

IN THE CIRCUIT COURT
OF THE CITY OF RICHMOND
JOHN MARSHALL COURTS BUILDING
THE 14TH DAY OF OCTOBER, 1994

COMMONWEALTH OF VIRGINIA, ex rel.)
STATE CORPORATION COMMISSION)
)
and)
)
STEVEN T. FOSTER,)
COMMISSIONER OF INSURANCE,)
Applicants)
)
v.)
)
HOME WARRANTY CORPORATION,)
)
HOME OWNERS WARRANTY CORPORATION,)
)
HOW INSURANCE COMPANY, A)
RISK RETENTION GROUP)
)
and)
)
RONALD L. TILLET,)
TREASURER OF VIRGINIA,)
Respondents.)

FINAL ORDER APPOINTING
RECEIVER FOR
REHABILITATION OR
LIQUIDATION

COURT FILE
NO. HE-7059-1

FINAL ORDER APPOINTING RECEIVER FOR REHABILITATION OR LIQUIDATION

WHEREAS, pursuant to Title 38.2, Chapter 15 of the Virginia Code and other applicable Virginia law, an Application has been filed with the Court for the entry of an order appointing the State Corporation Commission of the Commonwealth of Virginia (the "Commission") as Receiver of HOW Insurance Co., A Risk Retention Group ("HOWIC"), Home Owners Warranty Corp. ("HOW"), and Home Warranty Corp. ("HWC") (collectively, HOWIC, HOW, and HWC are referred to as "Respondents"), and for injunctive and other relief

authorized by Title 38.2, Chapter 15, for the reasons and purposes set forth in such Application.

WHEREAS, this Court finds that it has subject matter jurisdiction over the facts, matters, and issues raised in the Application and that it has personal jurisdiction over the Respondents.

WHEREAS, Respondents have been duly served and, along with the Treasurer of Virginia, have had notice of the Application for entry of an order appointing the Commission as Receiver for Respondents, and the parties have appeared by counsel and have agreed to the entry of this Order.

WHEREAS, the relief granted in this Order is a valid and essential exercise of, and fully consonant with, the Commonwealth's police power to regulate the business of insurance for the protection of the public good.

WHEREAS, a hearing was set for October 14, 1994, concerning the aforesaid Application, at which time the Respondents had a full and fair opportunity to litigate, contest, argue, and object to the matters and issues presented in the Applications and this Order, and thereupon consented to the entry of this Order.

WHEREUPON, the parties proffered this Order to the Court, and the Court, being advised in the premises, makes the following findings:

1. For the purposes of this proceeding only, Respondents are engaged in the business of making insurance contracts involving the issuance of home protection insurance

contracts against the cost of correcting major structural defects and defects due to specified deficiencies in builders' workmanship or materials for a ten-year period and are engaged in the business of insurance as defined in Virginia Code § 38.2-100, and as so engaged, Respondents are in a hazardous financial condition such that any further transaction of their business will be hazardous to their member builders, homebuyer certificate holders, insureds, creditors, and the public unless the relief granted herein is provided.

2. The relief sought in the Application is in the best interests of Respondents' member builders, homebuyer certificate holders, insureds, creditors, and the public, such that important public objectives concerning the regulation of the business of insurance will be fulfilled by the granting of the relief sought in the Application.
3. Under the provisions of Virginia Code §§ 38.2-1505 and 38.2-1508, the Commission should be authorized to proceed with the rehabilitation or liquidation of Respondents and to take whatever steps are reasonably necessary or advisable, consistent with the language of this Order and any written agreements between Respondents and the Commission, for the protection of Respondents' member builders, homebuyer certificate holders, insureds, creditors, or the public.

4. The Applicants are within their rights to exercise their powers under Chapters 15 and 51 of Title 38.2 of the Virginia Code to seek an order and injunction and the appointment of a receiver if Respondent HOWIC is in a hazardous financial condition.

