A copy of the written instrument which is the foundation of the claim.
7. The name and address of the claimant and the attorney who represents her or him, if any.

(b) No claim need be considered or allowed if it does not contain all the information in paragraph (a) which is applicable. The receiver may require that a prescribed form be used, that other information and documents be included, and that the proof of claim be verified by an affidavit of the claimant.

(c) At any time, the receiver may request the claimant to present information or evidence supplementary to that required under paragraph (a) and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

(d) No judgment or order against an insured or the insurer entered after the date of filing of a successful petition for liquidation, and no judgment or order against an insured or the insurer entered at any time by default or by collusion, need be considered as evidence of liability or of the quantum of damages. No judgment or order against an insured or the insurer entered within 4 months before the filing of the petition need be considered as evidence of liability or of the quantum of damages.

(e) All claims of a guaranty association or foreign guaranty association shall be in such form and contain such substantiation as may be agreed to by the association and the receiver.

(f) The signed statement required by this section shall not be required on claims for which adequate claims file documentation exists within the records of the insolvent insurer. Claims for payment of unearned premium shall not be required to use the signed statement required by this section if the receiver certifies to the guaranty fund that the records of the insolvent insurer are sufficient to determine the amount of unearned premium owed to each policyholder of the insurer and such information is remitted to the guaranty fund by the receiver in electronic or other mutually agreed-upon format.

(g) Upon application of the receiver:

1. The receivership court may allow alternative procedures and requirements for the filing of proofs of claim or for allowing or proving claims.

2. If the receivership court waives the requirements of filing a proof of claim for a person, class, or group of persons, a timely proof of claim by such person, class, or group is deemed to be filed for all purposes. However, the receivership court may not waive guaranty association or coverage determination proof of claim filing requirements, to the extent that the guaranty fund statute or filing requirements are inconsistent with the receivership court's waiver of proof.

(3) After the entry of the order of liquidation against a Florida-domiciled insurer, regardless of any prior notice that may have been given to creditors, the receiver shall notify all persons who may have claims against the insurer that they must file such claims with it at a place and within the time specified in the notice, or else such claims will be late filed. The Florida receiver need not give such notice in ancillary proceedings if the receiver obtains an order from the court authorizing the receiver to not send out such notices, which order the court shall issue upon satisfactory evidence that the domiciliary receiver will be sending out similar notices and will accept and evaluate claims from Florida residents, that Florida residents may have objections to evaluations heard in Florida, and that there are reasonable assurances that Florida policyholders and claimants will be treated fairly and equally as compared to residents of the domicile state. The time specified in the notice shall be as fixed by the court for filing of claims and shall be not less than 6 months after the entry of the order of insolvency. The notice shall be given in such manner and for such reasonable period of time as may be ordered by the court.

(4) The receiver may petition the receivership court to set a date certain before which all contingent or unliquidated claims are final. In addition to the notice requirements in this section, the receiver shall give notice of filing the petition to all claimants with claims that remain contingent or unliquidated under this section.

(5) Notwithstanding any other provision of this chapter, the receiver may petition the receivership court to set a date certain after which no further claims may be filed.

Credits

Added by Laws 1959, c. 59-205, § 734; Laws 1969, c. 69-106, §§ 13, 35; Laws 1970, c. 70-27, § 7; Laws 1983, c. 83-38, § 11; Laws 1991, c. 91-108, § 90. Amended by Laws 1997, c. 97-102, § 401, eff. July 1, 1997; Laws 2006, c. 2006-12, § 31, eff. May 16, 2006; Laws 2017, c. 2017-143, § 9, eff. July 1, 2017.

Notes of Decisions (6)

West's F. S. A. § 631.181, FL ST § 631.181

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West's F.S.A. § 631.191

631.191. Special deposit claims; secured claims; administration of
workers' compensation large deductible policies and insured collateral

[Currentness](#)

(1) Special deposit claims.--The owners of special deposit claims against an insurer against which a liquidation order has been entered in this or any other state shall be given priority against their several special deposits in accordance with the provisions of the statutes governing the creation and maintenance of such deposits. If there is a deficiency in any such deposit so that the claims secured thereby are not fully discharged therefrom, the claimants may share in the general assets, but such sharing shall be deferred until general creditors, and also claimants against other special deposits who have received smaller percentages from their respective special deposits, have been paid percentages of their claims equal to the percentage paid from the special deposit.

