

§11038. Insolvency and liquidation

1. Insolvency. If the superintendent determines that a licensee located in this State is insolvent or that he has collected accounts but has failed to remit money due to any claimant or forwarder within 30 days from the end of the month in which collection was made or, when the license of a debt collector has expired or terminated for any reason whatsoever, the superintendent, if he determines that action necessary to protect the public interest, may apply to the Superior Court of the county in which the main office of the debt collector is located, authorizing him to take possession of the assets and the books and records of the licensee for the purpose of liquidating its business and for such other relief as the nature of the case and the interest of the claimants or forwarders may require. The court, after citing the licensee to show cause why the superintendent should not be authorized to take possession of the assets and books of accounts and records for the purpose of liquidating the business of the licensee, and, after hearing the allegations and proofs of the parties and determining the facts, may upon the merits dismiss the application or, if it finds that action necessary for the protection of the public, issue its order authorizing the superintendent to take possession of the books and records and to liquidate the business and granting such other relief as it deems necessary under the circumstances. [PL 1985, c. 702, §2 (NEW).]

2. Powers and duties. In every case where the court issues an order authorizing the superintendent to take possession of the books and records and to liquidate the business of a licensee, the superintendent shall be vested with all of the powers, duties, authority and responsibility of a receiver, and without limiting the generality of this subsection and subject to the approval of the court.

A. The liquidation of the business shall be made by and under the supervision of the superintendent, either in the name of the superintendent or in the name of the licensee, and the superintendent or his successor shall be vested with title to all of the assets, including the proceeds of the financial security which has been filed with the superintendent and the proceeds of any and all money paid directly to the claimant or forwarder by any debtor prior to the date of the order. Money paid to the licensee or to the superintendent after the date of the order shall be disposed of by the superintendent. [PL 1985, c. 702, §2 (NEW).]

B. The superintendent for the purpose of collection or liquidation may sell, assign, convey and transfer or approve the sale, assignment, conveyance and transfer of the assets of the debt collector under such terms and conditions as the superintendent deems best for the best interests of the claimants of the debt collector. [PL 1985, c. 702, §2 (NEW).]

C. The superintendent shall cause notice to be given by advertisement in such newspapers as he may direct weekly for 4 consecutive weeks after the issue of the order authorizing him to take possession of the assets of the debt collector, calling on all persons who may have claims against the licensee to bring the claims to the superintendent and make legal proof of the claims at a place and time to be specified. The superintendent shall mail a similar notice to all persons whose names appear as claimants or forwarders upon the books and records of the licensee or as may appear in the records of the superintendent. Any claimant or forwarder whose portion of the collections has not been properly remitted shall file a claim, which shall be allowed for the amount actually due the claimant or forwarder after deduction of a commission or fee that may be due and owing the licensee. If the superintendent doubts the justice and validity of any claim, he may reject the claim and serve notice of that rejection upon the claimant, either by mail or personally. An affidavit of service of notice, which shall be prima facie evidence of service, shall be filed with the superintendent. The claimant may, within 30 days after receipt of notice of rejection, file a petition in the court in which the proceedings are pending to establish his claim or claims. Claims presented after the expiration of the time fixed in the notice to the claimants or forwarders shall be entitled to receive only liquidating dividends declared after presentation, unless otherwise ordered by the

court. The court may fix a date after which all claimants may be barred. [PL 1985, c. 702, §2 (NEW).]

D. The assets of the licensee in liquidation, exclusive of any bond proceeds, shall be disbursed in the following order:

- (1) Expenses of liquidation;
- (2) The full amount of claims of each claimant or forwarder of the licensee whose claim against the licensee has been approved by the superintendent;
- (3) Reserves for unclaimed and unpaid collections;
- (4) General creditors; and
- (5) Residue to licensee. [PL 1985, c. 702, §2 (NEW).]

E. All accounts and valuable papers given to the licensee by the claimant or forwarders in possession of the superintendent pertaining to accounts placed with the licensee for collection shall be returned to the claimant or forwarder by the superintendent within 30 days after verification has been made. [PL 1985, c. 702, §2 (NEW).]

F. Nothing contained in this subsection may preclude a creditor of a debt collector from prosecuting any and all legal actions and pursuing any and all remedies afforded him by the laws of this State for collection of debts until such time as the superintendent takes possession of the debt collector's agency under this section. [PL 1985, c. 702, §2 (NEW).]

[PL 1985, c. 702, §2 (NEW).]

SECTION HISTORY

PL 1985, c. 702, §2 (NEW).

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