THEREFORE, IT IS ORDERED, ADJUDGED and DECREED that:

- (1) The Commission should be, and hereby is, appointed as Receiver of Respondents (the "Receiver") pursuant to Title 38.2, Chapter 15 of the Virginia Code and is vested, in addition to the powers set forth herein, with all the powers and authority expressed or implied under the provisions of Title 38.2, Chapter 15. The Commission may do all acts necessary or appropriate for the rehabilitation or liquidation of Respondents.
- (2) The officers, directors, trustees, partners, affiliates, agents, employees, creditors, insureds, and members of Respondents, all persons acting in concert with them, and all other persons or entities of any nature including, but not limited to, builders, claimants, policyholders, homeowner warranty certificate holders, third party beneficiaries of contracts or policies of insurance and any governmental agencies who have claims of any nature against Respondents, its assets or estate, the Receiver, the Deputy Receiver, or the Special Deputy Receiver, including crossclaims, counterclaims, and third party claims, are hereby permanently enjoined and restrained

from doing or attempting to do any of the following, except with leave of the Receiver or the Deputy Receiver:

- a) - conducting or attempting to conduct any portion or phase of the business of Respondents; including, but not limited to, writing any new business on behalf of the Respondents or compromising, or attempting to compromise, any obligation of Respondents, in any way legally binding or attempting to bind Respondents;
 - b) commencing, bringing, maintaining or further prosecuting any action at law, suit in equity, arbitration, or special or other proceeding against Respondents or their estate, or the Receiver and his successors in office, as Receiver thereof, or any person appointed pursuant to paragraph 11 below;
 - c) making or executing any levy upon, selling, hypothecating, mortgaging, wasting, conveying, dissipating, or asserting control or dominion over the property or the estate of Respondents;
 - d) seeking or obtaining any preference, judgments, foreclosures, attachments, levies, or liens of any kind against the property or estate of Respondents;
 - e) interfering in any way with these proceedings or with the Receiver, or any duly authorized representative or successor in office, in his acquisition of possession of, the exercise of dominion or control over, or his title to the property or estate of Respondents, or in the discharge of his duties as Receiver thereof; or
 - f) commencing, maintaining or further prosecuting any direct or indirect actions, arbitrations, or other proceedings against any insurer of Respondents for proceeds of any policy issued to Respondents.
- (3) The Receiver is hereby authorized to take any and all actions that it deems advisable in connection with the liquidation or rehabilitation of Respondents, oversee the rehabilitation or liquidation of Respondents, and approve any other authorized steps that it considers advisable in

connection with the affairs of Respondents pursuant to Virginia Code § 38.2-1508 and Article IX, Section 3 of the Constitution of Virginia.

- (4) All claims against Respondents or their assets must be submitted to the Receiver as specified herein to the exclusion of any other method of submitting or adjudicating such claims in any forum, court, or tribunal subject to the further Order of the Commission. A Receivership Appeal Procedure is hereby adopted to facilitate the orderly disposition or resolution of claims or controversies involving the receivership or the receivership estate, providing as follows:

HOW INSURANCE COMPANY, HOME WARRANTY CORP.,
and HOME OWNERS WARRANTY CORP.
In Receivership for Rehabilitation or Liquidation

RECEIVERSHIP APPEAL PROCEDURE

*THIS PROCEDURE GOVERNS APPEALS AND CHALLENGES
OF ANY DECISION MADE BY THE RECEIVER OF HOW
INSURANCE COMPANY, HOME WARRANTY CORP. AND
HOME OWNERS WARRANTY CORP.*

A. APPLICABILITY OF PROCEDURE

1. For purposes of this procedure, the term "Deputy Receiver" includes the Special Deputy Receiver and any other duly authorized representative of the Receiver. In order to challenge or seek review of any "appealable decision" of the Deputy Receiver, including any decision concerning a claim against HOW Insurance Company, Home Warranty Corp., and Home Owners Warranty Corp. (collectively referred to as "HOW") you must adhere strictly to the following steps and deadlines. Failure to fully adhere to this procedure will result in a waiver of your appeal, and the Deputy Receiver's decision as to your claim or any other matter will become final and non-appealable.