(2) Secured claims.--

(a) The owner of a secured claim against an insurer against which a liquidation order has been entered in this or any other state may surrender her or his security and file her or his claim as a general creditor, or the claim may be discharged by resort to the security, in which case the deficiency, if any, shall be treated as a claim against the general assets of the insurer on the same basis as claims of unsecured creditors. If the amount of the deficiency has been adjudicated in ancillary proceedings as provided in this chapter, or if it has been adjudicated by a court of competent jurisdiction in a proceeding in which the domiciliary receiver has had notice and an opportunity to be heard, such amount shall be conclusive; otherwise the amount shall be determined in the delinquency proceeding in the domiciliary state.

(b) The value of any security held by a secured creditor shall be determined under supervision of the court by:

1. Converting the same into money according to the terms of the agreement pursuant to which the security was delivered to such creditor; or
2. If no such agreement exists, the court shall determine the value in the event the creditor and the receiver cannot agree upon same.

(3) Administration of workers' compensation large deductible policies and insured collateral.--

(a) *Definitions.*--As used in this subsection, the term:

1. "Collateral" means cash, a letter of credit, a surety bond, or any other form of security posted by the insured, or by a captive insurer or reinsurer, to secure the insured's obligation under a large deductible policy to pay deductible claims or to reimburse the insurer for deductible claim payments. Collateral may also secure an insured's obligation to reimburse or pay the insurer as may be required for other secured obligations.

2. "Deductible claim" means any claim that is within the deductible under a large deductible policy, including a claim for loss and defense and cost containment expense, unless such expense is excluded by the terms of the policy.

3. a. "Large deductible policy" means a combination of one or more workers' compensation policies and endorsements issued to an insured, and contracts or security agreements entered into between an insured and the insurer, in which the insured has agreed with the insurer to:

(I) Pay directly the initial portion of any claim under the policy up to a specified dollar amount or the expenses related to any claim; or

(II) Reimburse the insurer for its payment of any claim or related expenses under the policy up to the specified dollar amount of the deductible.

b. The term also includes policies that contain an aggregate limit on the insured's liability for all deductible claims in addition to a per--claim deductible limit. A policy must meet the current guidelines for large deductible workers' compensation filings as defined by the office, including the eligibility standards regarding the minimum standard premium and the minimum deductible to be deemed a large deductible policy.

c. The term does not include policies, endorsements, or agreements providing that the initial portion of any covered claim must be self-insured and that the insurer has no payment obligation within the self-insured retention.

d. The term does not include policies that provide for retrospectively rated premium payments by the insured or reinsurance arrangements or agreements, except to the extent such arrangements or agreements assume, secure, or pay the policyholder's large deductible obligations.

4. "Other secured obligations" means obligations of an insured to an insurer other than those under a large deductible policy, such as those under a reinsurance agreement or other agreement involving retrospective premium obligations, the performance of which is secured by collateral that also secures an insured's obligations under a large deductible policy.

(b) Applicability.--

1. This subsection applies to workers' compensation large deductible policies issued by an insurer that is subject to delinquency proceedings under this chapter. This subsection does not apply to first-party claims, or to covered claims funded by a guaranty association above the deductible unless paragraph (c) applies. Large deductible policies must be administered in accordance with the terms of the policy, except to the extent such terms conflict with this subsection.

2. This subsection applies to all delinquency proceedings that commence on or after July 1, 2017.

(c) *Handling of large deductible claims.*--Unless otherwise agreed to by the responsible guaranty association, all large deductible claims that are also covered claims as defined by an applicable guaranty association law, including those that may have been funded by an insured before liquidation, must be turned over to the guaranty association for handling. To the extent the insured funds or pays the deductible claim pursuant to an agreement by the guaranty fund or otherwise, the insured's funding or payment of a deductible claim extinguishes the obligations, if any, of the receiver and any guaranty association to pay such claim. A charge may not be made against the receiver or a guaranty association on the basis of an insured's funding or payment of a deductible claim.

