§ 7405. Order of liquidation; rights and liabilities. (a) An order to liquidate the business of a domestic insurer shall direct the superintendent and his successors in office, as liquidator, forthwith to take possession of the property of such insurer and to liquidate the business of the same and deal with such property and business of such insurer in their own names as superintendents or in the insurer's name as the court may direct, and to give notice to all creditors to present their claims.

(b) The superintendent and his successors shall be vested by operation of law with the title to all property, contracts and rights of action of such insurer as of the date of the entry of the order so directing them to liquidate. The filing or recording of such order in any record office of the state shall impart the same notice that a deed, bill of sale or other evidence of title duly filed or recorded by such insurer would have imparted. The rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, members and all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date the order is entered in the office of the clerk of the county where such insurer had its principal office on the date the proceeding commenced, subject, however, to the provisions of section seven thousand four hundred thirty-three of this article to the rights of claimants holding contingent claims.

(c) The liquidator of any domestic insurance corporation shall reinsure all its policy obligations in any solvent corporation authorized to do business in this state if the unearned premium reserve of the insurer is sufficient to effect such reinsurance. If such reserve is insufficient for that purpose, the liquidator shall reinsure a percentage of each policy obligation of the insurer outstanding to the extent that the reserve may be sufficient for that purpose. No contract of reinsurance shall be entered into by the liquidator except pursuant to an order of the court in which the liquidator was appointed directing the reinsurance and establishing the general form of the reinsurance contract.

(d) An order to liquidate the business of the United States branch of an alien insurer having trusteed assets in this state shall be in the same terms as those hereinbefore prescribed, except that only the assets of the business of such United States branch shall be included therein.

(e) Where the trustee of a mortgage series consisting in whole or in part of certificated mortgage investments guaranteed by a domestic insurer has distributed all of the trust estate collateral, or has been permitted by court order to abandon all or part of such collateral not distributed, the court, by order, may, upon the consent of the liquidator of the insurer, direct the superintendent, upon being furnished with a list of certificate holders certified to by the trustee, to record subsequent transfers of certificates and charge and collect a reasonable fee therefor, and distribute dividends applicable thereto upon liquidation of company assets in his hands, to the record owners of such certificates, and make and deduct from such dividend payments a reasonable charge for such services. The duty of the superintendent under such order shall terminate upon the termination of the liquidation proceedings.

(f) (1) No later than one hundred eighty days after a final order of liquidation with an adjudication of insolvency of an insurer by a court of competent jurisdiction of this state, the liquidator may in his sole discretion make application to the court for approval of a proposal to disburse assets out of marshalled assets, from time to time as such assets become available, to any fund established by article seventy-six of this chapter, article six-A of the workers' compensation law and any foreign entity performing a similar function, having obligations because of such insolvency. If the liquidator determines that there are insufficient assets to disburse, the application authorized by this subsection shall be considered satisfied by a filing by the liquidator stating the reasons for this determination.

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

(A) reserving amounts for the payment of expenses of administration, claims of secured creditors to the extent of the value of the security held, and claims falling within the priorities established in section seven thousand four hundred twenty-six of this article;

(B) disbursement of the assets marshalled to date and subsequent disbursement of assets as they become available;

(C) disbursements to the funds and entities entitled thereto under this subsection in amounts estimated to be at least equal to all claim payments for which such funds or entities could assert claims against the liquidator, and if the assets available for disbursement from time

to time do not at least equal such claim payments, then disbursements in the amount of available assets;

(D) equitable allocation of disbursements to each of such funds or entities;

(E) the securing by the liquidator from each of such funds or entities of an agreement to return to the liquidator such assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in section seven thousand four hundred twenty-six of this article in accordance with such priorities. No bond shall be required of any such fund or entity; and

(F) a full report to be made by each such fund or entity to the liquidator accounting for all assets so disbursed to the fund or entity, all disbursements made therefrom, any income earned by the fund or entity on such assets and any other matters as the court may direct.

(3) Notice of such application shall be given to such funds and entities and to the commissioners of insurance of each of the states. Any such notice shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, at least thirty days prior to submission of such application to the court. Action on the application may be taken by the court if the required notice has been given and the liquidator's proposal complies with subparagraphs (A), (B) and (D) of paragraph two of this subsection.

(g) (1) No later than one hundred twenty days after the end of the calendar or fiscal year of a domestic insurance corporation subject to rehabilitation or liquidation, upon whichever standard the corporation conducts its financial affairs, the rehabilitator or liquidator shall submit to the department an annual report of the preceding calendar or fiscal year's activity of such corporation. Such report, which shall pertain only to such corporation's activities and those of the rehabilitator or liquidator as they relate to such corporation, shall include a financial review of the assets and liabilities of the corporation, the claims accrued or paid in that period, and a summary of all other corporate activity and a narrative of the actions of the rehabilitator or liquidator respecting such corporation.

(2) No later than August first of each year, the rehabilitator or liquidator shall submit to the department and the legislature separate

or combined annual financial statements for the domestic insurance corporations subject to rehabilitation or liquidation. Upon whichever standard each corporation conducts its respective financial affairs, showing their condition at last calendar year end or at the last fiscal year end ending on or prior to last calendar year end, together with an opinion or other report of an independent certified public accountant on such financial statements, provided that such corporations were placed into rehabilitation or liquidation prior to the commencement of the calendar or fiscal years covered by such financial statements.

(3) No later than August first of each year, the superintendent as receiver shall submit to the department and the legislature an annual financial statement of the liquidation bureau showing its cash receipts and disbursements for the prior calendar year, together with an opinion or other report of an independent certified public accountant on such financial statement.

(4) The reports and statements required under this subsection shall be separate and apart from other reports and statements issued by the liquidation bureau of the department in the normal course of its business.