2. A decision of the Deputy Receiver is an "appealable decision" only if:
 - a. it concerns a specific claim made against HOW, whether or not arising under a policy or contract issued by HOW; or
 - b. it affects, or may affect, a financial interest, contract right or legal entitlement of the person making the appeal.
3. The date by which an appeal must be presented is governed by the "DATE OF DECISION" of the matter being appealed. The DATE OF DECISION is:
 - a. with respect to the Deputy Receiver's decision on a specific claim, the date shown on the NOTICE OF CLAIM DETERMINATION;
 - b. with respect to any non-claim matter, the day the Deputy Receiver announces his decision; or
 - c. with respect to any non-claim matter that is not announced, the date the decision is made.
4. There are two levels of appeal which may be available to you: appeal to the Deputy Receiver and appeal to the State Corporation Commission ("the Commission"). You may not appeal to the State Corporation Commission without first appealing to the Deputy Receiver in the manner described below.

B. APPEAL TO THE DEPUTY RECEIVER: DEADLINE: 30 DAYS
FROM DATE OF DECISION

1. Decisions by the Deputy Receiver must be appealed within thirty (30) days following the DATE OF DECISION.
2. Once the Deputy Receiver concludes his review of a specific claim, the claimant will be sent a NOTICE OF CLAIM DETERMINATION advising him or her of the disposition of his or her claim. Such a notice may have been sent to you before, or with, this "RECEIVERSHIP APPEAL PROCEDURE".
3. Within thirty (30) days after the DATE OF DECISION regarding the matter being appealed, you must file with the Deputy Receiver and the Deputy Receiver must receive a "NOTICE OF APPEAL" containing a narrative or documentary explanation of the reason for your appeal and including all documents supporting your appeal. No particular form is necessary for this notice of appeal (a letter may be sufficient) but whatever you send must be clearly labelled "NOTICE OF APPEAL" on the first page. It must also contain:
 - a. a copy of the NOTICE OF CLAIM DETERMINATION or, if in writing, a copy of the other matter being appealed;
 - b. a full and detailed explanation of your appeal;
 - c. adequate documentation to support it; and

d. the following or a substantially similar jurat so that the appeal is sworn:

State of _____ §
County of _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____ known to me to be the person whose name is subscribed to the foregoing NOTICE OF APPEAL, and having by me been first duly sworn, upon his (her) oath deposed and stated that the facts therein contained are true and correct to his (her) knowledge or belief.

Given under my hand and seal of office on this _____ day of _____, 1991.

(Notary Seal)

(Notary's name)
Notary public in and for

County,
State of _____

- 4. Because the date on which the Deputy Receiver receives your NOTICE OF APPEAL is very important in determining your appeal, you should employ a method of delivery that will enable you to know when it is actually received by the Deputy Receiver.
- 5. You must present all grounds and bases for appeal to the Deputy Receiver in your NOTICE OF APPEAL. Any ground or basis not presented in this Notice will be deemed waived and may not be presented for the first time to the State Corporation Commission unless the Commission determines that consideration of additional grounds or bases is necessary to attain the ends of justice.
- 6. Your NOTICE OF APPEAL must be received by the Deputy Receiver at the following address no later than thirty (30) days after the DATE OF DECISION.

Claim Appeals
HOW, In Receivership for Rehabilitation or
Liquidation
909 Las Colinas Boulevard
Irving, Texas 75015-2087

- 7. If your NOTICE OF APPEAL is not received at the above address by the above deadline, your right to appeal the Deputy Receiver's decision will be waived and that decision (including, but not limited to, a decision set out in a NOTICE OF CLAIM DETERMINATION) will become final and non-appealable.
- 8. Except as noted below, the Deputy Receiver will advise you of his decision regarding your appeal by sending you a written "DETERMINATION OF APPEAL" ("Determination") on or before thirty (30) days after receipt of your NOTICE OF APPEAL. However, the Deputy Receiver may extend the time by which he must determine your appeal by up to ninety (90) additional days by sending you a written "EXTENSION OF APPEAL" notification on or before thirty (30) days after receipt of your NOTICE OF APPEAL.

9. If the Deputy Receiver does not send you a written DETERMINATION OF APPEAL or an EXTENSION OF APPEAL notification within thirty (30) days following receipt of your NOTICE OF APPEAL, your appeal will be deemed automatically rejected and you will then have thirty (30) days within which to challenge the Deputy Receiver's decision.
10. If you receive a DETERMINATION OF APPEAL that you believe is incorrect, or if for any other reason you are dissatisfied with the Deputy Receiver's determination of your appeal, whether automatic or by specific decision, you may challenge such determination by following the procedures set out below. Note however, such appeal may only proceed if you have timely filed a Notice of Appeal using the procedures set forth above.