(d) *Deductible claims paid by a guaranty association.*--

1. To the extent a guaranty association pays any deductible claim for which an insurer would have been entitled to reimbursement from an insured, a guaranty association is entitled to the amount of reimbursements received or collateral available, subject to paragraph (g). Reimbursements paid to the guaranty association pursuant to this paragraph may not be treated as distributions under [s. 631.271](#) or as early access payments under [s. 631.397\(1\)](#).

2. To the extent that a guaranty association pays a deductible claim that is not reimbursed from collateral or by insured payments, or the guaranty association incurred expenses in connection with large deductible policies that are not reimbursed under this subsection, the guaranty association is entitled to assert a claim for those amounts in the delinquency proceeding.

3. This paragraph does not limit any right of the receiver or a guaranty association which may otherwise exist under applicable law to obtain reimbursement from insureds for claims payments made by the guaranty association under policies of the insurer or for the guaranty association's related expenses.

(e) *Collections.*--

1. The receiver may collect reimbursements owed for deductible claims as provided in this paragraph, and must use reasonable efforts to collect such reimbursements from the insured or the party that is obligated to pay the deductible as specified in the large deductible policy or other agreement. The receiver may bill insureds and others for reimbursement of deductible claims that are:

- a. Paid by the insurer before the commencement of delinquency proceedings;
- b. Paid by a guaranty association upon receipt by the receiver of notice from a guaranty association of reimbursable payments; or
- c. Paid or allowed by the receiver.

2. If the insured or other party does not make payment within the time specified in the large deductible policy, or, if no time is specified, within a reasonable time after the date of billing, the receiver may take reasonable steps to collect any reimbursements owed.

3. The insolvency of the insurer or its inability to perform any of its obligations under the large deductible policy may not be a defense to the insured's reimbursement obligation under the large deductible policy.

4. An allegation of improper handling or payment of a deductible claim by the receiver or a guaranty association may not be a defense to the insured's reimbursement obligations under the large deductible policy.

(f) *Collateral*.--

1. Subject to this paragraph, the receiver shall use collateral, when available, to secure the insured's obligation to fund or reimburse deductible claims or other secured obligations or payment obligations. A guaranty association is entitled to collateral as provided for in this paragraph to the extent needed to reimburse a guaranty association for the payment of a deductible claim. Any distributions made to a guaranty association pursuant to this paragraph may not be treated as distributions under [s. 631.271](#) or as early access payments under [s. 631.397\(1\)](#).

2. The receiver shall draw down collateral to the extent necessary in the event the insured fails to:

- a. Perform its funding or payment obligations under any large deductible policy;
- b. Pay deductible claim reimbursements within the time specified in the large deductible policy, or, if no time is specified, within 60 days after the date of the billing;
- c. Pay amounts due to the estate for preliquidation obligations;
- d. Timely fund any other secured obligation; or
- e. Timely pay expenses.

3. Claims that are validly asserted against the collateral must be satisfied in the order in which such claims are received by the receiver. However, if more than one creditor has a valid claim against the same collateral and the available collateral, along with billing collection efforts and to the extent that the collateral is subject to other known secured obligations, are together insufficient to pay each creditor in full, the receiver may prorate payments based on the ratio of the amount of claims each creditor has to the total claims paid by all such creditors.

4. Excess collateral may be returned to the insured, as determined by the receiver, after a periodic review of claims paid, outstanding case reserves, and a factor for claims that were incurred but not reported.

(g) *Receiver's expenses*.--The receiver is entitled to deduct from the collateral or from the deductible reimbursements reasonable and actual expenses incurred in connection with the collection of the collateral and deductible reimbursements as provided pursuant to [s. 631.271](#).

(h) *Construction.*--This subsection does not limit or adversely affect any rights or powers a guaranty association may have under applicable state law to obtain reimbursement from certain classes of policyholders for claims payments made by the guaranty association under policies of the insolvent insurer, or for related expenses the guaranty association incurs.

