

40-759. Deficiencies in operation by domestic society; notice to correct; show cause requirement upon failure to correct; injunction or quo warrant action by attorney general; recommencement of business; liquidation; receiver; procedures applicable to society voluntarily discontinuing business. (a) When the commissioner of insurance upon investigation finds that a domestic society: (1) Has exceeded its powers; (2) has failed to comply with any provisions of this act; (3) is not fulfilling its contracts in good faith; (4) has a membership of less than 400 after an existence of one year or more; or (5) is conducting business fraudulently or in a manner hazardous to its members, creditors, the public or the business, the commissioner shall notify the society of such deficiency or deficiencies and state in writing the reasons for dissatisfaction. The commissioner shall at once issue a written notice to the society requiring that the deficiency or deficiencies which exist are corrected. After such notice the society shall have a 30-day period in which to comply with the commissioner's request for correction. If the society fails to comply, the commissioner shall notify the society of such findings of noncompliance and require the society to show cause on a date named why it should not be enjoined from carrying on any business until the violation complained of shall have been corrected or why an action in quo warrant should not be commenced against the society.

(b) If on such date the society does not present good and sufficient reasons why it should not be so enjoined or why such action should not be commenced, the commissioner of insurance may present the facts relating thereto to the attorney general who shall, if deeming the circumstances to warrant, commence an action to enjoin the society from transacting business or in quo warrant.

(c) The court shall thereupon notify the officers of the society of a hearing. If after a full hearing it appears that the society should be so enjoined or liquidated or a receiver appointed, the court shall enter the necessary order. No society so enjoined shall have the authority to do business until:

- (1) The commissioner of insurance finds that the violation complained of has been corrected;
- (2) the costs of such action shall have been paid by the society if the court finds that the society was in default as charged;
- (3) the court has dissolved its injunction; and
- (4) the commissioner of insurance has reinstated the certificate of authority.

(d) If the court orders the society liquidated, it shall be enjoined from carrying on any further business, whereupon the receiver of the society shall proceed at once to take possession of the books, papers, money and other assets of the society and, under the direction of the court, proceed forthwith to close the affairs of the society and to distribute its funds to those entitled thereto.

(e) No action under this section shall be recognized in any court of this state unless brought by the attorney general upon request of the commissioner of insurance. Whenever a receiver is to be appointed for a domestic society, the court shall appoint the commissioner of insurance as such receiver.

(f) The provisions of this section relating to hearing by the commissioner of insurance, action by the attorney general at the request of the commissioner of insurance, hearing by the court, injunction and receivership shall be applicable to a society which shall voluntarily determine to discontinue business.

History: L. 1988, ch. 154, § 22; Jan. 1, 1989.