C. APPEAL TO THE STATE

CORPORATION COMMISSION: DEADLINE: 30 DAYS FROM A DETERMINATION OF APPEAL; OR, IF NO DETERMINATION, SIXTY DAYS FROM NOTICE OF APPEAL; OR, 30 DAYS FROM THE EXPIRATION OF AN EXTENSION OF APPEAL IF NO DETERMINATION.

1. You may challenge the Deputy Receiver's determination of your appeal no later than thirty (30) days after the date reflected on the Deputy Receiver's DETERMINATION OF APPEAL or no later than thirty (30) days following an automatic rejection, by filing a "PETITION FOR REVIEW OF DEPUTY RECEIVER'S DETERMINATION OF APPEAL" in the receivership proceeding identified as follows:

*Commonwealth of Virginia
State Corporation Commission*

COMMONWEALTH OF VIRGINIA, ex rel.
STATE CORPORATION COMMISSION

and

STEVEN T. FOSTER,
COMMISSIONER OF INSURANCE
Applicants

v.

CASE NO. _____

HOW INSURANCE COMPANY,
HOME WARRANTY CORP., AND
HOME OWNERS WARRANTY CORP.
Respondents.

2. An appeal of the Deputy Receiver's DETERMINATION OF APPEAL, whether automatic or by specific decision, and only after compliance with section B, above, must be filed with the State Corporation Commission in the receivership proceeding no later than the applicable date as specified below:
 - a. the thirtieth (30th) day following the date shown on the Deputy Receiver's DETERMINATION OF APPEAL; or
 - b. if no such written DETERMINATION OF APPEAL and no EXTENSION OF APPEAL notification is sent to you, the sixtieth (60th) day following the date on which the Deputy Receiver actually received your NOTICE OF APPEAL; or

- c. if an EXTENSION OF APPEAL notification is sent to you, but no DETERMINATION OF APPEAL is sent to you, then within thirty (30) days of the expiration of the date to which the EXTENSION OF APPEAL extended the time of response by the Deputy Receiver.
 3. Your appeal may not present grounds or bases for appeal that were not presented in the preceding appeal to the Deputy Receiver; unless the Commission determines that consideration of such grounds or bases is necessary to attain the ends of justice.
 4. Except as provided in applicable sections of the Virginia Insurance Laws and the Orders of the State Corporation Commission, proceedings regarding your PETITION FOR REVIEW OF DEPUTY RECEIVER'S DETERMINATION OF APPEAL ("Petition") will be governed by the Rules of Practice and Procedure of the State Corporation Commission ("the Rules").
 5. Any formal pleading or other related document or paper shall be considered filed with the Commission upon receipt of the original and required copies by the Clerk of the Commission at the following address: State Corporation Commission, Document Control Center, P. O. Box 2118, Richmond, Virginia 23216. Service must also be made upon the Deputy Receiver at HOW, In Receivership for Rehabilitation or Liquidation, 909 Las Colinas Boulevard, Irving, Texas 75015-2087. Failure to file your Petition as required under this Receivership Appeal Procedure waives any further right you have to appeal and the Deputy Receiver's determination of your appeal becomes final.
 6. Any finding, decision, judgment, order or decree of the Commission made and entered in connection with such PETITION FOR REVIEW OF DEPUTY RECEIVER'S DETERMINATION OF APPEAL shall be deemed a final judgment, order or decree of the Commission as described in, and be governed by, Rules 8:9 and 8:10 of the Rules.
- D. QUESTIONS REGARDING THIS PROCEDURE MUST BE DIRECTED IN WRITING TO THE ADDRESS IN PARAGRAPH B.6., ABOVE.

The foregoing Receivership Appeal Procedure shall be the exclusive method of submitting claims against the Respondents, its assets, the Receiver, the Deputy Receiver, and the Special Deputy Receiver until further Order of the Commission.

(5) The Commissioner of Insurance , Steven T. Foster, is hereby appointed as Deputy Receiver of Respondents (the "Deputy Receiver").

(6) Patrick H. Cantilo is hereby appointed Special Deputy Receiver of Respondents (the "Special Deputy Receiver").