Credits

Added by Laws 1959, c. 59-205, § 735; Laws 1983, c. 83-38, § 13; [Laws 1989, c. 89-360, § 9](#). Amended by [Laws 1997, c. 97-102, § 402, eff. July 1, 1997](#); [Laws 2017, c. 2017-143, § 10, eff. July 1, 2017](#).

West's F. S. A. § 631.191, FL ST § 631.191

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West's Florida Statutes Annotated

Title XXXVII. Insurance (Chapters 624-651) (Refs & Annos)

Chapter 631. Insurer Insolvency; Guaranty of Payment (Refs & Annos)

Part I. Insurer Insolvency: Rehabilitation and Liquidation (Refs & Annos)

West's F.S.A. § 631.192

631.192. Allowance of certain claims

Currentness

(1) No claim based upon a contract of insurance, suretyship, or indemnity may be allowed or paid from the assets of an insurer in process of liquidation unless the event causing the loss to, or creating the liability of, the obligee of the contract occurred prior to the order of liquidation or pursuant to the provisions of [s. 631.252](#).

(2)(a) Claims not covered by the provisions of subsection (1) may not be allowed or paid from the assets of an insurer in the process of liquidation unless:

1. The event, whether an act or omission, occurred prior to the date of the order of liquidation;
2. The goods were delivered or services were rendered prior to the order of liquidation; or
3. The duty to perform under a contract matured prior to the order of liquidation.

(b) Nothing in this subsection shall be deemed to extinguish or limit any right the receiver may otherwise have to cancel any contract or part thereof by virtue of any contractual provision or law of this state. It is the duty of every claimant under this subsection to mitigate and minimize any damage suffered as a result of a breach of contract upon entry of the order of liquidation. Recovery by any claimant under this subsection is limited to the actual damages suffered by virtue of a breach.

(3) A claim of a third party shall not be deemed contingent, but shall be fairly evaluated even though liability has not been established by the date set forth in subsection (1), if:

(a) It may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and

(b) The claimant furnishes suitable proof, unless the court for good cause shown otherwise directs, that no further valid claim against such insurer arising out of the claimant's cause of action other than those claims already presented can be made.

(4) The total liability of such insurer to all claimants arising out of the same act of its insured may be no greater than its maximum liability would be if it were not in liquidation.

(5) A claim may not be allowed for postjudgment interest accrued after the date the court enters the order of liquidation.

Credits

Added by Laws 1983, c. 83-38, § 14. Amended by [Laws 2017, c. 2017-143, § 11, eff. July 1, 2017](#).

[Notes of Decisions \(1\)](#)

West's F. S. A. § 631.192, FL ST § 631.192

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Proposed Legislation

[West's Florida Statutes Annotated](#)[Title XXXVII. Insurance \(Chapters 624-651\) \(Refs & Annos\)](#)[Chapter 631. Insurer Insolvency; Guaranty of Payment \(Refs & Annos\)](#)[Part I. Insurer Insolvency: Rehabilitation and Liquidation \(Refs & Annos\)](#)

West's F.S.A. § 631.271

631.271. Priority of claims

[Currentness](#)

(1) The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this subsection. Every claim in each class shall be paid in full or adequate funds shall be retained for such payment before the members of the next class may receive any payment. No subclasses may be established within any class. The order of distribution of claims shall be:

(a) *Class 1.*--

1. All of the receiver's costs and expenses of administration.
2. All of the expenses of a guaranty association or foreign guaranty association in handling claims.
3. All of the deputy supervisor's costs and expenses of administration incurred as a result of administrative supervision under part VI of chapter 624.

(b) *Class 2.*--All claims under policies for losses incurred, including third-party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which claims are not under policies, all claims of a guaranty association or foreign guaranty association, and all claims related to a patient's health care coverage by physicians, hospitals, and other providers of a health insurer or health maintenance organization. All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, may not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligations of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to her or his employee may be treated as a gratuity.

(c) *Class 3.*--Claims under nonassessable policies for unearned premiums or premium refunds.

(d) *Class 4.*--Claims of the Federal Government.