(7) The Receiver, Deputy Receiver, and the Special Deputy Receiver shall have the power:

- (a) to collect all debts and monies due and claims belonging to Respondents, wherever located, and for this purpose: (i) to institute and maintain timely actions in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts; (ii) to do such other acts as are necessary or expedient to marshal, collect, conserve or protect Respondents' assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon such terms and conditions as he deems appropriate, and the power to initiate and maintain actions at law or equity or any other type of action or proceeding of any nature, in this and other jurisdictions; (iii) to pursue any remedies available to enforce his claims;
- (b) to conduct public and private sales of the assets and property of Respondents, including any real property;
- (c) to acquire, invest, deposit, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any asset or property of Respondents, and to sell, reinvest, trade or otherwise dispose of any securities or bonds presently held by, or belonging to, Respondents upon such terms and conditions as he deems to be fair and reasonable, irrespective of the value at which such property was last carried on the books of Respondents. They shall also have the power to execute, acknowledge and deliver any and all deeds, assignments, releases and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the receivership;
- (d) to borrow money on the security of Respondents' assets, with or without security, and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the receivership;
- (e) to enter into such contracts as are necessary to carry out this Order;

- (f) to terminate and disavow the authority previously granted Respondents' Agents or marketing representatives to represent them in any respect, the underlying agreements, and any continuing payment obligations created therein, upon reasonable notice to such Agents and marketing representatives;
- (g) to affirm or disavow any executory contracts to which any Respondent is a party at such times as he deems appropriate under the circumstances, provided that payment due for any goods or services received after appointment of the Commissioner as Receiver with his consent shall be deemed to be an administrative expense of the receivership, and provided further that other unsecured amounts properly due under the disavowed contract, and unpaid solely because of such disavowal, shall give rise to a general unsecured creditor claim in the Receivership proceeding;
- (h) to institute and to prosecute, in the name of Respondents or in their own name, any and all suits and other legal proceedings, to defend suits in which any Respondent or the Receiver is a party in this state or elsewhere, whether or not such suits are pending as of the date of this Order, to abandon the prosecution or defense of suits, legal proceedings and claims which he deems inappropriate to pursue further and to compromise suits, legal proceedings or claims on such terms and conditions as he deems appropriate;
- (i) to prosecute any action which may exist on behalf of the member builders, homebuyer certificate holders, insureds or creditors of Respondents against any officer or director of Respondents, or any other person;
- (j) to remove any or all records and other property of Respondents to the offices of the Deputy Receiver or Special Deputy Receiver or to such other place as may be convenient for the purposes of efficient and orderly execution of the receivership, and to dispose of or destroy, in the usual and ordinary course, such of those records and property as the Receiver may deem or determine to be unnecessary for the receivership.

- (k) to file any necessary documents for recording in the office of any recorder of deeds or record office in this state or wherever the property of Respondents is located;
 - (l) to intervene in any proceeding wherever instituted that might lead to the appointment of a conservator, receiver or trustee of Respondents or their affiliates or subsidiaries, and to act as the receiver or trustee whenever the appointment is offered;
 - (m) to enter into agreements with any ancillary conservator, receiver, liquidator, rehabilitators, or Insurance Commissioner of any other state as he may deem to be necessary or appropriate; and
 - (n) to perform such further and additional acts as they may deem necessary or appropriate for the accomplishment, or in aid, of the purpose of the receivership, it being the intention of this Order that the aforestated enumeration of powers shall not be construed as a limitation upon the Receiver;
- (8) The Receiver is hereby vested with exclusive title both legal and equitable to all of Respondents' Property, including all of their affairs, business, assets, books, records, property, real and personal, including all property or ownership rights, choate or inchoate, whether legal or equitable of any kind or nature, including but not limited to all causes of action, defenses, letters of credit relating to the Respondents or their business, all interests of any kind in affiliates and subsidiaries, including, but not limited to Builders Warranty Insurance Company, HOW Home Protection Corporation, HOW Home Protection Corporation of Virginia, HOW Development Corporation, Home Owners Warranty Development Corporation, HOW Insurance Services, Inc., Home Owners