(e) *Class 5.*--Debts due to employees for services performed, to the extent that the debts do not exceed \$2,000 for each employee and represent payment for services performed within 6 months before the filing of the petition for liquidation. Officers and directors are not entitled to the benefit of this priority. This priority is in lieu of any other similar priority that is authorized by law as to wages or compensation of employees.

(f) *Class 6.*--Claims of general creditors.

(g) *Class 7.*--Claims of any state or local government. Claims, including those of any state or local government for a penalty or forfeiture, shall be allowed in this class, but only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under paragraph (k).

(h) *Class 8.*--Claims filed after the time specified in [s. 631.181\(3\)](#), except when ordered otherwise by the court to prevent manifest injustice, or any claims other than claims under paragraph (i) or under paragraph (k).

(i) *Class 9.*--Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Payments to members of domestic mutual insurance companies shall be limited in accordance with law.

(j) *Class 10.*--Interest on allowed claims of Classes 1 through 9. The rate of interest payable on an allowed claim must accrue from the date the court enters the order of liquidation until such time as the receivership court approves the distribution. The interest rate must be calculated in accordance with [s. 55.03](#).

(k) *Class 11.*--The claims of shareholders or other owners.

(2) In a liquidation proceeding involving one or more reciprocal states, the order of distribution of the domiciliary state shall control as to all claims of residents of this and reciprocal states. All claims of residents of reciprocal states shall be given equal priority of payment from general assets regardless of where such assets are located.

Credits

Added by Laws 1959, c. 59-205, § 743; Laws 1969, c. 69-106, §§ 13, 35; Laws 1970, c. 70-27, § 13; Laws 1970, c. 70-439, § 1; Laws 1983, c. 83-38, § 21; Laws 1985, c. 85-63, § 7; [Laws 1988, c. 88-166, § 40](#); [Laws 1991, c. 91-108, § 94](#); [Laws 1995, c. 95-213, § 1](#). Amended by [Laws 1997, c. 97-102, § 405](#), eff. July 1, 1997; [Laws 2012, c. 2012-151, § 37](#), eff. July 1, 2012; [Laws 2017, c. 2017-143, § 12](#), eff. July 1, 2017.

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Part I. Insurer Insolvency: Rehabilitation and Liquidation (Refs & Annos)

West's F.S.A. § 631.391

631.391. Cooperation of officers and employees

Currentness

(1) Any present or former officer, director, manager, trustee, agent, adjuster, employee, or independent contractor of any insurer or affiliate and any other person who possesses any executive authority over, or who exercises any control over, any segment of the affairs of the insurer or affiliate shall fully cooperate with the department and office in any proceeding under this chapter or any investigation preliminary or incidental to the proceeding. An order of rehabilitation or liquidation which results in the discharge or suspension of any of the persons listed above does not operate to release such person from the duty to cooperate with the department and office as set out herein. As used in this section, the term “person” includes any person who directly or indirectly exercises control over activities of the insurer through any holding company or other affiliate of the insurer. The term “cooperate” includes, but is not limited to, the following:

(a) To reply promptly in writing to any inquiry from the department or office requesting such a reply;

(b) Promptly to make available and deliver to the department or office any books, accounts, documents, other records, information, data processing software, or property of or pertaining to the insurer and in her or his possession, custody, or control; or

(c) Promptly to provide access to all data processing records in hard copy and in electronic form and to data processing facilities and services.

(2) No person shall obstruct or interfere with the department or office in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto.

(3) This section does not prohibit any person from seeking legal relief from a court when aggrieved by the petition for liquidation or other delinquency proceeding or by other orders.

(4) Any person referred to in subsection (1) who fails to cooperate with the department or office, or any other person who obstructs or interferes with the department or office, in the conduct of any delinquency proceeding or any investigation preliminary or incidental thereto, is guilty of a misdemeanor of the first degree, punishable as provided in [s. 775.082](#) or by fine of not more than \$10,000.

(5) Refusal by any person referred to in subsection (1) to provide records upon the request of the department or office is grounds for revocation of any insurance-related license, including, but not limited to, agent and third-party administrator licenses.

(6) Any person referred to in subsection (1) who refuses to cooperate in providing records upon the request of the department or office is liable for any penalties, fines, or other costs assessed against the guaranty association or the receiver that result from the refusal or delay to provide records.

Credits

Added by Laws 1970, c. 70-27, § 19; Laws 1970, c. 70-439, § 1; Laws 1971, c. 71-136, § 655; Laws 1983, c. 83-38, § 26; Laws 1985, c. 85-339, § 8; [Laws 1991, c. 91-108, § 95](#). Amended by [Laws 1997, c. 97-102, § 410, eff. July 1, 1997](#); [Laws 1997, c. 97-262, § 14, eff. May 30, 1997](#); [Laws 2003, c. 2003-261, § 1349, eff. June 26, 2003](#); [Laws 2011, c. 2011-226, § 7, eff. July 1, 2011](#); [Laws 2017, c. 2017-143, § 13, eff. July 1, 2017](#).

[Notes of Decisions \(1\)](#)

West's F. S. A. § 631.391, FL ST § 631.391

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Part I. Insurer Insolvency: Rehabilitation and Liquidation (Refs & Annos)

West's F.S.A. § 631.395

631.395. Guaranty fund; orders of court

[Currentness](#)

Any order of liquidation issued pursuant to [s. 631.111](#) or [s. 631.131](#) must authorize and direct the department as receiver to coordinate the operation of the receivership with the operation of any insurance guaranty fund authorized to operate in this state and may authorize the department to provide data processing services for any appropriate guaranty fund. Such authorization must include, but not be limited to, release of any of the following:

- (1) Claims files, records, or documents pertaining to claims on file with the insolvent insurer; and
- (2) Insurance claims filed with the receiver.

Credits

Added by Laws 1970, c. 70-27, § 20; Laws 1970, c. 70-439, § 1; Laws 1983, c. 83-38, § 27. Amended by [Laws 2017, c. 2017-143, § 14, eff. July 1, 2017](#).

West's F. S. A. § 631.395, FL ST § 631.395

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Part I. Insurer Insolvency: Rehabilitation and Liquidation (Refs & Annos)

West's F.S.A. § 631.397

631.397. Use of certain marshaled assets

[Currentness](#)

(1) The department, as receiver, may apply to the court for approval of a proposal to disburse assets out of such insurer's marshaled assets, as such assets become available, to each association entitled thereto or, if there are no assets available for such disbursement, then for approval of such proposal as the receiver deems appropriate. For the purposes of this section, the term “association” includes the Florida Insurance Guaranty Association, Incorporated, the Florida Workers' Compensation Insurance Guaranty Association, and any entity or person performing a function in another state similar to that performed in this state by the Florida Insurance Guaranty Association, Incorporated, or the Florida Workers' Compensation Insurance Guaranty Association, provided the Florida Insurance Guaranty Association, Incorporated, or the Florida Workers' Compensation Insurance Guaranty Association, is entitled to like payment under the laws of the association's state of domicile in respect to insolvent companies doing business in that state.

(2) Such proposal shall at least include provisions for:

(a) Reserving amounts for the payment of expenses of administration, the payment of claims of secured creditors to the extent of the value of the security held, and the payment of claims falling within the priorities established in this part.

(b) Disbursement of the other assets marshaled to date and subsequent disbursements of assets as they become available.

(c) Equitable allocation of disbursements to each association entitled thereto.

(d) The securing by the receiver, from each association entitled to disbursements pursuant to this section, of an agreement to return to the receiver such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in this part, in accordance with such priorities; however, no bond shall be required of any such association.

(e) A full report to be made by each association to the receiver, which report shall account for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets, and any other matter as the court may direct.

(3) The department's proposal shall provide for disbursements to each association in amounts at least equal to the claim payments made, and estimated to be made, by such association for which such association could assert a claim against the receiver, and

shall provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made, or to be made, by each such association, then disbursements shall be in the amount of available assets.

Credits

Added by Laws 1977, c. 77-100, § 1; Laws 1979, c. 79-400, § 241. Amended by [Laws 1997, c. 97-262, § 15, eff. May 30, 1997](#); [Laws 2017, c. 2017-143, § 15, eff. July 1, 2017](#).

West's F. S. A. § 631.397, FL ST § 631.397

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