Warranty Insurance Company, Ltd., Shelter Insurance Company and Home Owners Registration Corporation, all stocks, bonds, certificates of deposit, cash, cash equivalents, contract rights, reinsurance contracts and reinsurance recoverable, in force insurance contracts and business, deeds, mortgages, leases, book entry deposits, bank deposits, certificates of deposit, evidences of indebtedness, bank accounts, securities of any kind or nature, both tangible and intangible, including but without being limited to any special, statutory or other deposits or accounts made by or for Respondents with any officer or agency of any state government or the federal government, or with any banks, savings and loan associations, or other depositories and including such property of Respondents which may be discovered hereafter, wherever the same may be located and in whatever name or capacity it may be held (all of the foregoing being hereinafter referred to as the "Property") and is hereby directed to take immediate and exclusive possession and control of same. In addition to vesting title to all of the Property in the Receiver or its successors, the said Property is hereby placed in the *custodia legis* of the Commission, and the Commission is, hereby vested with the authority to assume and exercise sole and exclusive *in rem* jurisdiction over all the Property and any claims or rights respecting such

Property to the exclusion of any other court or tribunal, other than the Commission, such exercise of sole and exclusive jurisdiction being hereby found to be essential to the safety of the public and of the claimants against Respondents.

- (9) The officers, directors, trustees, partners, affiliates, agents, employees, creditors, insureds, and members of Respondents, and all persons acting in concert with them, are hereby ordered to surrender custody and control of the Respondents' Property to the Receiver, wherever held, including each of Respondents' offices, places of business, warehouses, and other facilities or locations, specifically including, but not limited to the Property held at 1110 North Glebe Road, Suite 800, Arlington, Virginia 22201; 909 Las Colinas Boulevard, Irving, Texas; 10630 Newkirk Street, Dallas, Texas; Allentown, Pennsylvania; and San Diego, California.
- (10) The Receiver and Deputy Receiver are authorized to employ and to fix the compensation of such deputies, counsel, employees, accountants, actuaries, investment counselors, asset managers, consultants, assistants and other personnel as they consider necessary. All compensation and expenses of such persons and of taking possession of Respondents and conducting this proceeding shall be paid out of the funds and assets of Respondents. The Receiver and the Deputy Receiver are further authorized to and may

designate, from time to time, individuals authorized to act as their representative with respect to affairs of Respondents for all purposes, including, but not limited to, signing checks and other documents required to effectuate the performance of the powers of the Receiver.

(11) The Deputy Receiver and Special Deputy Receiver are hereby granted the authority to act on behalf of, or as representative of, the Receiver with respect to the affairs of Respondents for all purposes, being hereby granted the authority to exercise fully all the rights and powers of the Receiver other than those contained in §§ 38.2-1507 and 1508 of the Virginia Code, including, but not limited to, the taking of any steps or actions reasonably necessary to effectuate the performance of the powers of the Commission granted pursuant to this order and the laws of the Commonwealth of Virginia. The Deputy Receiver and the Special Deputy Receiver shall serve at the pleasure and sole discretion of the Receiver.

(12) All persons, corporations, partnerships, associations and all other entities wherever located, are hereby enjoined and restrained from interfering in any manner with the Receiver, the Deputy Receiver, or the Special Deputy Receiver's possession of the Property or their title to or right therein and from interfering in any manner with the conduct of the receivership of Respondents. Said persons, corporations, partnerships, associations and all

other entities are hereby enjoined and restrained from wasting, transferring, selling, disbursing, disposing of, or assigning the Property and from attempting to do so.

- (13) The Receiver, the Deputy Receiver, or the Special Deputy Receiver may change to their own name, the name of any Respondents' accounts, funds or other property or assets held with any bank, savings and loan association or other financial institution, wherever located, and may withdraw such funds, accounts and other assets from such institutions or take any other action necessary for the proper conduct of the receivership.
- (14) All secured creditors or parties, pledge holders, lien holders, collateral holders or other persons claiming secured, priority or preferred interest in any property or assets of Respondents including any governmental entity are hereby enjoined from taking any steps whatsoever to transfer, sell, encumber, attach, dispose of or exercise purported rights in or against the Property without the consent of the Commission, the Deputy Receiver, or the Special Deputy Receiver.
- (15) No insurer, reinsurer, bank, savings and loan association or other financial institution shall, without first obtaining permission of the Receiver, Deputy Receiver, or Special Deputy Receiver exercise any form of set-off, alleged set-off, lien, or other form of self-help

whatsoever or refuse to transfer the Property to the Receiver's control.

- (16) Respondents, their officers, directors, partners, members, agents and employees, and all other persons, having any property or records belonging to Respondents, including data processing information and records of any kind such as, by way of example only, source documents, are hereby directed to assign, transfer and deliver to the Receiver, Deputy Receiver, or Special Deputy Receiver all of such property in whatever name the same may be held, and any persons, firms or corporations having any books, papers or records relating to the business of Respondents shall preserve the same and submit these to the Receiver for examination at all reasonable times.
- (17) The Commission, upon reasonable notice as determined at its discretion, shall have the power to cancel all or certain policies or contracts of insurance issued by Respondents, whether or not the same are cancelable by their terms, provided that:
- (a) in the event that fewer than all of Respondents' policies or contracts are canceled, such cancellation should be implemented with respect to all similarly situated policies or contracts of the same type at the same time and in the same manner,
 - (b) such cancellation shall give rise to unearned premium obligations calculated on a pro-rata basis, and constituting policyholder claims against the assets of Respondents, and

(c) in such cancellation, the Receiver may take into account the interest of persons insured or intended beneficiaries of such policies.

(18) In addition to that provided by statute or by the Builder's Agreements, Respondents' warranties or contracts, the Receiver may, subject to the following provisions, impose such full or partial liens, suspension, or moratoria upon the payment of any sums due under the warranties or contracts issued by Respondents as he deems proper under the circumstances:

- (a) Any such lien, suspension or moratorium shall apply in the same manner or to the same extent to all similarly situated contracts of the same type or to the particular types or payments due thereunder. However, the Commission, Deputy Receiver, or Special Deputy Receiver may, in their sole discretion, impose the same upon only certain types, but not all, of the payments due under any particular type of contract.
- (b) Notwithstanding any other provision of this Order, the Commission, Deputy Receiver, or Special Deputy Receiver, or their agents or employees, may exempt from any such lien, moratorium or suspension, those hardship claims, as he may define them, that he, in his sole discretion, deems proper under the circumstances.
- (c) The Commission, Deputy Receiver, or Special Deputy Receiver, or their agents or employees, shall only impose such contract lien, moratorium or suspension when the same is not specifically provided for by contract or statute as part, or in anticipation, of a plan for the partial or complete rehabilitation of HOWIC or when necessary to determine whether such partial or complete rehabilitation is reasonably feasible.
- (d) Under no circumstances shall the Commission, Deputy Receiver, or Special Deputy Receiver, or their agents or employees, be liable to any person or entity for his good faith decision to impose, or to

refrain from imposing, such contract lien, moratorium or suspension.

(e) Notice of such contract lien, moratorium or suspension, which may be by publication, shall be provided to the holders of all warranties or contracts affected thereby. Any such person may, within ten days of such notice, file an application for hearing with the Commission for the presentation of any objection thereto.

(19) The Receiver, Deputy Receiver and Special Deputy Receiver shall permit the enrollment and certification of enrollment in the Respondents' warranty and insurance program of structures built, or being built, by members of the HOW program provided that a contract between the builder and buyer as to such structure was in effect no later than October 7, 1994, and provided further that construction of such structures had commenced no later than October 7, 1994. The Receiver, Deputy Receiver, and Special Deputy Receiver are authorized, in their sole discretion, to determine whether the criteria delineated in this paragraph have been met. But the Receiver, Deputy Receiver, and Special Deputy Receiver may require that the parties to such contract and other parties at closing acknowledge that they have been advised of Respondents' receivership, Respondents' potential inability to perform fully under any warranty or contract issued on that home and related matters.

(20) The Commission and all deputies, special deputies, attorneys, accountants, actuaries, investment counselors,

asset managers, peace officers and other consultants shall be deemed to be public officers acting in their official capacities on behalf of the Commonwealth of Virginia and shall have no personal liability for or arising out of their acts or omissions performed in good faith in connection with their services performed in connection with these or related proceedings or pursuant to this or related orders except as regards claims by the Receiver.

- (21) No judgment, order, attachment, garnishment sale, assignment, transfer, hypothecation, lien, security interest or other legal process of any kind with respect to or affecting the Respondents or the Property shall be effective or enforceable or form the basis for a claim against Respondents or the Property unless entered by the Commission, or unless the Commission has issued its specific order, upon good cause shown and after due notice and hearing, permitting same.
- (22) All rights and liabilities of Respondents' member builders, homebuyer certificate holders, insureds, creditors, and other persons interested in the assets of the Respondents shall be fixed as of the date of the entry of an order to liquidate in the event of a liquidation as provided under the Virginia Code § 38.2-1512. In the event of a rehabilitation, the rights and liabilities of Respondents' member builders,

homebuyer certificate holders, insureds, creditors, and other persons interested in the assets of the Respondents shall be fixed as of the date certain determined by the Commission to be appropriate under the circumstances.

- (23) All costs, expenses, fees or any other charges of the receivership, including but not limited to fees and expenses of accountants, peace officers, actuaries, investment counselors, asset managers, attorneys, special deputies, and other assistants engaged by the Receiver, and other expenses incurred in connection herewith shall be paid from the assets of Respondents. Provided, further, that the Commission, Deputy Receiver, or Special Deputy Receiver may, in their sole discretion, require third parties, if any, who propose rehabilitation plans with respect to Respondents to reimburse the estate of Respondents for the expenses, consulting or attorney's fees and other costs of evaluating and/or implementing any such plan.
- (24) If any provision of this Order or the Application therefor is for any reason held to be invalid, the remainder of this Order and the application therefor to other persons or circumstances shall not be affected thereby.
- (25) It is expressly adjudicated that no finding has been made in this proceeding that HOW, HOWIC, and HWC combined or operated as a single business enterprise. Should any

liability action be taken by the Receiver or the Deputy Receiver against any officer, director, or employee in which liability is dependent upon a finding that HOW, HOWIC, and HWC operated as a single business enterprise engaged in the business of insurance, the findings contained in this Order shall not operate as an adjudication of such fact or preclude the director, officer, or employee from asserting that the three companies are not a single business enterprise.

- (26) Notwithstanding any provision in this Order, and consonant with the written agreement of the Respondents and the Special Receiver, the Receiver shall not pursue any action against officers, directors, and employees of Respondents for actions taken in good faith that were based upon the opinion, certification, or advice given by outside actuaries or accountants who were not employees of Respondents.
- (27) Inasmuch as the Commission is hereby appointed as Receiver for the Respondents, Steven T. Foster, Commissioner of Insurance is hereby discharged as Special Receiver of the Respondents and the rights and powers of such Special Receiver shall cease simultaneously with the appointment of the Commission, and such Special Receiver shall forthwith file with the Court an account of his dealings with the estate of the Respondents during the period of his receivership.

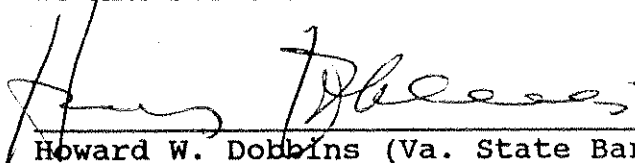
(28) The Receiver, Deputy Receiver, and Special Deputy Receiver are authorized to deliver to any person or entity a certified copy of this Order, or of any subsequent Order of the Commission, such certified copy, when so delivered, being deemed sufficient notice to such person or entity of the terms of such Order. But nothing herein shall relieve from liability, nor exempt from punishment by contempt, any person or entity who, having actual notice of the terms of any such Order, shall be found to have violated the same.

The Clerk of the Circuit Court of the City of Richmond is hereby directed to forward a certified copy of this order to all parties.

ENTER: October 14, 1994


JUDGE MELVIN R. HUGHES, JR.

We Ask For This:



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Robert D. Perrow (Va. State Bar No. 14766)
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A Copy,
Teste: IVA R. PURDY, Clerk

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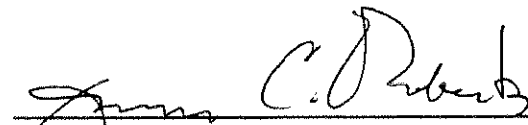
by  D.C.

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